



**THE GOVERNMENT OF KENYA**  
**MINISTRY OF WATER AND IRRIGATION**

**WATER & SANITATION SERVICE  
IMPROVEMENT PROJECT (WASSIP AF)**

RESETTLEMENT POLICY FRAMEWORK (RPF)

**FINAL REPORT**

**December, 2011**



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ENVIRONMENTAL KNOWLEDGE IN PRACTISE

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# GLOSSARY OF TERMS

## DEFINITIONS

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

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

**“Resettlement Assistance”** means the measures to ensure that WaSSIP Additional Financing (AF) program Affected Persons and Displaced Persons who may require to be physically relocated are provided with assistance during relocation, such as moving allowances, residential housing or rentals whichever is feasible and as required, for ease of resettlement.

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

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

**“Cut-off date”** is the date of commencement of the census of PAPs or DPs within the WaSSIP AF program area boundaries. This is the date on and beyond which any person whose land is occupied for WaSSIP AF program, will not be eligible for compensation.

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

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

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

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

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

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

**Resettlement and Compensation Plan”, also known as a “Resettlement Action Plan (RAP)” or “Resettlement Plan”** - is a resettlement instrument (document) to be prepared when program locations are identified. In such cases, land acquisition leads to physical displacement of persons, and/or loss of shelter, and /or loss of livelihoods and/or loss, denial or restriction of access to economic resources. RAPs are prepared by the party impacting on the people and their livelihoods. RAPs contain specific and legal binding requirements to resettle and compensate the affected party before implementation of the WaSSIP AF program activities commences.

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

**WaSSIP AF program Affected Person(s) (PAPs)** are persons affected by land and other assets loss as a result of WaSSIP AF activities. These person(s) are affected because they may lose, be denied, or be restricted access to economic assets; lose shelter, income

sources, or means of livelihood. These persons are affected whether or not they will move to another location.

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



## ACRONYMS AND ABBREVIATIONS

AFD	French Development Agency
AfDB	African Development Bank
AIDS	Acquired Immune Deficiency Syndrome
ARAPs	Abbreviated Resettlement Action Plans
AWSB	Athi Water Services Board
DDC	District Development Committee
DLO	District Land Office
DPs	Displaced Persons
EMCA	Environmental Management Coordination Act
ERSWEC	Economic Recovery Strategy for Wealth and Employment Creation
ESMF	Environmental and Social Management Framework
GCRC	Gross Current Replacement Cost
GOK	Government of Kenya
IDA	International Development Association
KISIP	Kenya Informal Settlements Investment Project
KSHS	Kenya Shillings
LGIs	Local Government Institutions
LVNWSB	Lake Victoria North Water Services Board
MDGs	Millennium Development Goals
MoWI	Ministry of Water and Irrigation
NCT 1	Northern Collector Tunnel Phase 1
NEMA	National Environment Management Authority
NGO	Non Governmental Organisation
NWSIRP	Nairobi Water and Sewerage Institutional Restructuring Project
O&M	Operational and Maintenance
PAP	Project Affected Persons
PAPs	Program Affected Person(S)
PCT	Project Coordination Team
PCU	Project Coordination Unit
PIM	Project Implementation Manual
PLO	Project Liaison Officer
RAPs	Resettlement Action Plans
RLA	Registered Land Act
RPF	Resettlement Policy Framework
USD	United States Dollar
WaSSIP AF	WaSSIP Additional Financing
WSBs	Water Services Boards
WSPs	Water Services Providers
WSS	Water Supply and Sewerage
WUA	Water Users Association

# EXECUTIVE SUMMARY

This Resettlement Policy Framework (RPF) relates to the Water and Sanitation Service Improvement Project -Additional Financing (WaSSIP AF) Project which is being financed by the World Bank. The Ministry of Water and Irrigation (MoWI) through the Water Services Board Coastal Water Services Board (CWSB) Athi Water Services Board (AWSB) and Lake Victoria North Water Services Board (LVNWSB) remain responsible for implementing the WaSSIP AF including the provisions of this ESMF.

This RPF is to be used by the MoWI in order to ensure that the World Bank safeguard OP 4.12 for involuntary resettlement and national requirements for land acquisition and resettlement are adequately addressed. MoWI should in addition ensure that the relevant capacity and training needs are established in order for the recommended measures to be implemented effectively.

## PROJECT BACKGROUND

### *Project Description*

The activities that the WaSSIP AF project will be financing that would give rise to resettlement concern were not confirmed during the preparation of the project and the exact location of facilities to be constructed was also not finalized during this period.

This Resettlement Policy Framework (RPF) provides guidelines on how the sub-projects will avoid, manage or mitigate all these project related displacement risks. Whereas the individual sub-project will carry some risks of adverse environmental and social impacts, this report addresses the risks that might arise if a sub-project will result into acquisition of land and hence disturbing the people's economic, social and/or physical aspects of life. Implementation of these sub-projects is expected to have a widespread positive impact on overall socio-economic status and livelihoods of the people in the country as a whole in terms of increase in the productivity and commercialization of hillside agriculture in target areas

### *Reasons for the use of a Resettlement Policy Framework*

Owing to the nature of the project, the exact location, nature and magnitude of sub-projects to be financed by the project cannot yet be determined at the moment. Therefore at this stage it is neither possible to determine the demography and livelihoods of neither the PAPs nor the resettlement related impoverishment risks they might face.

Consequently it is not yet possible to prepare detailed Resettlement Action Plans (RAPs), which specify the detailed mitigation measures and develop strategies to provide for livelihood restoration. The preparation of Resettlement Action Plans will be required once the location and scope of individual subprojects is known.

This Resettlement Policy Framework (RPF) has been developed in line with (OP 4.12) to provide guidelines on how the projects will avoid, manage or mitigate potential risks and the process by which Resettlement Action Plans will be prepared and implemented during the project implementation period.

The Resettlement Policy Framework serves to provide safeguards against severe adverse impacts of proposed programme activities and proposes mitigation against potential impoverishment risks by:

- *Avoiding displacement of people in the first place or,*
- *Minimizing the number of Displaced Persons or,*
- *Adequately compensating the displaced persons for losses incurred or*
- *Adequately providing other resettlement assistance or rehabilitation as seen necessary to address impacts of the intended interventions.*

### ***Resettlement Requirements***

The GoK by its national laws and the World Bank's Operational and Procedural Policies, specifically O.P.4.12 requires that the government prepare a Resettlement Policy Framework (RPF) to ensure full compliance with the standards set out by the World Bank's operational policy on involuntary resettlement (OP4.12) and the requirements of the Government of Kenya (GOK).

O.P.4.12 further requires that the RPF report must be disclosed as a separate and stand alone 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 local communities using the media, and at the Info shop of the World Bank.

The final draft report will be made publicly available to PAPs and the Interested and Affected Parties by placement of advertisement in the local national newspapers and in relevant government ministries at the national and regional level. The objective of placing the draft report in local venues is to allow for public review and comment as required by the compensation and resettlement laws of Kenya. It is only after the elapse of the comment period that the RPF will be officially submitted to the Bank where it will also be disclosed in the Info shop.

### ***Purpose of the Resettlement Policy Framework***

This RPF is a statement of the policy, principles, institutional arrangements and procedures that the WaSSIP AF will follow in each civil works package involving resettlement. It sets out the elements that will be common throughout the WaSSIP AF. Preparing it allows the Bank and the MoWI to agree on principles and processes so that these need not be discussed for every works package. It also allows WaSSIP AF staff, who may be in many different locations, to undertake planning for specific packages without having to re-negotiate fundamental agreements.

The RPF and the individual RAPs/ARAPs will be fully complementary to one another.

A Resettlement Action Plan (RAP) which is a detailed action plan for each subproject before implementation will be formulated and approved by the various government agencies and the Bank. This is because the sub-projects that are likely to cause displacement of persons have not been identified particularly in location and extent. Both RPF and RAPs are prerequisites for development projects that involve significant involuntary resettlement.

### ***Possible types of Resettlement***

Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land or resource acquisition that result in displacement. This may occur in case of (i) lawful expropriation or restrictions on land or resource use based on eminent domain and/or (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

The WaSSIP AF sub-projects may result in involuntary resettlement which could lead to either physical displacement (relocation or loss of shelter) or economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project related land or resource acquisition.

This resettlement policy framework focuses on direct economic and social impacts that result from the projects, and are caused by:-

- a) *The involuntary taking of land or other resources resulting in (i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood.*
- b) *The involuntary restriction of access to legally designated protected areas and gazetted forests resulting in adverse impacts on the livelihoods of the displaced persons.*

## **LEGISLATIVE FRAMEWORK**

In Kenya expropriation is provided for in the Constitution under section 75 for private land and sections 117 and 118 for unregistered Trust Land. But the constitution only gives general guidelines. The detailed procedures for land acquisition are elaborated under the “Land acquisition Act” in chapter 295 for private land and chapter 288 for unregistered Trust Lands. “Trust Land” refers to that land that is still held under African customary tenure. The title to this land is said to vest in the County Council in trust for its inhabitants, hence the term “Trust”.

Expropriation in this context refers to the taking away of private land and landed property for public purpose by the government with or without the owners consent subject to laws of eminent domain, which stipulates prompt and adequate compensation among other things. In Kenya “setting apart” for unregistered Trust Land and “Compulsory acquisition” for all registered private lands are the terms commonly used.

Expropriation of land is a very important aspect in land management in that it is the instrument by which land is availed for various development needs e.g. Infrastructure, Housing, Dams and Irrigation, or Industrial purposes if the development and utilization of the said land is to promote public benefit.

## **INSTITUTIONAL IMPLEMENTATION ARRANGEMENTS**

The implementation arrangements of the RPF build on the arrangements for resettlement and compensation activities required by Kenyan Legislation.

The main executing and accountable agency at national level will be the MoWI via the Project Coordination Unit (PCU). At sub-national level, the district authorities will play a critical role in supervising sub-project resettlement and compensation planning, implementation and monitoring. This will be mainly done through the District Land Office. The key actors on the ground involved in implementation will be the individual sub-project Resettlement and Compensation Committees, which will comprise representatives from all the legally and project mandated executing agencies at the district level.

### ***Valuation and Compensation***

As per the Valuation Law, all peoples affected by expropriation must receive fair and just compensation. The calculation of fair and just compensation is to be made by independent valuers. Fair and just compensation is stipulated to be market value for land and other assets. This RPF provides methods, formulae and cost units that are currently applicable internationally and are equivalent to market value. In order to ensure that OP4.12 requirements are met for valuation, these valuation methods are to be adopted for all sub-projects of projects.

### ***Preparation and Implementation of RAP***

The steps to be undertaken for each individual RAP include a screening process, a socioeconomic census and land asset inventory of the area and identification of Project Affected Parties (PAPs). This will be followed by the development of a Resettlement Action Plan (RAP), RAP review and approval, implementation of the RAP and monitoring of RAP implementation and success. These steps will be the responsibility of the WaSSIP AF Project Coordination Team (PCT) in each of the WSBs. The District Land Office should take the lead in electing the Resettlement and Compensation committee for each sub-project. This committee will not only coordinate the design and implementation of the RAPs but will contribute significantly since it will be created at sector level, thereby ensuring each RAP is appropriately tailored to local conditions. Throughout this process, consultation and public disclosure will take place with PAPs. Following approval of the sub-project RAP, the process of implementation must take place.

This will involve:

- *Consultation (a continuation of the process entered into during the site selection,*
- *Screening and the RAP development process);*

- *Notification to affected parties;*
- *Agreement on compensation, including agreement and further development of rehabilitation measures; and*
- *Preparation of contracts, compensation payments and provision of assistance in resettlement.*

### ***Grievance Redress Mechanisms***

At the time that the individual RAPs are approved, affected individuals and households will have been informed of the process for expressing dissatisfaction and for seeking redress. The grievance procedure will be simple, and will be administered as far as possible at the Sector/ Cell level by the Resettlement and Compensation Committee to facilitate access by PAPs. A representative of the Committee will act as Project Liaison Officer (PLO) and be the main project contact for all PAPs it is recommended that the PLO works in collaboration with an independent agency/NGO or person to ensure objectivity in the grievance process. All grievances concerning non-fulfilment of contracts, levels of compensation, or seizure of assets without compensation shall be addressed to the Project Liaison Officer and resolved in coordination with the District Administration and PCT in each WSB.

### ***Monitoring and Evaluation***

The arrangements for monitoring the resettlement and compensation activities will fit the overall monitoring program of the entire WaSSIP AF program, which will fall under the overall responsibility of the PCT. At the sub-project level, the District authorities will have responsibility for ensuring monitoring is undertaken with the Resettlement and Compensation Committee coordinating efforts. Periodic evaluations will be made in order to determine whether: the PAPs have been paid in full and before implementation of the sub project activities; economic rehabilitation measures have been implemented; and the PAPs have the same or higher standard of living than before. A number of objectively verifiable indicators shall be used to monitor the impacts of the compensation and resettlement activities. These indicators will be targeted at quantitatively and qualitatively measuring the physical and socio-economic status of the PAPs, to determine and guide improvement in their social wellbeing. In addition, an independent audit will take place at the completion of the RAP implementation.

### ***Estimated Budget***

The estimated grand total cost of the resettlement program for all sub-projects is US \$ 7,000,000 including the cost for the environmental safeguards. Because the exact unit prices, the number of people to be affected, and the scope of land acquisition are estimates, the exact figures will not be known until the RAPs are prepared, and the Government of Kenya will make funds available for the implementation of the RAPs.

### ***Annual Reporting and Performance Review Requirements***

Annual social progress reports will be prepared and the preparation will be supported by the WaSSIP AF short term technical consultants. These reports will be submitted to WaSSIP AF PCT before the Bank's supervision mission arrives. The annual reports will

be shared with WaSSIP AF PCT in each of the WSBs, the World Bank and other relevant government agencies.

### ***Capacity Building and Training***

Effective implementation of the Resettlement Policy Framework will require that adequate capacity enhancement within institutions and other stakeholders are undertaken. There is need for capacity building through training to be conducted to the Project Coordinating Team. In the initial preparatory stages the use of consultants to prepare initial RAPs working with the consultants to learn on the job through pairing is recommended. The deliverables of the study were this RPF report, and an accompanying Environmental and Social Impact Assessment report.

### ***Key Highlights of the RPF***

The key highlights in this RPF report is presented as follows:

- *Principles and objectives governing resettlement preparation and implementation.*
- *A description of the process for preparing and approving resettlement plans.*
- *Land acquisition and likely categories of impact.*
- *Eligibility criteria for defining various categories of project affected persons.*
- *A legal Framework reviewing the fit between the laws of Kenyan and regulations and Bank policy requirements and measures proposed to bridge any gaps between them.*
- *Methods of valuing affected assets.*
- *Organizational procedures for the delivery of entitlements, including, for projects involving private sector intermediaries, the responsibilities of the financial intermediary, the government, and the private developer.*
- *A description of the implementation process, linking resettlement implementation to civil works.*
- *Descriptions of the grievance redress mechanisms.*
- *A description of the arrangements for funding resettlement, including the preparation and review of cost estimates the flow of funds, and contingency arrangements.*
- *A description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring.*
- *Arrangements for monitoring by the implementation agency and, if required, by independent monitors.*

This RPF governs all activities funded under the WaSSIP AF, and is to be used in conjunction with the Environmental and Social Management Framework (ESMF) that has also been prepared for this program as a separate stand alone document, also disclosed at the Bank info shop and in Kenya.



# I. INTRODUCTION

## **PROJECT CONTEXT**

The exact locations and activities including facilities to be constructed by the WaSSIP AF project and which would potentially lead to environmental and social concerns have not yet been confirmed in detail at the time of project preparation.

It is for this reason that this RPF has been prepared by the GoK, represented by the Ministry of Water and Irrigation (MoWI) to fulfil the requirements of the Law of Kenya and the World Bank's Safeguards Policies.

The Resettlement Policy Framework provides guidelines for development of appropriate mitigation and compensation measures, for the impacts caused by future WaSSIP AF activities whose exact locations are not known. The RPF is intended for WaSSIP AF as a practical tool to guide the preparation of Resettlement Action Plans (RAPs) for sub- WaSSIP AF activities during implementation of the comprehensive WaSSIP AF program.

The objective of this Resettlement Policy Framework (RPF) is to provide a screening process, for any future WaSSIP AF program activities, to ensure that where land acquisition for WaSSIP AF program activities is inevitable, resettlement and compensation processes for lost land and associated assets should be conceived and executed in a sustainable manner.

This entails providing sufficient investment resources to meet the needs of the persons affected and/or displaced from their habitat and resources. It also requires adequate collaborative consultation and agreement with the WaSSIP AF affected persons to ensure that they maintain or improve their livelihoods and standards of living in the new environment.

World Bank further requires that the RPF is disclosed in-country to the general public as a separate and stand alone document for review and comment before it is approved. The document must also be available at the Infoshop of the World Bank. Individual RAPs will be prepared for each sub project based on the guidelines and procedures highlighted in the RPF document.

The prepared RAPs will then be cleared by the National Environment Management Authority (NEMA) and the World Bank, prior to implementation of their planned project investments. The use of this RPF and a separately prepared ESMF by WaSSIP AF would be the instrument, through which the project's environmental and social impacts are identified, assessed, evaluated and have appropriate mitigation, management and monitoring measures, designed and incorporated within the sub project itself.

## **OBJECTIVES**

The objective of this document is to enable World Bank, WASSIP AF and other participating institutions to address the needs of the populations that could be affected

by the program by establishing policies, principles, institutional arrangements for management of issues related to acquisition of land and hence displacement of persons and impact on their livelihoods. The legislation on resettlement of the government of Kenya and OP 4.12 Involuntary Resettlement of the World Bank will be the frameworks that will govern any resettlement arising out of the activities of the program.

## **JUSTIFICATION FOR THE RPF**

The WaSSIP AF expected investment activities are likely to result in the involuntary resettlement of people especially in the areas where the reservoir for the dams are going to be located.

As most of the WASSIP AF sub-projects are still at investigation phase, with feasibility studies currently ongoing for other proposed projects, the scope, scale of activities and likely numbers PAPs is uncertain. It is for this reason that a RPF has been prepared. The RPF provides guidance, to all actors involved in sub-project implementation, for the identification of resettlement implications and measures to adopt to minimize or address resettlement issues created by the sub-project. Once resettlement issues are identified, a Resettlement Action Plan will need to be prepared, guidance for which is included in Section 6 and 7.

At this stage however, the Government of Kenya (GoK) is not required to prepare a Resettlement and Compensation Plan (RAP) since the project actual locations have not yet been finalized and approved. However, the GoK is required by the World Bank to prepare a Resettlement Policy Framework (RPF) to be publicly disclosed in Kenya and at the World Bank Infoshop before appraisal of this project. The RPF establishes 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 WaSSIP AF, when these sites are decided upon. The RPF is prepared to the standards of the GoK's own policy on resettlement and the policy of the World Bank, OP4.12.

When the sites are identified, for the sites that trigger OP 4.12, resettlement/compensation plans will be closely coordinated with the planning and implementation of civil works and then subsequently prepared consistent with this policy framework by WaSSIP AF and will be submitted to the World Bank for approval before any land acquisition, resettlement, loss, denial of, and restriction to economic resources or any other impact on livelihood occurs. This framework therefore is necessary to provide guidelines for addressing concerns of affected persons where:

- *Land is contributed voluntarily for the development of WaSSIP AF program activities in return for compensation,*
- *Land is contributed voluntarily for development of WaSSIP AF activities without seeking compensation, and*
- *Land is acquired involuntarily for the development of WaSSIP AF program activities.*

The guiding principle for land acquisition will be that where land is required for implementation of the investment program appropriate safeguards will be observed to avoid or reduce the negative impacts of land acquisition on the affected community

members.

This framework will be applied to all WaSSIP AF sites with the in-built mechanisms for resolving any forms of disputes on land acquisition. This RPF will apply to all activities implemented that are associated with this program. The RPF is presented in a much more comprehensive manner so as to guide and ensure that all conditions of population dislocation or loss of socio-economic benefits are taken into account during formulation of the resettlement action plans (RAPs).

## 2. PROJECT DESCRIPTION

This chapter describes the proposed WaSSIP AF including the different components and activities expected during the implementation of the project.

### **WATER AND SANITATION SERVICE IMPROVEMENT PROJECT**

The Government of Kenya's (GOK) National Water Policy (1999) envisages 100% access to safe water for the country's population by 2010. The Millennium Development Goals (MDG) envisages access to safe water and improved sanitation of 70% and 93% respectively by 2015. Current coverage figures are 49% and 86% respectively. During the 1980's and 1990's Kenya made large investments in water supply and sewerage (WSS) production and treatment capacities, but these did not result in efficient and sustainable service distribution. WSS operations were not transparent, unsustainable and ill suited to respond to consumer needs. There was widespread collapse of infrastructure due to under-investment in operations and maintenance. To address the deteriorated situation and the previously fragmented water supply and sanitation (WSS) delivery responsibilities, GOK commenced a comprehensive sector reform in early 2003.

The main sector reform vehicle is the Water Act (2002), aimed at harmonizing the management of water resources and WSS. A central tenet of the new service delivery framework is the separation of functions between each aspect of service delivery - policy making, regulation, asset ownership / control and service delivery operations. The consequent formalization of relationships between these functions is expected to reduce conflicts of interest and increase transparency and accountability. Consistent with this tenet, the GOK (i) reorganized the Ministry of Water and Irrigation (MoWI) into a body focused on policy issues, (ii) established a Water Services Regulatory Board (WSRB), and (iii) established seven Water Services Boards (WSBs). Each WSB is mandated to appoint Water Services Providers (WSPs), which are legal entities contracted by WSBs to be responsible for service delivery operations.

#### ***Nairobi Water and Sewerage Institutional Restructuring Project (NWSIRP)***

The Bank supported the Nairobi Water and Sewerage Institutional Restructuring Project (NWSIRP) that focused on the early phase of reform in Nairobi i.e., institutional restructuring - setting up new autonomous institutions, operationalizing and strengthening them. The project was successfully implemented and has contributed to increase in revenue collection by 60% leading to operational and maintenance (O&M) cost being covered. AWSB and NWSC continue to strengthen their operational, commercial and financial functions. Transparency and governance has improved as a result of a more traceable operating framework, the organization of the sector under legally accountable sector institutions (parastatals and companies), and the implementation of governance training, broad stakeholder representation on institutional oversight mechanisms and individual performance contracts and Codes of Ethics. AWSB, CWSB and LVNWSB have established functional water service providers in line with Water Act 2002 to operate services in the area of their jurisdiction.

## **OBJECTIVES OF THE PROJECT**

### ***The Kenya Water and Sanitation Service Improvement Project (WaSSIP)***

Following the successful implementation of the NWSIRP the Government of Kenya engaged the Bank in discussions towards financing infrastructure development for Athi Water Services Board,(AWSB) Coast Water Services Board (CWSB) and Lake Victoria North Water Service Board (LVNWSB) under the Water and Sanitation Service Improvement project (WaSSIP). The project was financed for 150Million USD (AWSB - 65.99Million CWSB 43.33Million and LVNWSB 40.48).

From February 14 to March 7, 2011, an International Development Agency (IDA) mission undertook the formal Mid-Term Review (MTR) of the status of the Water and Sanitation Service Improvement Project (WaSSIP). The main objective of the mission was to carry out a review of the project activities supporting Athi Water Services Board (AWSB), the Coast Water Services Board (CWSB), the Lake Victoria North Water Services Board (LVNWSB), the Water Appeals Board (WAB) and the Water Services Regulatory Board (WASREB). In addition, a post procurement review and a review of progress and compliance of the Resettlement Plan Framework (RPF) and the Indigenous People Plan Framework (IPPF) were conducted.

The mission rated the progress of implementation of the project as good with the following implementation performance and disbursements: The total cost of all contracts already awarded (and expenditures incurred under operating costs and training) is 136.04 million USD, which represents 90.0 percent of the 151million USD of IDA funds available for WaSSIP. The total cost of all contracts either awarded or where the bidding process had commenced was 145.1million USD which represents 96.5 percent out of 151million USD of IDA funds available for WaSSIP. The disbursed amount was 77.16 million USD (51.0 percent of the total IDA amount) for the 3 WSB.

Based on the good implementation progress of WaSSIP 1 of the project and the need for additional investments in all three WSB's areas, it was agreed during the MTR that the Bank's team together with the three WSBs prepare the necessary documentation to request additional financing for the project from IDA in the first quarter of Fiscal Year 2012 (July to September 2011).

The proposed WaSSIP AF project is targeted at investments on rehabilitation and expansion of existing water supply schemes, design and development of bulk water supply systems, planning and development of sanitation infrastructure in each of the jurisdictions of the three water service boards (WSBs) - AWSB, CWSB and LVNWSB, and institutional strengthening of the three WSBs, the associated Water Service Providers (WSPs), and capacity building of Water Services Regulatory Board (WSRB) and the Water Appeal Board (WAB).

### ***Rationale for Continued Bank Involvement***

The continued satisfactory implementation of WaSSIP 1 places the Bank in a unique position to help strengthen the water sector reform. Further support would consolidate the gains in sector institutional arrangements and help these institutions to improve and expand actual WSS delivery to Kenyans through sustainable infrastructure investments. Service delivery to underserved informal settlement areas, where a majority of the poor resides is critical and will be considered under the Kenya Informal Settlements Investment Project (KISIP) which is supported by the Bank under the Ministry of Housing. The 3 WSBs will submit proposals to KISIP for financing investments for informal settlement works.

In order to minimize disruptions and loss of momentum in project implementation, the gap between the closing of WaSSIP 1 (expected end-December 2012) and the start of a follow-on support activity should be minimized. The proposed project would be the next step in the Bank's phased support and is consistent with the GOK's Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) that calls for structural reforms, the mobilization of investments, and expansion of services. The project directly addresses the CAS that determined deteriorated infrastructure based services as a constraint to economic growth and the Africa Action Plan that calls for the closing of Africa's infrastructure gap and expanding service coverage. Further the support will go a long way towards the achievement of Kenya Vision 2030 and the MDGs.

Cooperation with development partners would maximize the benefits of common directions and visions and the optimal use of resources. In the first instance, there is an opportunity for parallel financing activities with KFW, AFD and AfDB to support the AWSB, LVNWSB, and CWSB. Confirmation of interest from these agencies has been obtained through previously established cooperation, joint missions and through discussions in the Donor Sector Working Group. Other development partner interests (e.g., the Japanese financing agencies) would be sought.

### **PROPOSED PROJECT DEVELOPMENT OBJECTIVE(S)**

The proposed WaSSIP AF will complement and build on the gains and achievements already made through the implementation of NWSIRP and WaSSIP 1. The development objectives of the project are therefore to:

- 1. Increase access to reliable, affordable and sustainable water supply and sanitation services; and*
- 2. To improve the water and wastewater services in the areas served by AWSB, LVNWSB and CWSB.*

This will be achieved by:

- (i) Rehabilitating selected existing water production, transmission, storage and distribution facilities and wastewater collection, treatment and disposal facilities,*

- (ii) *Expanding piped water supply services to under-served areas through a balanced program including the involvement of communities in decision making and extension of primary and secondary distribution pipes where required, and*
- (iii) *Refining and strengthening the institutional structure, emphasizing on increasing accountability and transparency of the institutional and governance and management framework for AWSB, CWSB, LVNWSB, WSRB and WAB.*

## **PROJECT COMPONENTS AND RESETTLEMENT IMPLICATIONS**

### ***Rehabilitation and Extension of Water Supply Facilities***

Overall the WaSSIP AF proposed projects in the 3 WSBs include support in the (i) rehabilitation of existing water supply systems including major transmission pipelines, water treatment works, storage, water distribution networks, boreholes including deep wells; (ii) construction of water treatment networks in selected small towns; development of water storage dams and the Northern Collector Tunnel (for Nairobi supply), (iii) extension of water distribution networks and metering iv) generation of electricity from the gravity water systems and v) feasibility study and preparation of water master plan for LVNWSB. This component is focused on improving and expanding reliable, sustainable and affordable safe water supply to consumers.

### ***Rehabilitation and Extension of Wastewater and Sanitation Facilities***

Support the (i) planning and design of sewerage networks and sewage treatment facilities; (ii) extension of existing networks, design for development of energy generation from waste water treatment plants(iii) Preparation of Nairobi Metropolitan Sewer Master Plan. This component is focused on improving treatment and disposal of wastewater. The rehabilitation deteriorated wastewater treatment and construction of facilities would result in overall environmental benefits.

### ***Institutional Strengthening Program***

This component is aimed establishing and reorienting the central sector organizations and strengthening capacities in designated areas of their sector leadership, The support includes institutional strengthening of: (i) the asset holding companies - AWSB, LVNWSB and CWSB; (ii) autonomous and ring fenced water and sewerage service provision companies in the three WSB areas, (iii) Strengthening of the Water Services Regulatory Board (WSRB); and (iv) Water Appeals Board. (WAB); (v) technical assistance for M & E, engineering, financial, legal, assets valuation, audits, informal settlements WSS program, communications, environmental monitoring, and independent assessments of institutional framework; (vi) programs to increase oversight and transparency of service delivery; and (vii) training and capacity building. This component is focused on strengthening the service delivery framework, governance and transparency, and monitoring and evaluation.

### ***Investment requirement***

Investment proposals have been developed by AWSB, LVNWSB and CWSB from which a specific set of priority investments could be selected for financing. Preliminary estimates are for 250Million USD (AWSB 141million, CWSB 53Million and LVNWSB

54Million USD) for Bank financing. However, overall investment requirement for the three WSB is far above this amount (in excess of 700Million USD).

### ***Implementation***

The proposed project will be implemented using existing organizational structures and incorporating lessons learnt and experience gained in the implementation of WaSSIP 1 and with other similar projects. The project will be managed by the Project Implementation Unit established by the three WSBs and within the overall framework of WaSSIP as defined in the Project Agreement. AWSB will provide secretariat for the PCT and the team will come under the oversight of the respective Chief Executive Officers of AWSB, CWSB and LVNWSB.

## **COMPONENT I: SUPPORT TO THE ATHI WATER SERVICES BOARD SERVICE AREA**

### ***Rehabilitation and Extension of Water Supply Facilities***

Support the (i) rehabilitation of existing water supply systems including transmission pipelines, water treatment works, storage, water distribution networks, boreholes; (ii) construction of water treatment networks in selected small towns; and (iii) extension of water distribution networks and metering. This component is focused on improving and expanding reliable, sustainable and affordable safe water supply to consumers.

#### ***Rehabilitation of existing water supply systems***

- *Consultancy services for designs, preparation of contract documents and supervision works in Nairobi and Satellite towns:*
- *Works contracts Nairobi*
- *Rehabilitation of water supply in satellite towns (Mavoko, Kitengela, Kangundo and Wote)*

#### ***Construction of water treatment works and related works in small towns***

- *Consultancy services for designs, preparation of contract documents and supervision works*
- *Works contracts*

#### ***Extension of water distribution networks and metering***

- a) *Consultancy services for designs, preparation of contract documents and supervision works*
- b) *Works contracts*

#### ***Improvement and development of new water sources***

- a) *Consultancy services for designs, preparation of contract documents and supervision works –*
- b) *Works contracts in Nairobi and Other small towns*

The main works for Nairobi involve construction of Northern Collector Tunnel Phase 1 (NCT 1). This new water sources are aimed at securing water supply to Nairobi during



the dry periods when there is reduced supply to the city. The NCT 1 will deliver 1.5m<sup>3</sup>/s(130,000m<sup>3</sup>/day) of water to Thika Dam from Maragua, Gikigie and Irati rivers. This will ensure that during the long dry periods Thika dam continues to provide 460,000m<sup>3</sup>/day of water to Ng'ethu Treatment plant for treatment and eventual supply to Nairobi city.

The main works under the small towns is the construction of Kiambu dam on Kamiti River. Kiambu town currently gets 2,500m<sup>3</sup>/day from the Nairobi city transmission system. In order to ensure this amount is secured for the City, construction of Kiambu dam has been proposed to supply 20,000m<sup>3</sup>/day to be treated and supplied to Kiambu town and neighbouring areas including Karuri and Runda.

### ***Rehabilitation and Extension of Wastewater and Sanitation Facilities -***

Support the (i) rehabilitation of sewerage networks and sewage treatment facilities; (ii) extension of existing networks; (iii) Preparation of Nairobi Metropolitan Sewer Master Plan. This component is focused on improving treatment and disposal of wastewater. The rehabilitation deteriorated wastewater treatment and construction of facilities would result in overall environmental benefits. This component includes the following sub-components:

- a) *Consulting services for planning and design sewerage networks and sewage treatment facilities in small towns;*
- b) *Consulting services for design of energy generation from wastewater treatment facilities;*
- c) *Extension of existing networks;*
- d) *On-plot sanitation & Hygiene campaigns*

## **COMPONENT 2: SUPPORT TO THE COAST WATER SERVICES BOARD SERVICE AREA**

### ***Rehabilitation and Extension of Water Supply Facilities***

Support the (i) rehabilitation of existing water supply systems including transmission pipelines, water treatment works, storage, water distribution networks, boreholes; (ii) construction of water treatment networks in selected small towns; and (iii) extension of water distribution networks and metering. This component is focused on improving and expanding reliable, sustainable and affordable safe water supply to consumers.

### ***Rehabilitation of existing water supply systems for Mombasa and WSP's***

- a) *Consultancy services for designs, preparation of contract documents and supervision works*
- b) *Works contracts*

### ***Construction of Water Supply and related works in small WSP's***

- a) *Consultancy services for designs, preparation of contract documents and supervision works*
- b) *Works contracts*

### ***Improvement and development of new water sources***

- a) *Consultancy services for review of designs and contract documents and supervision works*
- b) *Works contracts*
- c) *Marere and Baricho*

## **COMPONENT 3: SUPPORT TO THE LAKE VICTORIA NORTH WATER SERVICES BOARD (LVNWSB) SERVICE AREA**

This component is aimed at providing resources to Lake Victoria North Water Services Board (LVNWSB) for the following sub components:

### ***Rehabilitation and Extension of Water Supply Facilities***

This sub component will support (i) the rehabilitation of existing water supply systems including water sources intakes, surface and groundwater borehole sources, transmission pipelines (gravity or pumped), water treatment works, storage tanks, water distribution networks (ii) construction of extension of water supply source works water treatment works etc in selected small towns, and (iii) construction of extension of water distribution networks and installation of metering. This sub component will focus on improving and expanding water supply to make them be reliable, sustainable, affordable and safe to consumers.

### ***Rehabilitation of Water Supply Systems***

Six independent rural water supply schemes of Sio Port, Port Victoria, Musanda, Navakholo, Kwanza, and 1 rural cluster. The works will comprise of (i) cleaning (flushing) and equipping of boreholes, (ii) water treatment chemical dosing units ( where required), (iii) rehabilitation of pipeline fittings ( section valves, air valves, wash outs, etc), (iv) replacements of pipeline sections that are prone to bursts and supply failures, (v) repair of leaking storage tanks;

### ***Consulting services for design and supervision***

For design of rehabilitation works, Tender documentation and construction works supervision.

### ***Expansion of Water supply Systems.***

The expansion works will consist of expansion of intake structures to cater for increased demand or development of new intakes and drilling of new boreholes; new treatment works or expansion of existing treatment works; new pumping units for raw water and treated water; new storage tanks; new backwash systems; additional rising mains and reticulation systems; metering of schemes; additional balancing tanks; additional dosing facilities; water testing laboratories. The following projects are particularly targeted:-

### ***Butere and Malaba/Malakisi Towns***

- *Six Independent Rural Schemes*
- *One Rural Clusters*
- *Eldoret Water supply Expansion: Expansion of Ellegirini and Kipkaren Dam Water treatment works*
- *Extending Services to Informal Settlements.*
- *Consulting services for design (where necessary) and supervision of the above*
- *Consultancy services for feasibility/design of new water supplies*
- *Extension of water distribution networks and metering*

### ***Rehabilitation and Extension of Wastewater Facilities.***

This component is deferred and will be addressed at a later date. The subcomponents covered under this include among others the following:

#### ***Mumias town Construction Works.***

- *There is need for construction of sewerage systems in Mumias town (of approximate capacity of 7,500 m<sup>3</sup>/d). Separate funding will be sought for this.*

#### ***On site sanitation.***

- *Butere, 3 independent schemes and 2 rural clusters.*

#### ***Malaba-Kocholia Sewerage***

System expansion including construction of waste stabilization ponds and 5 km sewers and on plot connections:

- *Civil works;*
- *Consultancy (design and supervision)*

#### ***Kimilili Town- development of sewerage system***

Including waste stabilization ponds, 5 km trunk sewers and laterals.

### 3. METHODOLOGY AND CONSULTATION

The study was conducted using the following approaches and methodologies;

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

Review on the existing baseline information and literature material was undertaken and helped in gaining a further and deeper understanding of the project. Among the documents that were reviewed in order to familiarise and deeply understand the project included:

- *WaSSIP 1 Resettlement Policy Framework,*
- *World Bank Involuntary Resettlement Operational Policy 4.12.*
- *Environmental Management and Coordination Act 1999*
- *Relevant legislation related to resettlement in Kenya including; EMCA, Land Act among others.*

#### **FIELD VISITS**

In order to familiarise and get acquainted with the project types in terms of background issues (socio-economic and bio-physical) field visits have been made to certain sites that have been identified on a preliminary basis as potential locations for sub projects.

#### **INTERACTIVE DISCUSSIONS**

Using detailed questionnaires, Focus Group Discussions, direct face to face interviews, the consultant has held a few discussions with relevant stakeholders and implementing partner's. Detailed public consultation and stakeholder engagement is scheduled to be conducted prior to the submission of a final RPF.

## 4. POTENTIAL IMPACTS OF THE PROJECT

### DEFINITION OF PROJECT AFFECTED PEOPLE (PAPS)

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

The policy framework applies to all economically and/or physically displaced persons regardless of the total number affected by the severity of impact and whether or not they 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, indigenous groups, ethnic minorities and other historically disadvantaged groups or other economically and/or physically displaced persons who may not be protected through Kenya's land compensation legislation.

### PROJECT ACTIVITIES WITH DISPLACEMENT POTENTIAL

The main project activities envisaged to have displacement potential are:-

- *Rehabilitation of existing water supply systems including water sources intakes, surface and groundwater borehole sources, transmission pipelines (gravity or pumped), water treatment works, storage tanks, water distribution networks (ii) construction of extension of water supply source works water treatment works etc in selected small towns, and (iii) construction of extension of water distribution networks and installation of metering (iv) Construction of water treatment networks in selected small towns; and (v) extension of water distribution networks and metering.*

### CATEGORIES OF PAPS

The likely displaced (economically or physically) persons herein referred to as Project Affected Persons (PAPs) have been categorized into three groups namely:-

#### *Affected individuals*

These are individuals who risks losing assets, investments, land, property and/or access to natural and/or economic resources as a result of a sub-project.

#### *Affected households*

A household is affected if one or more of its members are affected by any sub-project. This includes:-

- *Any member in the households, men, women, children, dependent relatives and friends, tenants;*
- *Vulnerable individuals who may be too old or ill to farm along with the others;*
- *Members of households who cannot reside together because of cultural rules, but who depend on one another for their daily existence;*
- *Members of households who may not eat together but provide housekeeping or other activities critical to the family's maintenance; and*
- *Other vulnerable people who cannot participate, due to being physically challenged or for cultural reasons, in production, consumption, or co-residence.*

In the local cultures, members of production, consumption, and co-resident groups form overlapping, often incongruent sets of people who may exchange domestic or farming services on a regular basis even though living separately. Compensation will not be limited to people who live together in a co-resident group, since this might leave out people whose labour contributions are critical to the functioning of the "household".

### ***Vulnerable Households-***

Vulnerable households include:-

***Orphans*** -Due to the impacts of the AIDS crisis and the past conflicts, there are a considerable (some estimates put it at 40% of all children) 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.

Orphaned children engage in any form of economic activity to provide for themselves and their siblings, by engaging in activities such as manual work at open air markets, transporting loads for short distances, and other exploitative employment. Compensation for these orphans, if they are affected by the projects in a way which requires their physical relocation, would take the form of paying for their rehabilitation and training to acquire useful vocational skills.

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

***HIV/AIDS afflicted persons***-Relatively high percentages of the poor and total population are living with HIV or are terminally ill with AIDS. Many are beneficiaries of numerous health programmes from the government, international organizations and the NGO community.

***Widow-Female-headed households***-These may depend on husbands, sons, brothers, or others for support. However, in other cases, women are the main breadwinners in their

household and therefore need relatively easy access to health service facilities, as mothers and wives. 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.

***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 specifically includes the labour costs of preparing new land, so these women are provided for by the compensation plan.

***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. However, 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.

***Non-farming females***-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 receive replacement cost compensation. 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 AIDS afflicted person. These groups could be identified as being particularly vulnerable to land acquisition activities, and as such the following considerations will be made when project sites are identified and PAPs listed.

- a) *Special consideration should be paid to these groups outlined above by identifying their needs from the socio-economic and baseline studies undertaken as part of the RAP process;*
- b) *The groups should be individually consulted and given opportunities to participate in the resettlement decision-making process, as well as project activities;*
- c) *Consultation with these groups should ensure that resulting resettlement and compensation restores and or improves their pre-project livelihood;*
- d) *The RAPs should be designed to ensure special attention is paid to the monitoring of the resettlement process in order to ensure that pre-project livelihoods are indeed restored and or improved upon;*
- e) *PAPs should be given sufficient technical and financial assistance to make use of the grievance mechanisms of the project where required;*
- f) *Decisions concerning them should be made in the shortest possible time.*

The categories given above may not cover all types of affected persons. In addition, the categories are not mutually exclusive. It is important therefore that the WaSSIP AF program activities should have well prepared and comprehensive resettlement action plans that would be specific and comprehensive enough to benefit all the categories of affected persons, through the following and other actions as may be appropriate:

- *Quick decisions and rapid action on the RAPs' to assist the affected persons in a timely manner,*
- *Individual and collective consultations will be expedited at the conception of the program sites,*
- *The affected persons will be given the opportunity to participate or to work in the WaSSIP AF program activities,*
- *Alternative subsistence farming plots will be identified, surveyed and developed and made available to those losing land,*
- *Compensation for loss of crops and trees will be determined prior to re-location or construction and paid accordingly,*
- *Rehabilitation support, where appropriate, will be given to those moved from their land during relocation and re-establishment,*
- *Resettlement will be aimed at improving their livelihoods,*
- *Monitoring of the raps to ensure that resettlement and compensation has improved the quality of life of all the affected persons, in comparison with their pre-resettlement conditions and,*
- *Technical and financial assistance will be made available to them.*

## **APPROXIMATE NUMBER OF PAPS**

Determination of the number of PAPS is impossible at this phase of the project because the sub projects have not been determined in terms of location, nature, scope and magnitude. Project descriptions do not exist for any of the sub-projects to allow estimation of PAPS. The purpose of this RPF is therefore to establish the mechanisms by which the appropriate tools, screening checklists and RAPs will be implemented to mitigate potential resettlement impacts once sub-projects have been identified.

Each individual sub-project which might require physical and/or economic resettlement, the number of PAPS will be established through a Resettlement Action Plan which will be elaborated before project implementation.

### ***Potential relocation areas***

During the development of individual sub projects, location for resettlement where necessary will be identified through a consultative process involving relevant authorities and the PAPS involved.



## 5. PRINCIPLES AND OBJECTIVES GOVERNING RESETTLEMENT PREPARATION AND IMPLEMENTATION

The impacts due to involuntary resettlement from development projects, if left unmitigated, often gives rise to severe economic, social and environmental risks resulting in production systems being dismantled, people facing impoverishment when their productive skills may be less applicable and the competition for resources greater; community institutions and social networks being weakened; kin groups being dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost.

The World Bank Safeguard policy OP 4.12, in most cases, is not triggered because people are being affected by physical displacement. It is triggered because the project activity causes land acquisition, whereby a physical piece of land is needed and people may be affected because they are cultivating on that land, they may have buildings on the land, they may use the land for water and grazing of animals or they may otherwise access the land economically, spiritually or any other way which may not be possible during and after the project is implemented. Therefore, people are in most cases compensated for their loss (of land, property or access) either in kind or in cash of which the former is preferred.

Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities, as well as environmental damage and social stress in areas to which they have been displaced. For these reasons, the project will avoid involuntary resettlement, or if this is not feasible at least minimize it to the extent possible. However, where it is unavoidable, appropriate measures to mitigate adverse impacts on displaced persons and host communities will be carefully planned and implemented following the general framework outlined in this document.

### **INVOLUNTARY RESETTLEMENT**

Involuntary resettlement, if left unmitigated, normally gives rise to severe economic, social, and environmental risks. People face impoverishment when their productive assets or income sources are lost and social networks are weakened. The nine most common impoverishment risks are:-

(a) *Landlessness*: Expropriation of land removes the main foundation on which many people build productive systems, commercial activities and livelihoods. Often land is lost forever and sometimes it is partially replaced, seldom fully replaced or fully compensated. This is the main form of de-capitalization and pauperization of the people who are displaced, and both natural and man-made capital is lost.

(b) ***Joblessness***: Loss of salaried employment occurs both in rural and urban displacement. People losing jobs may be industrial or service workers, landless agricultural labourers, or artisans. Unemployment or under-employment among those who are resettled may linger long after physical relocation. Creating new jobs for them is difficult and requires substantial investments, new creative approaches, and reliance on sharing project benefits.

(c) ***Homelessness***: Loss of shelter may be only temporary for many people, but for some it remains a chronic condition and is also felt as loss of identity and cultural impoverishment. Loss of housing may have consequences on family cohesion and on mutual help networks if neighbouring households of the same kinship group get scattered. Group relocation of neighbours is therefore usually preferable over dispersed relocation.

(d) ***Marginalization***: This occurs when relocated families lose economic power and slide down towards lesser socio-economic positions. Middle-income households may become small landholders while small shopkeepers and craftsmen may lose business and fall below poverty thresholds. Economic marginalization tends to be accompanied by social and psychological marginalization.

(e) ***Increased morbidity and mortality***: Vulnerability of the poorest people to illness is increased by forced relocation, because it tends to be associated with increased stress, psychological traumas, or the outbreak of parasitic diseases. Decreases in health levels result from unsafe water supply and sewage systems that proliferates epidemic infections, diarrhoea, dysentery, etc.

(f) ***Food insecurity***: Destruction of crops diminishes self-sufficiency, dismantles local arrangements for food supply, and thus increases the risk of chronic food insecurity. This is defined as calorie-protein intake levels below the minimum necessary for normal growth and work.

(g) ***Educational loss***: Involuntary displacement disrupts all public services at the departure sites, with heavy effects particularly on school programmes. Interruption of school attendance causes prolonged loss of access to education; some children do not return to school at all and are prematurely sent by their families to join the labour force.

(h) ***Loss of access to common property***: Poor farmers, particularly those without assets, suffer loss of access to the common property goods belonging to communities that are relocated (e.g., loss of access to forests, water bodies, grazing lands fishing areas, cemetery lands, etc.). This represents a form of income loss and livelihood deterioration that is typically overlooked by planners and therefore uncompensated.

(i) ***Social displacement***: The dismantling of community structures and social organization, the dispersion of informal and formal networks, local associations, etc. is a massive loss of social capital. Such displacement undermines livelihoods in ways usually not recognized and not measured by planners, and is a cause of

disempowerment and impoverishment. Because those resettled are non-homogeneous groups, the risks highlighted above differentially affect various categories of people.

Maximum safeguarding is achieved when involuntary displacement is avoided altogether. Avoidance is the first response to risks that should be considered. Recognizing risks upfront and their financial implications is often a powerful stimulus to search for an alternative that eliminates the need for displacement or cuts down its size. This is technically possible, for instance, by changing the site of a substation or by re-routing a transmission or distribution line around (rather than through) a dense human settlement.

## **PHYSICAL DISPLACEMENT**

If people must move to another location due to the implementation of a sub-project, the Government of Kenya (GoK) will offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate. The project will also provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable. Alternative housing and/or cash compensation will be made available prior to relocation. New resettlement sites built for displaced persons will offer improved living conditions.

In the case of physically displaced persons with recognized or recognizable rights, the project will offer the choice of replacement property of equal or higher value, equivalent or better characteristics and advantages of location or cash compensation at full replacement value.

Where these displaced persons own and occupy structures, the project will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost. Compensation in kind will be offered in lieu of cash compensation where feasible. Based on consultation with such displaced persons, the client will provide relocation assistance sufficient for them to restore their standards of living at an adequate alternative site.

There are no known ethnic groups categorised as indigenous people in the project area. However, during the implementation of the RPF, the project will identify and mitigate any adverse impacts on any vulnerable groups of people in the project area.

In exceptional circumstances, when it is not feasible to avoid relocation, the project will not carry out such relocation and/or provide funding for any subproject, which would require such relocations, without obtaining broad support for it from the affected vulnerable groups of people as part of the free, prior, and informed consultation process. However, if this need arises in the context of WaSSIP AF, the project will prepare a resettlement action plan and a community development action plan to help restore the community livelihoods.

## **ECONOMIC DISPLACEMENT**

If land acquisition for a subproject 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, 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.*

Therefore, the principal governing objectives of this policy are based on ensuring that;

- *Involuntary resettlement and land acquisition should be avoided where feasible, or minimized, exploring all viable alternatives.*
- *Where involuntary resettlement and land acquisition is unavoidable, resettlement and compensation activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to give the persons economically or physically displaced by the project the opportunity to share in the project benefits.*
- *Displaced and compensated persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.*
- *Displaced (economically or physically) and compensated persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or levels prevailing prior to the beginning of project implementation, whichever is higher.*

Affected people, according to the Bank Safeguard Policy OP 4.12, refers to people who are directly affected socially and economically by the bank assisted investment projects, caused by:

- a) Involuntary taking of land and other assets resulting in:
  - *Relocation or loss of shelter*
  - *Loss of assets or access to assets*
  - *Loss of income sources or means of livelihood, whether or not the affected persons must move to another location;*or
- b) The involuntary restriction or access to legally designated parks and protected areas results in adverse impacts on the livelihood of the economically or physically displaced persons.

**The Bank Safeguard Policy OP 4.12 applies to all components under the program, whether or not they are directly funded in whole or in part by the Bank.**

The policy applies to all (economically or physically) displaced persons regardless of the total number affected, the severity of impact and whether or not they have legal title to the land. Particular attention should be paid to the needs of vulnerable groups among those (economically or physically) displaced especially those below the poverty line; the land less, the elderly, women and children, or other (economically or physically) displaced persons who may not be protected through the GoK's Land compensation legislation.

In particular for the WaSSIP AF, the policy also requires that the full implementation of individual resettlement plans by WaSSIP AF are a prerequisite for the implementation of the project activities requiring land acquisition/land use, to ensure that displacement(economic or physical) or restriction to access does not occur before necessary measures for resettlement and compensation are in place. It is further required that these measures include provision of compensation and of other assistance required for relocation, prior to (economical or physical) displacement, and preparation and provision of resettlement sites with adequate facilities, where required.

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

Furthermore, where relocation or loss of shelter occurs, the policy further requires that measures to assist the displaced persons are implemented in accordance with the resettlement plan of action. In this project, the implementation of WaSSIP AF's activities are expected to have overall positive social impacts.

These negative social impacts include denial, restriction or loss of access to the economic resources in the areas that may be required by WaSSIP AF in pursuance of their activities. When this happens, people will be impacted and resettlement and

compensation cannot be avoided and the World Bank Safeguard Policy OP 4.12 will be triggered even though those affected may not necessarily have to physically move to another location.

It is therefore, particularly important to neutralize to the extent possible any socio-economic pressures in affected areas that are likely to be exacerbated by involuntary resettlement, by facilitating the consultation and participation of those impacted in the project activities, where feasible to do so. Therefore, offering impacted people the opportunity to continue to participate in the planning process that would lead to the preparation of Resettlement Plans is mandatory and Section 6 and 7 of this RPF deals with this requirement.

Offering impacted people the opportunity for employment in project activities or to be providers of services during construction of the civil works, e.g. for supply of construction materials (e.g. gravel, sand etc.), will provide additional income generating opportunities to a significant number of impacted persons who may potentially have to be resettled.

Therefore, this opportunity for local employment is being taken advantage of in this RPF, by including it for discussion in the consultative process with the affected people. This RPF prefers to encourage potential civil works contractors and WaSSIP AF through the provision of incentives in their contracts (civil works contracts that is) to show preference for employing project affected persons and not through legal provision.

Furthermore, it is worthy to note that rush migration to selected land sites may occur by those wishing to take advantage of the rules of eligibility of this RPF. Were this to happen it would bring to bear additional pressures on the whole planning process, compensation budgets and increase the tendency for conflict among users. This has major considerations therefore when establishing the cut-off dates. The establishment of cut of dates is discussed in this report too.

A major object of this RPF is to ensure that project affected persons are meaningfully consulted, have participated in the planning process, are adequately compensated to the extent that at least their pre-displacement incomes have been restored and that the process has been a fair and transparent one.

## 6. IMPLEMENTATION ARRANGEMENTS

### OVERVIEW

The overall coordination of the project will be provided by the Ministry of Water and Irrigation (MoWI) through the WaSSIP AF Project Coordination Team (PCT) established for each of the 3 WSBs which will oversee all resettlement planning and coordinate all issues relating to the compensation. Given the importance of the activities under the various sub-components, WaSSIP AF will collaborate with Local Authorities falling within the project area in coordination and implementation.

### SPECIFIC ROLES IN THE COMPENSATION PROCEDURE

#### *(a) Public Participation with the PAPs*

This will initiate the compensation process as part of an ongoing process that would have started at 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 in a participatory approach from the beginning.

#### *(b) Notification of land resource holders*

In cases where there is clearly no identified owner or user, the respective local authorities and leaders, will notify the community leaders and representatives who will help to identify and locate the land users. These leaders and representatives will also be charged with the responsibility of notifying their members about the established cut-off date and its significance. The users will be informed through formal notification in writing and by verbal notification delivered in the presence of the all the relevant stakeholders.

#### *(c) Documentation of Holdings and Assets*

The Local Authorities, local leaders and WaSSIP AF Technical Staff (sociologist; resettlement experts) in the 3 WSBs will arrange meetings with affected individuals to discuss the compensation process. For each individual or household affected, officials will complete a compensation report containing necessary personal information on, the affected party and those that he/she claims as household members, total land holdings, inventory of assets affected, and information for monitoring their future situation. This information will be confirmed and witnessed by local elders. The reports will be kept current and will include documentation of lands surrendered. This is necessary because it is one way in which an individual can be monitored over time.

#### *(d) Agreement on Compensation and Preparation of Contracts*

All types of compensation will be clearly explained to the individual and households involved. WaSSIP AF PCT and the Local Authorities will draw contracts listing all property and land being surrendered, and the types of compensation selected. A person selecting in-kind compensation will have an order form signed and witnessed. The

compensation contract and the grievance redress mechanisms will be read aloud in the presence of the affected party and the Local Community Elder prior to signing.

#### ***(e) Compensation Payments***

All handing over of property such as land and buildings and compensation payments will be made in the presence of the affected party, WaSSIP AF WSBs PCT, staff, Local Authorities, representative of the PAPs and the community local leaders.

### **COMMUNITY COMPENSATION PAYMENTS**

It is very unlikely that sub-projects will take land occupied by physical structures, including community facilities. However, if this situation arises, community compensation will be in-kind only for a community as a whole in the form of reconstruction of the facility to at least the same standard or equivalent better standard required by local planning regulation. Examples of community compensation include for grazing grounds, school buildings, public toilets, wells or pumps, market places, and community roads.

### **INSTITUTIONAL ROLES IN COMPENSATION**

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

The main agency involved in implementation of the RPF will be the Ministry of Water and Irrigation (MoWI), as executing agency, will have overall responsibility for implementation of WaSSIP AF and will act as the central agency responsible for holding all information relevant to the RPF.

PCT has been established by each of the 3 Water Services Board (WSB) to provide general guidance regarding the implementation of Project activities.

#### ***Project Coordination Team (PCT)***

The PCT has been set up in each of the 3 WSBs implementing WaSSIP AF and their role is the day-to-day coordination and implementation of the WaSSIP AF project. They will therefore play an important role in the implementation of RAPs and will ensure that the procedures and requirements of the Kenyan laws as well as the requirements under OP 4.12 are enforced. A key role will be to review all RAPs and other resettlement-related documentation to ensure that all procedures have been adhered to and that there is consistency in approach between sub-projects. They will also undertake the main monitoring and evaluation role of resettlement activities during and post implementation.

#### ***District authorities***

Will oversee, coordinate and facilitate the implementation process of WaSSIP AF across local governments under its jurisdiction. The District-level lands departments will provide a review and monitoring role, and provide political and administrative support for the implementation of the RAPs.



### ***District Land Offices***

The District Land Offices will be the executive body responsible for ensuring activities undertaken comply with the land legislation. They will assess the validity of land tenure rights of affected persons and eventually provide the land use permit for the new activity proposed by the sub-project. In addition they will be responsible for ensuring effective grievance mechanisms are in place. They will also be used in the design of the ARAP as much as possible in order to ensure that community buy in is present at an early stage hence reducing disputed or grievances. Their activities will be monitored by the District authority. The District Land Offices will play a major role in RAP implementation by:

- *Establishing the sub-project level Resettlement and Compensation Committees at Sector/ Cell level (see Section 6.6 );*
- *Clarifying the policies and operational guidelines of these Resettlement and Compensation Committees;*
- *Establishing standards for unit rates of affected assets and compensation estimates, according to the standard units appended to the RPF, adjusted for local conditions where necessary; and*
- *Coordinating and supervising implementation by Resettlement and Compensation Committees as stipulated in the RPF and national/ district guidelines.*

### ***District Development Committee***

This committee is represented by a member of each of the key departments and agencies at District level (including the District Lands Office), and supervises and monitors all activities at District level. The DDC is mandated to develop a District Development Strategy and therefore it plays a critical role to ensure that all activities are fully aligned with this strategy. Given the importance of ensuring proper implementation of sub-projects within their Districts, it will play a crucial role in ensuring alignment of resettlement and compensation arrangements with the District Development strategy.

It is recommended that these committees (or a delegated sub-committee responsible for coordinating WaSSIP AF project activities in their District) would play a major role during RAP implementation by:

- *Ensuring that appropriate compensation procedures are followed; and Review and sign-off of all documentation (e.g., screening forms, completed RAPS, grievance forms, consultation plans) before submitting to the WSBs).*

### ***Resettlement and Compensation Committees***

In keeping with Kenya's decentralization policy, the responsibility for the development and implementation of the RAPs will be at divisional level.

Once resettlement has been identified via the screening process in relation to a WaSSIP AF sub-project, District Land Office representatives will be responsible for electing members of a sub-project Resettlement and Compensation Committee. These committee do not currently exist, but is proposed as part of the RPF implementation arrangements, and will operate at village or divisional level. It is proposed to be coordinated by the

District Land Offices, due to the executive powers of the DLO. This committee will plan for, coordinate and monitor resettlement, compensation and relocation activities, as well as supervise compensation payments to the recipient project affected parties (PAPs). A large part of their responsibility will be consultation with potential PAPs.

The local Resettlement and Compensation Committee would comprise the following:

- *Representative from the village Land Committee;*
- *Representative from the Land Adjudication Committee;*
- *Representative from the District Development Committee (in particular from the Social Department);*
- *Representative from any other key sector office involved in the resettlement process;*
- *Key representative from the implementing organization (Farmer cooperative, WUA, NGO);*
- *A representative PAP; and WaSSIP AF PCT Extension team (ideally the Rural Sociologist)*
- *The Resettlement and Compensation Committee would have responsibility for: validate inventories of PAPs and affected assets; allocate land, where required, to permanently affected households; monitor the disbursement of funds; guide and monitor the implementation of relocation; coordinate activities between the various organizations involved in relocation; facilitate conflict resolution and addressing grievances; and provide support and assistance to vulnerable groups.*

This committee should meet on a regular basis (as determined by the needs of the project) to ensure that resettlement activities are appropriately designed and executed. It is recommended that a representative be elected to act as the Project Liaison Officer who would act as the key contact with PAPs and therefore facilitate implementation of consultation, public participation and grievance mechanisms.

### ***Land Adjudication Boards***

The Land Adjudication Boards/Committee is responsible for coordinating individual land registration and ensuring appropriate compensation payment is made for individual land expropriated. It will ensure that compensation payments are included in the requests for funds, and that they are allocated accordingly. Land Adjudication committees are a traditional legal institution implemented only when there is conflict over land ownership. Only when disputes are referred to them will they have a role to play, in conflict and dispute resolution. A key role is the management of land ownership conflicts, part of which involves helping vulnerable people to appeal in case of grievances.

## **STEPS TO BE FOLLOWED IN LAND ACQUISITION AND RESETTLEMENT FOR THE WASSIP AF PROGRAM INVESTMENT ACTIVITIES**

Implementation of the program investment activities, particularly the infrastructure and related services will include construction of infrastructure as explained earlier in this report. These activities may require land acquisition, leading to people's denial or restriction of access to land resources, services and social amenities. In this case,

resettlement action plans, consistent with OP 4.12 and this resettlement policy framework, will be prepared.

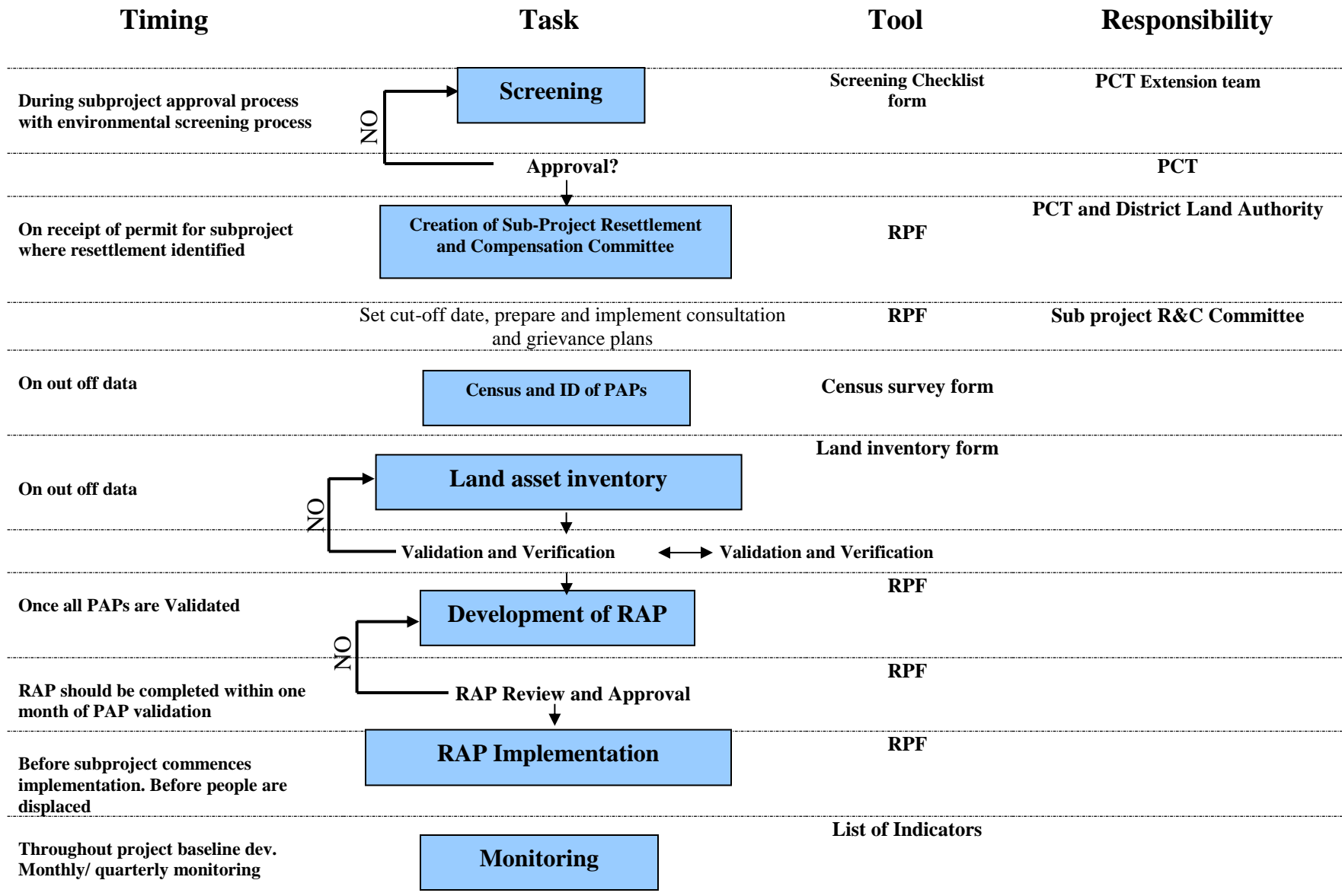
### *The screening process*

Once the list of WaSSIP AF Program activities is known, the process for land acquisition and resettlement will start with the screening process (identification and analysis) of possible and alternative sites for WaSSIP AF program activities implementation.

During screening and indeed during all the other planning and preparatory activities, there will be adequate consultation and involvement of the local communities and the affected persons. Specifically, the affected persons will be informed about the intentions to use the earmarked sites for the WaSSIP AF Program. The affected persons will be made aware of:

- *Their options and rights pertaining to resettlement.*
- *Specific technically and economically feasible options and alternatives for resettlement sites, if required.*
- *Proposed dates for displacement or land repossession.*
- *Effective compensation rates at full replacement costs for loss of assets and services*
- *Proposed measures and costs to maintain or improve their living standards.*
- *Grievance procedure*

**Figure 1** below outlines the steps to be followed in land acquisition and resettlement under the WaSSIP AF including screening and approval processes.



### ***Steps leading to preparation of the resettlement action plan***

The screening process is a very important component of several activities that contribute to the preparation of the Resettlement Action Plans (RAPs). Preparation and submission of the Resettlement Action Plan to the relevant local government authorities and World Bank comprises the following steps:

**Step 1:** The program investment activities to be undertaken and the locations of the investments will undergo preliminary evaluation on the basis of the objectives of the program.

**Step 2:** MoWI through WaSSIP AF staff and implementing institutions will approach the communities impacted through the local government authorities with the view to arriving at a consensus on possible sites for the type of facility to be adopted.

**Step 3:** The Local Communities authorities (district development committees) will undertake their inter-communal consultations in order to review the siting of the facility.

**Step 4:** The environmental and social screening process in conformity with the provisions of the ESMF and the RPF screening process. The process will determine:

- *Whether any resettlement will be required at the chosen site and if so whether alternative sites are available,*
- *Whether any loss of land, assets or access to economic resources will occur or*
- *Whether any of the World Bank operational policies will be triggered.*

**Step 5:** On the basis of analysis of the matrix emanating from the two screening processes a final selection of the optimum site presenting the least negative environmental and social impacts including resettlement /loss of assets can be made.

**Step 6:** Where resettlement or loss of assets cannot be avoided, the provisions of the World Bank's OP 4.12 will be applied and a RAP prepared for each sub project /investment.

From this point, the provisions of this RPF will be utilised up to payment of the compensation package including resettlement support where appropriate. The costs associated with this resettlement or relocation will be included in the Resettlement Action Plans (RAPs) for all the investments. For all the WaSSIP AF projects, the government of Kenya through the implementing agency shall provide funds for compensation after identification of the land and a comprehensive evaluation report done and approved by the government valuer.

### ***Public Consultation and Participation***

WaSSIP AF Program activities involving the community owe their success to community active participation right from planning to implementation. Hence public consultations through participatory rural appraisal will be mandatory for all WaSSIP AF Program requiring land acquisition; compensation and resettlement for the WaSSIP AF program investment activities.

The aim of public consultations at this stage would be to:

- *Disseminate concepts for proposed WaSSIP AF program with a view to implement WaSSIP AF program interest amongst communities.*
- *Determine communities' willingness to contribute in kind towards the implementation of the WaSSIP AF program, or accept the need for land acquisition for purposes of the program.*

To date, the project has held several consultations with PAPs in the proposed sub project areas under implementation by AWSB, CWSB and LVNWB. Key issues expressed by the PAPs regarding land acquisition/involuntary resettlement that have arisen during the implementation of the original project and preparation of additional financing include:

- What will be the compensation rate for our land, crops and structures?
- How soon will the compensation process-actual receipt of money-so that the PAPs can organize themselves in terms of relocation?
- Will there be employment for the local population affected by the project during the construction period and will they be considered?
- What will be the process of actual valuation of the assets and how will the compensation be made?
- Is it possible to reduce the size of the proposed way leave to 2m rather than 6 metres in order to avoid acquisition of more land?
- What will be the implication in case the project has to interfere with people's property?
- The PAPs expressed their concern regarding the possibility of the project providing water tanks, boreholes and ablution block
- Where will the trunk lines pass through in order to determine if they will be affected or not?
- Is it possible to have a representative of the stakeholders within the LVNWSB-to ensure that their interest is taken into consideration?

- When is the expected project start date
- What will happen if we are not compensated as per the market rates

These concerns have been addressed through the project design and implementation in the following ways:

- The RPF has prescribed compensation rate for loss of assets to be guided by a complete inventory and census of assets upon which all compensation will be based on full replacement cost at the existing market values.
- The ongoing feasibility studies for each of the proposed sub projects are aimed at clearly mapping out the routes and locations where the water infrastructure projects will follow. All the PAPs will be provided with the clear maps after the feasibility studies are completed in order to determine if they will be affected i.e. loss of land structures etc or otherwise.
- The project design will include the preparation of resettlement action plans for each of the specific sub-projects. These RAPs will clearly establish through a consultative process the cut-off date to guide on when the project will commence in terms of socio-economic surveys.
- The design of the project through the RPF has provided for the establishment of Project Resettlement Committees in each of the sub projects where resettlement will be triggered. These committees will be comprised of youth representatives, women representatives, vulnerable persons, farmers among others in order to take care of the interest of PAPs.
- A grievance re-dress mechanism will be established for each sub project as specified in the RPF and all the PAPs will be sensitized on steps and what to do in the event they feel aggrieved during the resettlement process.

## 7. PROCESS FOR SCREENING, PREPARING & APPROVING RAPS

This section sets out the step by step process that the WaSSIP AF will take to determine whether the subproject will result in physical or economic displacements and therefore whether a resettlement action plan (RAP) is required and if so, how to prepare and implement one. Section 7.1 describes the screening process, while sections thereafter describe the detailed actions required to prepare RAPs. The screening process presented below will ensure that subprojects presented to the Project for funding comply with the requirements of OP 4.12 and the Kenya law relating to land acquisition/use and resettlement.

### **SCREENING FOR INVOLUNTARY RESETTLEMENT**

Subproject screening is used to identify the types and nature of potential impacts related to the activities proposed under the project and to provide adequate measures to address the impacts. Screening for resettlement issues shall be part of the environmental and social screening. Measures to address resettlement shall ensure that PAPs are:-

- a) *Informed about their options and rights pertaining to resettlement;*
- b) *Included in the consultation process and given the opportunity to participate in the selection of technically and economically feasible alternatives;*
- c) *Provided prompt and effective compensation at full replacement cost for; and (d) Losses of assets and access attributable to the subprojects.*
- d) *Enabled to restore and preferably improve their living standards compared to pre-project ones.*

Therefore, the first stage in the process of preparing the individual resettlement plans is the screening process to identify the land acquisition and land use needs that will cause resettlement. The resettlement and compensation plans will contain the analysis of alternative sites undertaken during the land screening process.

The land screening process presented here below is designed to take advantage of and to build upon the existing planning structures that WaSSIP AF has in place and have successfully been using in the past to plan especially from the WaSSIP 1.

#### ***Screening checklist***

The screening checklist form will be incorporated into the Project's Implementation Manual. The screening checklist will be completed by the WaSSIP AF social specialist with the support of the Local Authorities at various levels.



### ***Subproject design***

If the screening indicates that a subproject requires in its present layout the physical or economic resettlement, advice to consider feasible alternative sub-project designs to avoid or at least minimize physical or economic displacement, while balancing environmental, social and financial costs and benefits will be sought.

Once the decision on which areas the sub projects will be located under the WaSSIP AF PCT for each WSB will meet the administrative and local leaders of those potentially affected to decide a cut - of- date for each affected land/area and communicated to all those potentially affected in the chosen areas.

The cut of date when finalized will be the date when WaSSIP AF will commence its socio- economic study and census on the chosen site so as to identify the potential PAPs on the individual, household and vulnerable groups' level. The carry-out of the socio-economic study and the census is the first step in the preparation of the RAPs.

### ***Baseline and Socio-economic data***

An important aspect of preparing a RAP is to establish appropriate socio-economic baseline data to identify the persons who will be displaced by the individual subproject, to determine who will be eligible for compensation and assistance, and to discourage inflow of people who are ineligible for these benefits. The PAPs may be classified into three groups namely:-

- *Those who have formal legal rights to the land they occupy;*
- *Those who do not have formal legal rights to land, but have a claim to land that is recognized or recognizable under the national laws including those measures put in place by the draft land policy; or*
- *Those who have no recognizable legal right or claim to the land they have occupied before the cutoff date.*

In summary, the census consolidates information that (i) provides initial information on the scale of resettlement to be undertaken; (ii) gives an indication of further socio-economic research needed to quantify losses to be compensated and, if required, to design appropriate development interventions; and (iii) establishes indicators that can be measured at a later date during monitoring and evaluation.

Baseline data for sub-project RAPs will include number of persons; number, type, and area of the houses to be affected; number, category and area of residential plots and agricultural land and crops to be affected; and productive assets to be affected as a percentage of total productive assets.

The purpose of the socio-economic study is also to collect base line data within the chosen/targeted sites/areas/homesteads/villages thereby enabling the social assessment of potentially affected populations/communities/homesteads/villages.

The socio-economic study would focus on the identification of stakeholders (demographic data), the participation process, identification of affected people

(including owners and users of land) and impact on their property and their production systems, the institutional analysis and the system for monitoring and evaluation.

Detailed calculation of individual and household economies and identification of all impacts will be undertaken as part of the socio-economic study and be the determinant in the potential compensation process.

Standard characteristics of the affected households, including a description of production systems, labor, and household organization, and baseline information on livelihoods (including production levels and incomes derived from both formal and informal economic activities) and standards of living and health status of the PAPs.

Under this study a comprehensive base line census would be carried out to identify potentially affected people on the individual and household levels, vulnerable groups (women, children, the elderly, female headed households, affected internally displaced people, affected internally displaced households, etc.) and to discourage inflow of people ineligible for assistance.

The socio-economic study and baseline census will be carried out on behalf of WaSSIP AF by its qualified staff aided where necessary by specialist consultants with the support and technical backing of the social specialist to be hired under this project.

On completion of the socio- economic study and the baseline census WaSSIP AF will prepare a resettlement and compensation plan (RAP) for each site that is affected by resettlement and compensation.

Where the impacts on the entire displaced population are minor (i.e. if affected people are **not** physically displaced and less than 10% of their productive assets are lost) or fewer than 200 people are displaced (economically or physically) for the entire project, and then the bank will approve the preparation of an Abbreviated Resettlement Plan (ARAP). The contents of the ARAP are to be:

**Box 1. . Contents of ARAPs**

- *Census survey of displaced (economically or physically) persons and valuation of assets.*
- *Description of compensation and other resettlement assistance to be provided.*
- *Consultations with displaced people about acceptable alternatives.*
- *Institutional responsibility for implementation and procedures for grievance redress*
- *Arrangements for monitoring and implementation, and*
- *A timetable and budget.*

For impacts that are not considered minor, the preparation of a Resettlement Plan (RAP) is required for each site, World bank OP 4.12 article 25 sets the requirements of the full RAP to include;

### ***Contents of RAPs***

- *Description of the project*
- *Potential Impacts*
- *Objectives*
- *Socioeconomic Studies*
- *Legal Framework*
- *Institutional Framework.*
- *Eligibility*
- *Valuation of and compensation for losses*
- *Resettlement measures*
- *Site selection, site preparation, and relocation*
- *Housing, infrastructure, and social services*
- *Environmental protection and management*
- *Community participation*
- *Integration with host populations*
- *Grievance procedures*
- *Organizational responsibilities*
- *Implementation schedule*
- *Cost and budget*
- *Monitoring and evaluation*

### **PREPARATION OF A SUB-PROJECT RAP**

A RAP shall be prepared by the Technical Consultants contracted by WaSSIP AF in consultation with the local authorities and community leaders for sub projects that have been determined to result in potential involuntary resettlement and/or land acquisition.

The resettlement and compensation plans would then be forwarded for screening and approval to the National Environment Management Authority (NEMA) in compliance with the national and project institutional and administrative requirements.

All sites that trigger OP4.12 and their resettlement and compensation plans would be subject to the final approval of the World Bank to ensure compliance with bank safeguards. Thus ensuring that before land is actually acquired or access to resources is lost, denied or restricted, that the individual resettlement and compensation plans are consistent with this RPF.

Once these drawings are ready and information on the site location and land use requirements are available, before a final decision by WaSSIP AF is made to go ahead with the project, for cases where resettlement and compensation issues arise, the consultative and participatory process with local communities must begin at this stage by sensitizing the respective local/traditional administration and leaders about the tentative land needs of the expansion exercise. The respective local/traditional leaders will meet consistent with their local practices, with all the respective leaders of the homesteads/villages involved. It is at this first meeting of the local community leaders and administration and homesteads/villages that the cut - off- date is to be decided for

each affected land/area and communicated to all the homesteads/villages in the potentially affected areas.

Once the cut-off dates are decided, WaSSIP AF will commence on those dates the socio-economic study and census, consistent with the requirements detailed above in this section of the RPF. The process continues for sub project described above, with preparation of the RAP or ARAP, submission for approval to NEMA and the World Bank, etc.

For the World Bank to approve funding for any project activity that needs to acquire land to support proposed investments under this project, WaSSIP AF must first secure legal title to the land that is acquired, consistent with the provisions of this RPF and Kenyan law. For investments on land that is already owned by the WaSSIP AF, the World Bank will only approve funding for the investment activities once it is satisfied that the provisions of this RPF were met in cases where OP 4.12 apply, i.e. that affected persons, if any, on its land are treated consistent with this RPF.

In cases where the land was acquired and there were no resettlement and compensation issues the WaSSIP AF would have to also seek the confirmation of the World Bank that provisions of OP 4.12 do not apply before funding will be approved and must secure the site and also chose a cut-off date for that site so that opportunistic invasions can be avoided.

Furthermore, the National Environment Management Authority (NEMA) should as a guideline consider the cumulative factor and not approve multiple sites that have individual high impact intensity. For example, where land acquisition is required to such an extent that it would require more than 20% of a community's/village or individual's/homestead's total land under use or when the mitigation measures are so cumbersome that their efficacy cannot be predetermined or they cost more than 15% of the investment budget.

Using WaSSIP AF funds, capacity will be built at the level of NEMA and the respective Water Services Boards implementing the WaSSIP AF by providing technical assistance through the project to allow WaSSIP AF themselves to screen their proposed productive investments/network expansion for environmental and social concerns. This training will also include the capacity to develop mitigation measures to meet environmental and social impacts and to prepare implementation of such measures. This would build capacity at the level of WaSSIP AF with regards environmental and social safeguards issues, which is crucial for success of this project.

## **GRIEVANCE MECHANISM**

As the screening process is mostly carried out by the sub-projects, the project will establish an independent grievance mechanism, through the Local Authorities including land committees and local community leaders to inform all PAPs about the project and receive and address specific concerns about compensation and relocation that are raised by displaced persons or members of host communities, including a recourse mechanism

designed to resolve disputes in an impartial manner. Further description on the grievance redress mechanism is found in section 12.0. However as a summary all the grievances will be channeled to the existing structures in Kenya for handling grievances beginning with the traditional institutions as the first stop before resorting to the Kenya Courts of Law as the last resort. A grievance log will be established and used in monitoring of complaints

## **COMPENSATION AND BENEFITS FOR DISPLACED PERSONS**

The Local Authorities will oversee the implementation of resettlement activities and ensure that the displacement or restriction of access does not occur before necessary measures for resettlement are in place. When displacement cannot be avoided, the project will offer displaced persons and communities' compensation for loss of assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the project will offer land-based compensation. The project will further provide opportunities to displaced persons and communities to derive appropriate development benefits from the project.

## **CONSULTATION**

Following disclosure of all relevant information through the project communication channels and the independent grievance mechanism, the project will provide for resettlement action plans to consult and facilitate the informed participation of affected persons and communities, including host communities, in decision making processes related to resettlement. The Local Authorities and WaSSIP AF will ensure that consultation will continue during the implementation, monitoring, and evaluation of compensation payment and resettlement to ensure that the living conditions of the PAPs are enhanced or at least restored.

## **APPROVAL OF RESETTLEMENT ACTION PLANS**

After clearance, the compensation, resettlement and rehabilitation activities of the RAP, overseen by the Local Authorities and WaSSIP AF and verified by NEMA before funds can be disbursed for civil works under the subproject.

The EMPs and RAPs developed for subprojects will also be reviewed by the PCT and the World Bank. For quality assurance, it is required that RAPs prepared for subprojects be submitted to the World Bank for review to ensure that they are produced in line with the OP 4.12. Gaps in quality shall be addressed through training at the district level for relevant service providers and reviewers, funded by the project as part of the budget for capacity building.

## 8. ELIGIBILITY CRITERIA FOR VARIOUS CATEGORIES OF AFFECTED PEOPLE

This chapter sets out eligibility criteria, which are necessary to determine who will be eligible for resettlement and benefits, and to discourage inflow of ineligible people.

### PRINCIPLES

The involuntary taking of land results in relocation or loss of shelter; and loss of assets or access to assets or loss of income sources or means of livelihood, whether or not the PAPs must move to another location or not. Meaningful consultations with the affected persons, local authorities and community leaders will therefore allow for establishment of criteria by which displaced persons will be deemed eligible for compensation and other resettlement assistance. OP 4.12 suggests the following three criteria for eligibility:-

- a) *Those who have formal rights to land including customary/communal land, traditional and religious rights recognized under Kenyan Law.*
- b) *Those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets provided that such claims are recognized under the laws of Kenya or become recognized through a process identified in the resettlement plan.*
- c) *Those who have no recognizable legal right or claim to the land they are occupying, using or getting their livelihood from before the cut of date, but are recognized under World Bank OP 4.12.*

Those covered under (a) and (b) above are to be provided compensation for the land they lose, and other assistance in accordance with this RPF.

Persons covered under (c) above are to be provided with resettlement assistance in lieu of compensation for the land they occupy, and other assistance, as necessary, to achieve the objectives set out in this RPF, if they occupy the project area prior to a cut-off date established by the (WaSSIP AF) in close consultation with the potential PAPs, local community leaders and the respective local leader and acceptable to the World Bank.

Persons who encroach on the area after the cut-off date are not entitled to compensation or any other form of resettlement assistance. All persons included in (a), (b) or (c) above are to be provided with compensation for loss of assets other than land. It is therefore clear that all project affected persons irrespective of their status or whether they have formal titles, legal rights or not, squatters or otherwise encroaching illegally on land, are eligible for some kind of assistance if they occupied the land before the entitlement cut-off date.

## **ELIGIBILITY CRITERIA**

Defining eligibility criteria is essential for the resettlement/ rehabilitation process and compensation payments. The census, property inventories provide the basis of the identification of PAPs and assets. Project affected peoples who are considered to be eligible for resettlement and compensation include the following:

Farmers currently using the plots in affected areas for cultivation of subsistence and commercial crops or grazing cattle. These may be either leased from farmer cooperatives, or squatters. Those currently farming in the dam area (upstream) will permanently lose access to their land, whilst those farming in the area to be rehabilitated (downstream) will lose access to their land temporarily.

Each farmer in the area affected (both upstream and downstream) is expected to be allocated alternative land post marshland rehabilitation.

Households who will lose part of their land for the development of borrow pits for the construction of the dams will also be compensated. In the event that this land is subsequently rehabilitated by the project the resulting loss in productivity of the rehabilitated land means that the households will still be eligible for compensation;

**Table 1** below shows the entitlement matrix for the various categories of the PAPs under WaSSIP AF which could be used by local officials.

**Table 1. The Entitlement Matrix for Various Categories of PAPs**

Project Impact	Eligible Groups	Recommended Measures	
Loss of access to land used for agriculture	Users of land	<p><i>Plot Replacement:</i> Allocate replacement plot within the developed marshland. Pay for cooperative membership where applicable to ensure security of tenure, ensure that household does not need to make any additional payments to receive the replacement plot.</p> <p><i>Land for land replacement:</i> Provide equivalent replacement of agricultural land at a suitable location (i.e., within easy access of affected land), and with access to at least equivalent appropriate water sources. Cover all transaction and land preparation costs, i.e., replacement land should be acquired ready for planting without any cost to the affected household. Acquired land will be replaced adjacent to the remaining land where possible. Where this is not possible, the entire land plot will be replaced in an alternative suitable location. Provide security of tenure with formal rights to the land.</p> <p><i>Cash compensation for land:</i> Provide cash compensation for land plot at full replacement value. In addition provide assistance with purchase of suitable replacement plot.</p> <p><i>Economic rehabilitation assistance:</i></p>	



Project Impact	Eligible Groups	Recommended Measures
		<p><b>COMMON MEASURES</b></p> <p><i>Crop compensation:</i> Where harvesting prior to land loss is not possible, provide replacement seedlings for crops lost plus cash compensation for value of production lost.</p> <p><i>Resettlement assistance:</i> Provide cash compensation for the income foregone during the period that the PAP is without land. In addition, provide assistance with the transportation of materials and equipment to replacement land.</p> <p><i>Economic Rehabilitation assistance:</i> Once the PAP has moved onto new land, provide appropriate assistance (financial or other) to cover the income foregone due to lag times with replanting at new location (e.g., loss of income from X number of crop production cycles, from planting through to harvesting). This should be sufficient to cover periods until crop production is at levels at least equivalent to pre-displacement levels.</p>
	Laborers	<p><i>Resettlement assistance:</i> Provide access to work on alternate land, and provide food/ cash compensation until laborers are able to restore alternate employment.</p>
	Tenants	<p><i>Crop compensation:</i> Where harvesting prior to land loss is not possible, provide replacement seedlings for crops lost plus cash compensation for value of production lost.</p> <p><i>Resettlement assistance:</i> Provide cash compensation for the income foregone during the period that the tenant is without land. In addition, provide assistance with the transportation of materials and equipment to replacement land.</p> <p>OR</p> <p>Provide access to work on alternate land, and provide food/ cash compensation until tenants are able to restore access to alternate land.</p> <p><i>Economic rehabilitation assistance:</i> Once the PAP has moved onto new land, provide appropriate assistance (financial or other) to cover the income foregone due to lag times with replanting at new location (e.g., loss of income from X number of crop production cycles, from planting through to harvesting). This should be sufficient to cover periods until crop production is at levels at least equivalent to pre-displacement levels. In addition, provision of training and assistance where cultivation of unfamiliar crops is required on alternative land. Other assistance includes provision of equipment, seeds, and fertilizers necessary for cultivation of new crops until such time as there is a favorable harvest to cover these costs and enable farmers to meet pre-displacement income levels.</p>

Project Impact	Eligible Groups	Recommended Measures
Loss of access to grazing	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 around rehabilitated marshland for growth of cattle fodder; assistance with cultivation of fodder, provision of cattle fodder for lag period until cultivated cattle fodder becomes available.</p>
Loss of structures and dwellings	Households owning structures	<p>Structures will be treated on a case-by-case basis, and decisions taken in consultation with the owners. Measures to be provided are:</p> <p><i>Provision of new structures:</i> Construct new structures on identified replacement land of equivalent or preferably improved quality (particularly in the case of dwellings). Provide security of tenure to formalize rights to the structure.</p> <p>OR</p> <p><i>Cash Compensation:</i> Where the structure cannot be relocated, provide cash compensation based on the full replacement value, excluding depreciation costs.</p> <p><i>Resettlement assistance:</i> Provide assistance with relocation, and cover all costs of moving salvageable parts of existing structures.</p>
	Tenants	<p><i>Renting Arrangements:</i> Facilitate alternative renting arrangements, and cover any increase in cost for the remaining lease period.</p> <p><i>Resettlement assistance:</i> Provide assistance with relocation, and cover all the costs of moving the contents of the existing structures.</p>
Loss of access to water sources	All affected households	<p><i>Replace water access:</i> Provide alternate access to water sources in the interim period.</p>
Loss of access to cultural sites	All affected households	<p><i>Consultation:</i> Undertake consultation with affected households to determine appropriate arrangements and compensation if suitable.</p>
Loss of businesses	Businesses (including informal business activities in markets)	<p><i>Loss of land or structures:</i> to be dealt with as above.</p> <p><i>Resettlement assistance:</i> Provide assistance with relocation, and cover all the costs of moving any salvageable parts of existing structures and reinstallation and start up of equipment. In addition, provide appropriate financial allowance to cover the income foregone due to lag times for the reestablishment at the new market.</p> <p><i>Economic rehabilitation assistance:</i> Provide assistance to restore business including training and capacity building if required.</p>

## **ELIGIBILITY FOR COMMUNITY COMPENSATION**

It is important to note that the eligibility may be claimed collectively e.g. as a community or religious group and does not necessarily have to be individuals or families. Communities on communal land that permanently lose land and/or access to assets and/or resources under statutory or customary rights will be eligible for compensation. Example of community compensation could be for public toilets, market places, taxi parks, schools and health centres. The rationale for this is to ensure that the pre-project socio-economic status of communities where adversely impacted, is also restored.

Eligibility criteria will also be determined by the status of development up to when the study starts and will further be determined by other development approval as issued by the government. The consultant will interview key government officers in the district including provincial administration.

## **LOSS OF PROPERTY**

This includes loss of houses, crops and trees, structures, fixed improvements, businesses which should be compensated at market value, negotiated settlements, productivity valuation, material and labour valuation. In cases where the loss is partial, disposition of salvage material will be exercised. Cash payments may also be made if a small fraction of property is lost instead of replacing the whole property, but if the partial loss results in the PAPs not being economically viable then the property will be replaced. Those who lose houses will also be assisted with temporary residence (if necessary).

## **LOSS OF WAGES AND INCOME**

These are persons who will lose their income due to the project. Workers losing employment in the process of relocation should be entitled to transitional income support. Compensation equivalent to lost income required for the duration of impact should be paid to the latter. In addition, PAPs will be entitled to transitional assistance, which include moving expenses, temporary residence (if necessary), and employment in the project while waiting for employment. In difficult cases, local administration shall be used to judge eligibility as well as village committees.

## **CUT-OFF DATE**

The entitlement cut-off date refers to the time when the assessment of persons and their property in the identified project areas are carried out, i.e. the time when WaSSIP AF has identified the land sites it would need and when the socio-economic study is taking place. Thereafter, no new cases of affected people will be considered. Unfinished structures would be identified and secured, and unused materials will be piled at the site so that the survey can estimate investment which should be compensated for in lieu of expenses (including labor) incurred until the cut - off date.

The cut-off date is to be determined at a meeting of the respective local authorities and community leaders and the representatives of WaSSIP AF, soon after the affected site is chosen. This date and its significance will then be disseminated to all the various members of each household or to every individual by local leader. This is thoroughly consistent with the way planning meetings and other meetings are held in rural areas in Kenya.

Cut-off dates are essential in the process of drawing up lists to ensure that ineligible persons do not take the opportunity to claim eligibility. The establishment of a cut-off date is required to prevent opportunistic invasions/rush migration into the chosen land thereby posing a major risk to the sub-project.

There will be a time lapse between the cut-off date and the time that actual productive investments would start thus the need for special attention to secure the sites from rush and opportunistic invasion. These measures will include close consultation with the recognized PAPs, signs that inform general public of intended use of site and security patrols to identify opportunistic invaders. Further patrols and monitoring of any violation of the cut-off date could be carried out by local administrations and be reported to the local resettlement committee. This will also be done by the local PAPs representatives or the local community.

Because the time period between the cut-off date and the time actual productive investments (civil works, etc.) would start, bearing also in mind that only after PAPs have been compensated and any replacement structures built according to the requirements of this RPF, is likely to be anytime period from six months on, special attention needs to be taken to secure the sites from rush and opportunistic invasion. These measures should include close consultation with the recognized PAP's, signs that inform general public of intended use of site, security patrols to identify opportunistic invaders etc.

This date is subject to the approval of the National Environment Management Authority (NEMA) and must also be in full compliance with the conflict resolution mechanisms in this RPF and this date must be communicated effectively to the potential PAP's and the surrounding local villages/communities.

*The local community leaders will play a crucial role in identifying users of land since most of them would have acquired their customary rights to use the land from their local authorities and leaders.*

## 9. COMPARISON OF KENYA LAWS AND WORLD BANK REQUIREMENTS

This section seeks to highlight major issues related to Kenyan land legislation with regards to resettlement. It provides a brief overview of the Kenya Land Policy and laws, the Kenyan Constitution provisions connected with land use, planning, management and tenure. A comparison of the Kenya laws with the World Bank provisions on resettlement, gaps and recommendations drawn to fulfil gaps is also presented in this section.

### OVERVIEW OF NATIONAL LEGISLATION GOVERNING ACQUISITION AND RESETTLEMENT

In Kenya expropriation is provided for in the Constitution under section 75 for private land and sections 117 and 118 for unregistered Trust Land. But the constitution only gives general guidelines. The detailed procedures for land acquisition are elaborated under the “Land acquisition Act” in chapter 295 for private land and chapter 288 for unregistered Trust Lands. “Trust Land” refers to that land that is still held under African customary tenure. The title to this land is said to vest in the County Council in trust for its inhabitants, hence the term “Trust”.

Expropriation in this context refers to the taking away of private land and landed property for public purpose by the government with or without the owner’s consent subject to laws of eminent domain, which stipulates prompt and adequate compensation among other things. In Kenya “setting apart” for unregistered Trust Land and “Compulsory acquisition” for all registered private lands are the terms commonly used.

Expropriation of land is a very important aspect in land management in that it is the instrument by which land is availed for various development needs e.g. Infrastructure, Housing, Dams and Irrigation, or Industrial purposes if the development and utilization of the said land is to promote public benefit.

**Table 2. Summary description of the relevant legislation.**

Legal Framework	Functional Relationship to Resettlement
The Land Acquisition Act Chapter 295 Laws of Kenya	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 subprojects requiring resettlement are under the provision of this Act.
The Registered Land Act Chapter 300 Laws of Kenya	Provides for the absolute proprietorship over land (exclusive rights). Such land can be acquired by the state under the Land Acquisition Act in the project area.
The Land Adjudication Act Chapter 95	Provides for ascertainment of interests prior to land

Laws of Kenya	registrations under the Registered Land Act.
Physical Planning Act No. 6 of 1996	Section 2 of the Act requires that all land intended for any development requires planning and development permission. Section 36 of the Act also requires that development projects, which have substantial alteration of the state of land, must be subjected to an EIA.
The Environmental Management and Coordination Act 1999,	The legislation that governs Environmental Impact Assessment (EIA) studies. This resettlement exercise falls under the Second Schedule, which lists the projects required to undergo EIA studies in accordance with section 58 (1-4) of the Act. Resettlement components of the subprojects may pose potentially negative environmental impacts. Part 3 of this Schedule applies to settlement planning. Therefore according to the above Act, the proposed sub-projects may require EIA studies.
The Local Government Act Chapter 265 Laws of Kenya	Provides for making by- laws and institutions by Councils. By-laws can be made on the governance of a project under the provisions of this Act.
The Wayleaves Act Chapter 292 Laws of Kenya	Provides for certain undertakings to be constructed e.g. pipelines, canals, pathways etc., through or under any lands or settlements. The project is under the provision of the Act.
The Lakes and River Act Chapter 409 Laws of Kenya	This Act provides for protection of river, lakes and associated flora and fauna. The provisions of this Act may be applied, in the management of the resettlement zones in this project.
The Wildlife Conservation and Management Act, Cap 376	This Act provides for the protection, conservation and management of wildlife in Kenya. The provisions of this Act should be applied in the management of the project.
The Public Health Act Laws of Kenya	Provides for the securing of public health and recognises the importance of water. It provides for prevention of water pollution by any development activity including resettlement by stakeholders.

## **LAND TENURE SYSTEM IN KENYA**

Rights and that are 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. Government Land Act (cap 280), Registered Land Act (cap 300), Registration of Titles Act (cap 281), Trust Land Act (cap 288) of the Laws of Kenya.)

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

This refers to unwritten land ownership practices by certain communities under customary law. Kenya being a diverse country in terms of its ethnic composition has

multiple customary tenure systems, which vary mainly due to different agricultural practices, climatic conditions and cultural practices. However most customary tenure systems exhibit number of similar characteristics as follows:

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

### ***Freehold Tenure***

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. Freehold land is governed by the Registered Land Act (RLA) Cap 300 of the Laws of Kenya. 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.

### ***Leasehold Tenure***

Leasehold is an interest in land for a definite term of years and may be granted by a freeholder usually subject to the payment of a fee or rent and is subject also to certain conditions which must be observed. e.g. relating to developments and usage.

Leases are also granted by the government for government land, the local authorities for trust land and by individuals or organizations owning freehold land. The maximum term of government leases granted in Kenya is 999 years for agricultural land and 99 years for urban plots. There are few cases of 33 years leases granted by government in respect of urban trust lands. The local authorities have granted leases for 50 and 30 years as appropriate.

### ***Public Tenure***

This is where land owned by the Government for her own purpose and which includes unutilized or un-alienated government land reserved for future use by the Government itself or may be available to the general public for various uses. The land is administered under the Government lands Act Cap 280. These lands are vested in the president and who has, normally through the Commissioner of Lands, powers to allocate or make grants of any estates, interests or rights in or over un-alienated government land. 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.

### ***Public Trust Doctrine:***

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

It is the case that **the statutory framework for land ownership in Kenya is heavily influenced by common law jurisprudence** on land ownership-the owner's rights include the rights of use and abuse. In Kenya however, the development of physical planning legislation has vested in the state the cumulative rights of other land owners. The regulatory power is referred to as police power.

### ***Police Powers:-***

Under the **Agriculture Act** the Minister has the right to **prohibit cultivation of the land and felling of trees**. If the minister exercised all the powers then the owners of agricultural land would not be able to pursue productive use of the land. Within the Kenyan context police power is spread a wide range of statutes:

- *Agriculture Act Cap 118*
- *Public Health Act Cap 214*
- *Local Government Act Cap 261*
- *Physical Planning Act Cap 286*
- *Environmental Management and Coordination Act 199*
- *Forests Act Cap 385*
- *Wildlife Conservation and Management Act.*

The extent of the exercise of police power varies across these statutes. In the end the Physical Planning Act provides a framework for physical planning and development control as cited briefly below. The Forest Act, Wildlife Conservation and Management Act provide for the creation of protected areas. Protected areas are areas within which the predominant land use takes the form of a complete ban on the exercise of private rights.

### ***Eminent Domain:***

This is the common law theory that the Government is the ultimate owner of all property. The government can acquire property for the public good. Other Acts of relevance to this framework document are:

### ***Mining Act***

All un-extracted minerals (other than common minerals) under or upon any land are vested in the Government, subject to any rights in respect thereof which, by or under this Act or any other written law, have been or are granted, or recognized as being vested, in any other person



Mineral in this Act, does not include clay, murrum, limestone, sandstone or other stone or such other common mineral substances as the Minister may by notice in the Gazette declare not to be minerals for the purposes of this Act.

### *Physical Planning Act*

It deals with all matters relating to preparation of all kinds of physical development plans and subdivisions. It stipulates development control measures and the role of the District and liaison committees. The power of physical planning is concentrated in the office of the director. The Act provides an opportunity of entrusting or empowering the Physical Planners to carry out all planning issues on all categories of land. It also deals with planning problems between boundaries of two Local Authorities, and the creation of Municipal and District Planning liaison committees that encourage involvement of varied expertise in planning.

### *The Forests Act 2005*

Gazetted forest land is reserved using the Forest Act 2005. Under the Forest Act, a piece of forest land can be degazetted and converted to other uses. However, the Forest Act requires all de-gazettement of forest land to be discussed and approved by Parliament following preparation of a comprehensive EIA Report. All degazetted land then reverts to the Commissioner of Lands who then proceeds to allocate the land in accordance with the Land Control Act. Under the Forest Act 2005, forest land can also be leased for use for other purposes provided that such use does not contradict conservation goals. The same act also allows for Participatory Management of Forests and thus guarantees communities rights to access and utilize certain forest goods and services including citing of water supply intake works in forest areas.

## **REQUIREMENTS OF THE WORLD BANK FOR RESETTLEMENT**

The World Bank's Safeguard Policy OP 4.12 applies to all components of the programme, all associated activities, and to all economically and /or physically affected persons, regardless of the number of people affected, the severity of impact and the legality of land holding. The OP 4.12 further requires particular attention to be given to the needs of vulnerable groups especially those below the poverty line, the landless, the elderly, women and children, indigenous groups, ethnic minorities, orphans and other disadvantaged persons.

The World Bank's Policy requires that a resettlement action plan shall be prepared and cleared by the Bank prior to implementing resettlement activities. The Bank also requires that the provision of compensation and other assistance to Project Affected Persons, to restore livelihoods when these are affected appreciably, shall be done prior to the displacement of people. In particular, the policy requires that possession of land for project activities may take place only after compensation has been paid. Resettlement sites, new homes and related infrastructure, public services and moving allowances must be provided to the affected persons in accordance with the provisions of the RAP.

## **COMPARISON BETWEEN KENYAN LEGISLATION AND OP 4.12**

**Table 3** below is a comparative analysis between the Kenyan legislation in relation to Land Acquisition and compensation and the OP 4.12 for the World Bank. In all the cases where the Kenyan legislation is determined as inadequate or gaps exist between World Bank OP 4.12, and Kenyan Laws, those of the Bank shall take precedence.

**Table 3.0 Comparative Analysis of World Bank OP 4.12 and Government of Kenya requirements including measures to address gaps**

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<b>GENERAL REQUIREMENTS</b>			
<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 for public interest.</li> <li>2. The Land Acquisition Act outlines procedures for sensitizing the affected population to the project and for consultation on implications and grievance procedures. All affected persons are entitled to just compensation.</li> <li>3. The Land Acquisition Act guarantees the right to fair and just compensation in case of relocation. It also provides that compensation should help the party expropriated to easily adjust to their new circumstances and as well minimize possible risks that might accrue in the process 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. Same as the World Bank</li> </ol>	<ol style="list-style-type: none"> <li>1. For each of the WaSSIP AF subproject, ensure that resettlement issues are considered at the design stage of the project in order to avoid/ minimize resettlement.</li> </ol>
<b>OP 4.12</b>			
<b>PROCESS REQUIREMENTS</b>			
<p><b>Consultation:</b> Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs</p>	<p>The Land Acquisition Act outlines procedures for sensitizing the affected population to the project and for consultation on implications and grievance procedures.</p>	<p>Land Acquisition Act only provides for negotiations if necessary between the expropriated and the expropriating party. There is no provision for affected persons to participate in planning and implementation of resettlement programs.</p>	<p>Implement consultation procedures as outlined in Section 9.</p>
<p><b>Grievance:</b> For physical resettlement, appropriate and accessible grievance mechanism will be established.</p>	<p>Land Acquisition Act clearly outline the steps and process for grievance redress that is backed by the judicial system</p>	<p>Kenyan legislation meets OP4.12 requirements.</p>	<p>n/a</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p><b>Eligibility Criteria</b>  <i>Defined as:</i>            (a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);            (b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan (see Annex A, para. 7(f)); and<sup>19</sup>            (c) those who have no recognizable legal right or claim to the land they are occupying</p> <p><i>To determine eligibility:</i>            Carry out resettlement census. Cut off date for eligibility is the day when the census begins.</p>	<p>The Land Acquisition Act 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>Census is provided by the above law; Cell Land Committees and Land Adjudication Committees are involved in the census.</p> <p>Once all requirements are in place, a Gazette Notice should define the cut off date, although this is not clearly stipulated in the legislation.</p>	<p>Kenya’s Land Acquisition 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>There is provision for determining a cut-off date for eligibility.</p>	<p>Ensure ALL users (including illegal squatters, laborers, rights of access) of affected lands are included in the census survey (see Section 4).</p> <p>Implement cut-off procedures as outlined in Section.3.1.5.</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p><b>Measures:</b> Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land-based.</p> <p>Cash based compensation should only be made where (a) land taken for the project is a small fraction of the affected asset and the residual is economically viable; (b) active markets for lost assets exist and there is sufficient supply of land and housing; or (c) livelihoods are not land-based.</p> <p>World Bank OP4.12 Article 6(a) requires that displaced persons are provided with prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project. If physical relocation is an impact, displaced persons must be provided with assistance during relocation and residential housing, housing sites and/or agricultural sites to at least equivalent standards as the previous site. Replacement cost does not take depreciation into account. In terms of valuing assets, if the residual of the asset being taken is not economically viable, compensation and assistance must be provided as if the entire asset had been taken.</p> <p>Compensation and other assistance required for relocation should be determined prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required</p>	<p>Legislation provides for the landholder to compensation for the value of the land and activities on the basis of size, nature location considering the prevailing market value.</p> <p>Land Acquisition Law provides for expropriation, based on just and fair compensation. Just compensation is monetary, alternative land or a building equivalent as long as either option equates to fair and just monetary compensation. In case the determination of ‘just’ compensation exceeds in value the alternative land given to the expropriated person, the difference will be paid to the affected person in cash. The option selected will be determined through discussion with the affected person.</p> <p>The land acquisition law stipulate that displacement should occur only after prompt and full compensation has been received by the effected person</p>	<p>There is no stipulation in the Kenyan legislation to place preference on non-cash based 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 alternative options are considered in preference to providing cash compensation (as outlined in the Entitlement Matrix).</p> <p>Ensure that ALL resettlement options are agreed on with PAPs and put in place BEFORE displacement of affected persons.</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p><b>Valuation:</b> With regard to land and structures, “replacement cost” is defined as follows: For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes.</p> <p>For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors’ fees, plus the cost of any registration and transfer taxes.</p>	<p>Valuation is covered by the Land Acquisition Act and stipulates, as already mentioned, that the affected person receive fair and just compensation, as determined by independent valuers. A private valuer must take into account total costs which will allow the compensated person to acquire the same value assets post expropriation. The law is designed to give freedom to the independent valuer to take into account all parameters contributing to the fair and just compensation which suggests that all replacement, relocation and incidental costs should be included.</p> <p>In the event that alternative land is provided, if it has significantly lower productivity than the expropriated land, the fair and just compensation shall include additional cash.</p>	<p>Consistent with World Bank OP</p>    <p>Consistent with World Bank OP</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><b>Monitor</b> Adequate monitoring and evaluation of activities to be undertaken.</p>	<p>According to Land Acquisition Act, monitoring and evaluation of compensation must be undertaken by the District Land Boards. In addition the law provides that if one part is not happy about the compensation it can appeal the Land Commission.</p>	<p>Whilst monitoring and evaluation of compensation provided is enshrined in Kenyan legislation, it mainly focuses on whether or not contracted compensation measures have been met rather than on whether the compensation provided was appropriate.</p>	<p>Implement monitoring procedures as outlined in Section 10 to ensure that all monitoring activities are sufficient to meet World Bank OP4.12 standards.</p>

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

**Table 4.0 Comparative Analysis of World Bank OP 4.12 and Kenya's requirements Relevant to the Process**

Category of PAPs and Type of Lost Assets	Kenyan Law	World Bank OP4.12
Land Owners	Cash compensation based upon market value under statute. Land for Land	Recommends land-for-land compensation. Other compensation is at replacement cost
Land Tenants	Entitled to compensation based on the amount of rights they hold upon land under relevant laws. Illegal tenants not entitled to compensation	PAPs are entitled to some form of compensation whatever the legal/illegal recognition of their occupancy.
Land Users	-In some cases land users have some form of secured tenure extended to them under new laws. In other cases land users are not entitled to compensation for land. Land for land	Entitled to compensation for crops, may be entitled to replacement land and income must be restored to at least pre-project levels.
Owners of Temporary Buildings	Cash compensation based on market value or entitled to new housing on authorized land under government (state or local) housing programs.	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Owners of Permanent buildings	Cash Compensation is based on market value.	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Perennial Crops	Cash compensation based upon rates calculated as an average net agricultural income.	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop,

## 10. METHODS OF VALUING AFFECTED ASSETS

This chapter sets out the detailed requirements for determining the value of affected assets.

### TYPES OF COMPENSATION PAYMENTS

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

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

In addition, resettlement and economic rehabilitation assistance will be given, as outlined in the Entitlement Matrix in **Table 1 in chapter 8**. A provisional guide on compensation values for land is provided in Annex D. However this is for guidance only it is essential that current market values are used to establish actual compensation. The District Land Offices and PCT are to establish these rates as part of the preparation of each sub-project, using as a benchmark the rates prevailing for other government land acquisition schemes in that District.

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

### VALUATION OF ASSETS AND NATIONAL LAW

As detailed in the section 9 according to Kenya's Expropriation Law, any expropriated assets are to be 'justly' compensated using current market rates with valuation undertaken by an independent valuator.

### VALUATION PROCEDURE

The procedure to be followed during valuation of affected assets is as follows.

#### *Use of Standard Valuation Tables*

Due to the large number and the localized nature of the majority of sub-project interventions, it is anticipated that a relatively large number of small-scale asset valuations will need to be carried out during the course of the project. It would therefore



be cumbersome and inefficient to deploy an individual valuation expert in each and every case.

It is proposed that an evaluation expert is contracted by the PCT at the project outset to develop a standardized procedure for asset valuation, which can then be applied by a project representative at the local and/or district level. This standardized procedure would include a series of reference tables for estimating asset value by type according to the approximate size and condition of the existing asset.

The tables would be developed using legally acceptable valuation procedures accepted by both the Government of Kenya and World Bank for purposes of fairness and consistency. The approach will consider replacement costs and types and levels of compensation under the Kenya law. Valuation of lost assets will be made at their replacement cost.

### *Preparation of Asset Inventory*

In order to prepare an inventory of assets for a sub-project, a field team will visit the affected area to carry out an asset valuation survey. The team will be led by a project representative and will include the Local Authorities at the various levels, a representative of the PAPs, and WaSSIP AF.

During the survey, 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. The document will indicate when the affected person will be notified, and that the inventory will not be official until a second signed copy, verified by project supervisory staff, is returned 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.

### *Methods of Compensation*

Individual and household compensation will be made in cash, in kind, and/or through assistance. 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 5: Forms of compensation**

FORMS OF COMPENSATION	
Cash Payments	Compensation will be calculated in Kenya Shillings. 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	Assistance may include moving allowance, transportation and labor

Making compensation payments raises issues regarding inflation, security and timing that must be considered. One purpose of providing in-kind compensation is 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 should to be addressed by the local administration.

The time and place for in-kind compensation payments will be decided upon by each recipient in consultation with WaSSIP AF and the District, and local administrations. Monetary payments should be paid at a time in relation to the seasonal calendar.

Local Banks and micro-finance institutions should work closely with the local administration at this level to encourage the use of their facilities, which will positively impact the growth of the local economies.

## **VALUATION METHODS**

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

The replacement cost approach is based on the premise that the costs of replacing productive assets is based on damages caused by project operations. These costs are taken as a minimum estimate of the value of measures that will reduce the damage or improve on on-site management practices and thereby prevent damage. The approach involves direct replacement of expropriated assets and covers an amount that is sufficient for asset replacement, moving expenses and other transaction costs.

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

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

### ***Other methods***

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

*Schedule of rates from Ministry of Public Works:* The Construction Departments have a schedule of rates for preparing estimates for construction projects, which the consultant

can use to assess costs for construction materials and labour. When applied to calculate replacement cost, rates current for the period of actual replacement must be used.

## **CALCULATION OF COMPENSATION BY ASSETS**

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

### *Compensation for Land*

The first premise of is provision of replacement land for both the marshland and hillside affected plots. 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 should be provided. This should be valued based on the prevailing market value in the locality to purchase an equally productive plot of land in the same locality. In addition, any associated costs of purchasing the land i.e., taxes, registration fees will need to be included in the compensation.

In addition, the PAPs will be compensated for any permanent improvements made to the land (for instance transmission lines). This will be calculated based on the price of making the permanent improvement at current prevailing market rates for labor, equipment and materials.

Where land lost is only a small proportion of total land owned by the PAP, but renders the remaining land as unusable, the compensation provided should be calculated based on the total land affected (i.e., the actual land lost plus the remaining unusable land).

Compensation for land is aimed at providing a farmer whose land is acquired and used for project purposes, with compensation for land labour and crop loss. For this reason, and for transparency, land is defined as an area or homestead (i) in cultivation, (ii) being prepared for cultivation, or (iii) cultivated during the last agricultural season. This definition recognizes the farmer's labour as the biggest investment he/she makes in producing a crop which is higher than all other inputs such as seed and fertilizer. As a result, compensation relating to land will cover the market price of labour invested as well as the market price of the crop lost.

### *Land Measurement*

For purposes of measuring land, 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 should be used. If a traditional unit of measurement does not exist in a particular area then it is recommended that land should be measured in metres or any other internationally accepted unit of measurement.

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

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

The current prices for cash crops will be determined and all crops will be valued using a single rate regardless of the crop grown. This rate incorporates the value of crops and the value of the labour invested in preparing new land.

Determining compensation using a single rate creates transparency because anyone can measure the area of land for which compensation is due and multiply that by a single rate known to all. This approach also allows assignment of values to previous year's land (land in which a farmer has already invested labour) and land that have been planted but crops have not germinated. Further, it avoids contention over crop density and quality of mixed cropping.

The value of the labour invested in preparing agricultural land will be compensated at the average wage in the community for the same period of time. The rate used for land compensation should be updated to reflect values at the time compensation is paid.

Crop values will be determined on:-

- a) A combination of staple foods and cash crops. The 80/20 ratio of land that a farmer typically has in food crops and cash crops is used to determine the chances s/he would lose food crop rather than a cash crop income.
- b) The value of staple crops to be taken as the highest market price (over 3 years) reached during the year, in recognition of the following factors:-
  - *Although most farmers grow staple crops mainly for home consumption, they always have the option of selling these crops to take advantage of the market.*
  - *Farmers most often purchase cereals when they have run out, during drought when prices are high. Compensating at a lower value might put the individual or household at risk.*
  - *On average, the highest price of staple food yields a high per hectare value reimburses for the vegetables and other foods that are commonly inter-cropped with staples, but are almost impossible to measure for compensation.*

- c) The labour 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 labour costs will be paid in Kenya Shillings at the prevailing market rates. All agricultural labour activities are included for two reasons. First, because of the need for transparency, all land labour will be compensated for at the same rate. Secondly, it is difficult to forecast when during the growing season, a farmer might need to give his/her land. In certain cases, assistance may be provided to land users in addition to compensation payments e.g. if the farmer is notified that his/her land is needed after the agriculturally critical date when he/she will not have enough time to prepare another land without assistance. In such a case, assistance will be provided in the form of labour intensive village hire, or perhaps mechanized clearing, so that replacement land will be ready by the sowing dates. The farmer will still continue to receive his/her cash compensation to enable him/her to pay for sowing, weeding and harvesting.

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

The preferred option is to provide alternate structures (huts, houses, farm outbuildings, latrines, storage facilities and fences etc.) of improved quality where possible. Where structures are dwellings, the replaced structure should provide improved living conditions.

The second option is provision of cash compensation at full replacement value. Replacement values will be based on:

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

Compensation will be made for structures that are (i) abandoned because of relocation or resettlement of an individual or household, or (ii) directly damaged by subproject activities.

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

Compensation will be provided for community assets identified through the socio-economic survey. In all cases these will be provided in kind and new facilities will be provided even if there are existing facilities at the new location.

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

This policy does not permit the use of land that is defined to be cultural property by the Banks Safeguards OP 4.11. Sacred and genocide war memorial sites include but not restricted only to; museums, altars, initiation centers, ritual sites, tombs and cemeteries. It includes other such sites or places/features that are accepted by local laws (including customary), practice, tradition and culture as sacred. To avoid any possible conflicts between individuals and/or communities/homesteads/chiefdoms the use of sacred sites for any project activity, is not permitted under this project.

### ***Compensation for Loss of Businesses***

Any structures will be replaced in an appropriate location as outlined above. In addition, compensation will be paid for the lost income and production during the transition period (time lag between losing the business and re-establishment). This will be estimated based on the daily or monthly income of the affected parties.

### ***Compensation for Cultivated Crops (both cash and subsistence) and Trees***

PAPs will be encouraged to harvest their produce before loss of land. In order to ensure that this is possible, and that appropriate market prices are received for yields, there needs to be sufficient consultation beforehand so that harvesting can be properly planned. In the event that crops cannot be harvested, compensation for loss of crops (whether cash or subsistence) and trees will be provided as follows:

- *Provision of seed or seedlings (as appropriate for hillside plots, rice for marshland plots);*
- *Provision of cash compensation for value of crops lost, at current market value;*
- *Provision of cash compensation to cover the income foregone during the period that the PAP is without land. The cash compensation will be equivalent to the value of crop production lost, until the replacements are yielding to the same level (i.e., the period until the replacement seed/seedlings are producing – whether the same year for annual crops, or longer in the case of shrub or tree crops).*

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

Until a replacement garden starts to bear, the family displaced (economically or physically), will have to purchase vegetables in the market for daily use. The replacement costs therefore, will be calculated based on the average amount that an average town dweller spends on buying these items for one year per adult from the local market.

Beehives are placed in various locations in the bush by individuals specializing in honey gathering. If such hives will be disturbed by the project activities, or access to hives is denied, beekeepers will be free to move them, and hopefully the bees will adapt to the new locations. Beekeepers will be compensated by the value of one season's production costs of honey for each hive that is moved and any reasonable costs associated with moving the hive.

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

Banana and Mango trees are featured here below as two examples of the 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. Therefore, compensation for banana trees would be compensated at the full market rates for bananas harvested in that year and for another 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. Therefore, the farmer should have restored his pre-project position by the end of the second year. This example of bananas is an example for trees/plants that have a relatively short life.

Given their significance to the local subsistence economy, which this project intends to positively impact, mango trees 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 chose to resettle, they will be compensated for the labor invested in the trees they leave behind, because they will continue to own the trees left behind under customary rights. It is not uncommon for individuals to own trees in other villages in which they formally lived and, in some cases, to continue to harvest fruit from those trees for subsistence purposes and/or sale to traders. If a household chooses to transfer ownership of the trees, transfer costs will be paid in addition to labor costs. The compensation rate will be based on information obtained from the socio-economic study. From this study, a compensation schedule for mango trees can be developed incorporating the following goals:

- *Replace subsistence mango production yields as quickly as possible.*
- *Provide subsistence farmers with trees to extend the number of months of the year during which mangoes are produced and can be harvested as a supplemental source of food for their families during their "hungry season".*
- *Provide farmers with the opportunity to derive additional production income from trees bearing more valuable fruits at off-season periods.*
- *Provide cash payments to farmers to replace pre-project income derived from the sale of excess mango production until replacement trees produce the equivalent (or more) in projected cash income.*

The compensation schedule is based on providing a combination of new grafted and local trees to farmers, as well as cash payments to offset lost yearly income.

***Other domestic fruit and shade trees***

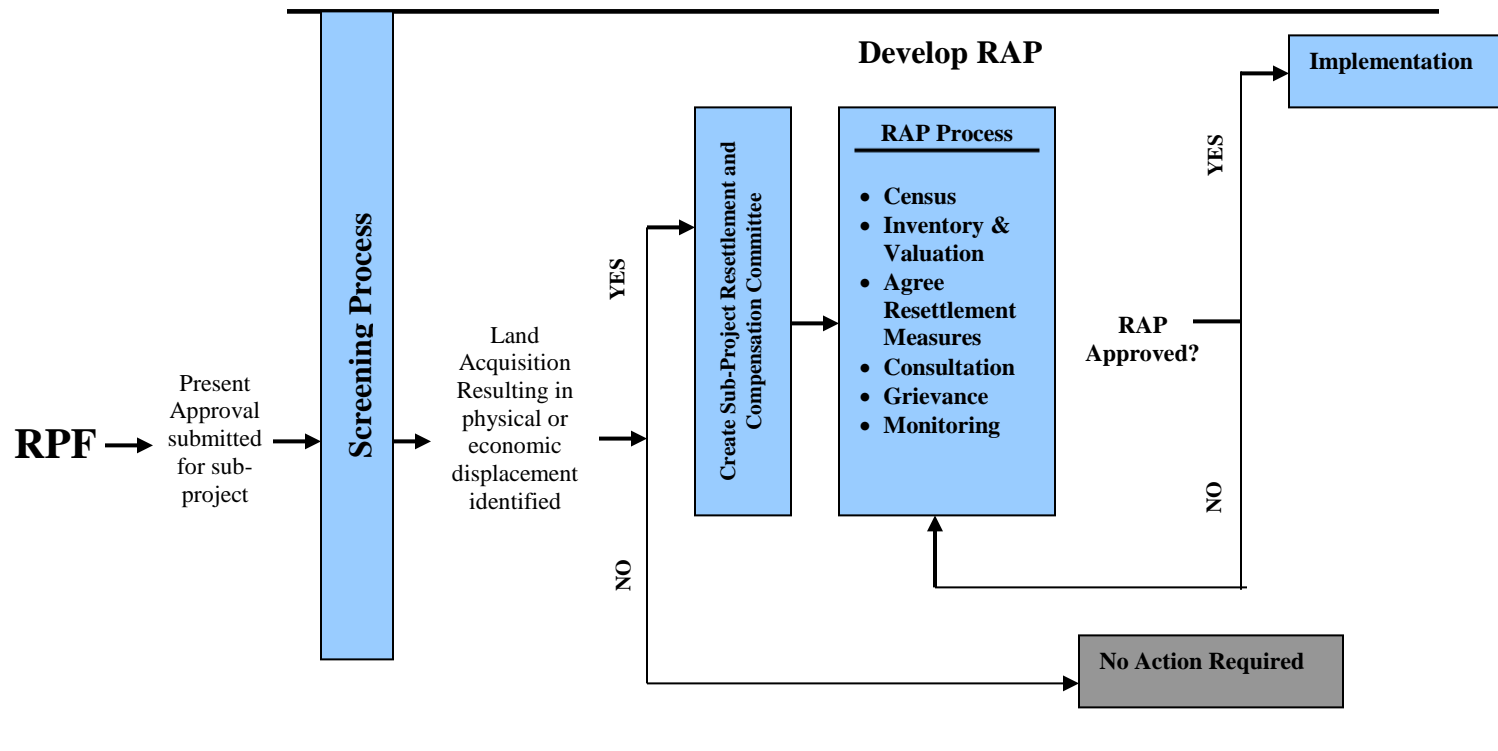
As defined in this policy, individuals will be compensated for wild trees which are located in their land. Wild productive trees belong to the community when they occur in the bush as opposed to fallow land. These trees will be compensated for under the umbrella of the community compensation.

No compensation will be paid for minor pruning of trees. Compensation for removal of limbs will be prorated on the basis of the number of square metres of surface area removed. The total surface area of the tree will be calculated using the following formula:  $(\frac{1}{2} \text{ diameter of canopy})^2 \times 3.14$ .



The overall process RAP is presented in Figure 2.

Figure 2 Outline of the RAP process



## II. IMPLEMENTATION SCHEDULE, LINKING RESETTLEMENT IMPLEMENTATION TO CIVIL WORKS

### OVERVIEW

Before any project activity is implemented, PAPs will need to be compensated in accordance with the resettlement policy framework. 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 individual RAPs.

The measures to ensure compliance with this RPF will be included in the RAPs that will be prepared for each land involving resettlement or compensation. The schedule for the implementation of activities must be agreed to between the Resettlement Committee and the PAPs. These include the target dates for start and completion of civil works, timetables for transfers of completed civil works to PAPs, and dates of possession of land that PAPs are using. The dates must be after transfer date for completed civil works to PAPs and payments of all compensation. How these activities are linked to the implementation of the overall subproject must also be agreed between the parties. The screening process must ensure that RAPs contain acceptable measures that link resettlement activity to civil works in compliance with this policy.

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

### PROJECT LAUNCHING

At each sub-project launching, an assessment of the social impacts of each sub-project will be conducted particularly for subprojects presumed to induce extensive adverse social impacts. The assessment will help to determine which mitigation measures to be taken and establish whether or not detailed RAPs with timetables and budgets should be prepared.

Issues to be addressed by the screening process will include demography, land tenure and socio-economic structures for larger sub-projects involving more than 20 households and consultations with local authorities and PAPs for all sub-projects.

A key task to be conducted under this process is a household survey describing the extent of the social impacts. At this stage, all PAPs will be listed in order to avoid an influx of people trying to take advantage of the compensation and rehabilitation. A cut off date from which eligibility for compensation will be terminated will be proclaimed and new inhabitants coming to the project affected areas will not be considered for compensation. The principles of compensation will be triggered wherever there will be land acquisition and adverse social impacts.

## **IMPLEMENTATION SCHEDULE**

The timing of the resettlement will be coordinated with the implementation of the main investment component of the project requiring resettlement. 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 should include a target date when the expected benefits for resettled persons and hosts would be achieved.

Arrangements for monitoring implementation of resettlement and evaluating its impact will be developed during project preparation and used during supervision. Monitoring provides both a warning system for project managers and a channel for resettled persons to make known their needs and their reactions to resettlement execution. Environmental and Social Impact Assessments, if deemed necessary through the application of the ESMF, will be conducted parallel with the design of the sub-projects, and will determine the number of PAPs and to assess demand of needs of the displaced persons which could be housing, water, health facilities and sanitation.

Target dates for achievement of expected benefits to resettled persons and hosts should be set and the various forms of assistance to the resettled persons should be disseminated to them. Planning and coordination of the tasks of the various actors is key to successful implementation. To achieve this, workshops will be organized with the stakeholders and other relevant government agencies, at project launching and at the commencement of every subproject identified to have adverse social impacts. The workshops will focus on (i) taking stock of the legal framework for compensation, (ii) settling institutional arrangements and mechanisms for payment of compensation, (iii) defining tasks and responsibilities of each stakeholder and (iv) establishing a work plan.

The stakeholders will be requested to participate in the decision making process and provide inputs in the area of their expertise in order to establish a coherent work plan or schedule. PAPs will also be consulted with the aim of obtaining their positions on the issues at stake.

Specifically, precise details must be provided when preparing the implementation schedule for each RAP. The schedule for the implementation of activities agreed to

between WaSSIP AF and the PAPs and will include aspects such as target dates for start and completion of civil works, timetables for transfers of completed civil works to PAPs, dates of possession of land that PAPs are using (this date must be after transfer date for completed civil works to PAPs and payments of all compensation), and how these activities are linked to the implementation of the overall project.

When WaSSIP AF present their resettlement and compensation plans to the NEMA for approval, part of the screening process that NEMA would use to approve RAPS would be to confirm that the resettlement plans contain acceptable measures that link resettlement activity to civil works in compliance with this policy. The timing mechanism of these measures would ensure that no individual or affected household would be displaced (economically or physically) due to civil works activity before compensation is paid and resettlement sites with adequate facilities are prepared and provided for to the individual or homestead affected. Once the resettlement plan is approved by the local and national authorities, the resettlement plan should be sent to the World Bank for final review and approval.

## 12. GRIEVANCES REDRESS MECHANISMS

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

Grievances may arise from members of communities who are dissatisfied with (i) the eligibility criteria, (ii) community planning measures, or (iii) actual implementation. This chapter sets out the measures to be used to manage grievances.

### OVERVIEW

A key element of resettlement activities will be the development and implementation of a grievance mechanism. 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, ensuring that they are addressed in an appropriate and timely manner, with corrective actions being implemented if appropriate and the complainant being informed of the outcome. The grievance procedure will be simple and will be administered as far as possible, at the subproject level by the Resettlement and Compensation Committee to facilitate access by PAPs.

The grievance procedure does not replace existing legal processes. Based on consensus, the procedures will seek to resolve issues quickly in order to expedite the receipt of entitlements, without resorting to expensive and time-consuming legal actions. If the grievance procedure fails to provide a result, complainants can still seek legal redress.

The overall process of grievance is as follows:-

- *During the initial stages of the valuation process, the affected persons will be given copies of grievance procedures as a guide on how to handle the grievances.*
- *The process of grievance redress will start with registration of the grievances to be addressed for reference, and to enable progress updates of the cases.*
- *The project will use a local mechanism, which includes resettlement committees, peers and local leaders of the affected people. These will ensure equity across cases, eliminate nuisance claims and satisfy legitimate claimants at low cost.*
- *The response time will depend on the issue to be addressed but it should be addressed with efficiency.*
- *Compensation will be paid to individual PAPs only after a written consent of the PAPs, including both husband and wife.*

Should a PAP refuse the compensation suggested, he/she could appeal to the WaSSIP AF /PCT and District Land Office. In case of failure to agree on compensation, the individual PAP has the right to take his/her case to the civil court for litigation.

## **GRIEVANCE REDRESS PROCESS**

At the time that the individual resettlement plans are approved and individual compensation contracts are signed, affected individuals and homesteads will have been informed of the process for expressing dissatisfaction and to seek redress. The grievance procedure will be simple and administered as far as possible at the local levels to facilitate access, flexibility and ensure transparency.

All the grievances will be channeled to the existing structures in Kenya for handling grievances beginning with the traditional institutions as the first stop before resorting to the Kenyan Courts of Law as the last resort. A grievance log will be established by the project and copies of the records kept with all the relevant land authorities at the district, sector and village level and will be used in monitoring of complaints

WaSSIP AF being a party to the contract would not be the best office to receive, handle and rule on disputes. Therefore, taking these concerns into account, all grievances concerning non-fulfilment of contracts, levels of compensation, or seizure of assets without compensation should be addressed to the local leader/committee for resolution. As is normal practice under customary law, all disputes in communities are solved by the leaders after a thorough investigation of the facts using the services of his officials. Notwithstanding that the grievance redress mechanism accepts that the compensation and resettlement plans will be (contracts) binding under statute.

The grievance redress mechanisms is 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.

Also, in the local cultures it takes people time to decide that they are aggrieved and want to complain. Therefore, the grievance procedures will give people up to the end of the next full agricultural season after surrendering their assets to set forth their case.

All attempts would be made to settle grievances. Those seeking redress and wishing to state grievances would do so by notifying their traditional leader or the appropriate municipal/district authority, who will in turn inform and consult with WaSSIP AF, NEMA, MoWI, homestead/household representatives and leaders and other records to determine a claims validity.

If valid, the traditional leader or the appropriate district authority will notify the complainant and s/he will be settled. If the complainants claim is rejected, then the matter will be brought before the law courts for settlement. The decision of the lowest court (i.e. Magistrate or high court) would be final and all such decisions must be reached within a full growing season after the complaint is lodged. This is designed to ensure a speedy and affordable adjudication.

If a complaint pattern emerges, WaSSIP AF, the district and regional administrations, with the local leaders will discuss possible remediation. The local leaders will be required to give advice concerning the need for revisions to procedures. Once they agree

on necessary and appropriate changes, then a written description of the changed process will be made. WaSSIP AF, the district and regional administrations and the traditional leaders and representatives will be responsible for communicating any changes to future potential PAPs when the consultation process with them begins.

### ***Process***

The procedure for managing grievances should be as follows:

The affected person should file his/ her grievance, relating to any issue associated with the resettlement process or compensation, in writing to the subproject Resettlement and Compensation Committee. The grievance note should be signed and dated by the aggrieved person. A selected member of the Committee will act as the Project Liaison Officer who will be the direct liaison with PAPs (this should be the Social representative from the PCT extension team).

The PLO should be working in collaboration with an independent agency/NGO person ensure objectivity in the grievance process. Where the affected person is unable to write, the local Project Liaison Officer will write the note on the aggrieved person's behalf. Any informal grievances will also be documented by the Project Liaison officer. The note should be embossed with aggrieved person's thumbprint. A sample grievance form is provided in Annex. A copy of this completed form should be submitted by the Project Liaison Officer to PCT.

- 1) *The Project Liaison Officer and the sub-project Resettlement and Compensation Committee will consult to determine the validity of claims. If valid, the Committee will notify the complainant and s/he will be assisted.*
- 2) *The sub-project Resettlement and Compensation Committee will 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, 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 Committee, the Project Liaison Officer will assist the aggrieved person to take the matter to the District Land Adjudication Committee, legally responsible for resolving formally lodged grievances.*

OR

- 4) *If the aggrieved person does not receive a response or is not satisfied with the outcome within the agreed time, s/he may lodge his/her grievance to the District Land Office, also mandated to help resolve such matters). If requested, or deemed necessary by the sub-project Committee, the Project Liaison Officer will assist the aggrieved person in this matter.*

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

### ***Grievance Log***

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

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

### ***Monitoring Complaints***

The Project Liaison Officer will be responsible for:

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

To date, the project has held several consultations with PAPs. Key issues regarding land acquisition/involuntary resettlement that have arisen during the implementation of the original project and preparation of additional financing include: [list some examples]. These concerns have been addressed through the project design and implementation in the following ways: [list some examples].



### 13. RPF IMPLEMENTATION BUDGET

The actual cost of resettlement and compensation for each sub project will be determined during the socio-economic study. WaSSIP AF would have to finance the resettlement compensation because they are the party that would be impacting livelihoods. Presently, US\$ 7,000,000 has been presented in the PAD as the estimated cost for RAP preparation including implementation under WaSSIP AF. However, the total cost of resettlement will depend on the number of sub projects that might vary individually.

At this stage, it is not possible to estimate the exact number of people who may be affected since the technical designs and details have not yet been developed. It is therefore not possible to provide an estimated budget for the total cost of resettlement that may be associated with implementation of WaSSIP AF. However, when these locations are known, and after the conclusion of the site specific socio-economic study, information on specific impacts, individual and household incomes and numbers of affected people and other demographic data will be available, a detailed and accurate budgets for each RAP will be prepared. Each RAP will include a detailed budget, using the following template thus facilitating the preparation of a detailed and accurate budget for resettlement and compensation. WaSSIP AF will prepare the resettlement budget and will finance this budget through the administrative and financial management rules and manuals like any other activity eligible for payment under the program. This budget will be subject to the approval of the World Bank. At this stage all that can be reasonably and meaningfully prepared is an indicative budget, highlighting key features that the budget must contain, inter alia, as follows;

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

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

Monitoring			
Contingency			

#	Item	Costs (in KSHS)*	Assumptions
1	Compensation for loss of Land	/hectare	For land acquisition purposes, based on cost realized in projects involving similar issues in Kenya.
2	Compensation for loss of Crops	/hectare of farm lost	Includes costs of labor invested and average of highest price of staple food crops as per methods described in this RPF.
3	Compensation for loss of access to pastoralists	N/a	Those affected would be provided with shared access, or alternate routes ( decision agreed through consultation and participation of all)
4	Compensation for loss of access to fishing resources.	Say, /fishmonger	Data provided from revised socio-economic study will determine market values of catch, fish products etc. that is produced.
5	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.
6	Compensation for Trees	/year/tree	Based on methods described in this RPF for compensation for trees.
7	Cost of Relocation Assistance/Expenses	/household	This cost is to facilitate transportation, etc.
8	Cost of Restoration of Individual Income	Say	Assumed to be higher than the GDP/capita.
9	Cost of Restoration of Household Income	Say	Through employment in Program Activities.
10	Cost of Training Farmers , pastoralists and other PAPs		This is a mitigation measure which seeks to involve those affected by the project activities. This figure represents a costs of around Kshs/person

The PCT will manage and monitor the resettlement budget and will finance it through the administrative and financial management rules and manuals as for any other activity eligible for payment under WaSSIP AF.

# 14. MECHANISM FOR CONSULTATIONS AND PARTICIPATION OF DISPLACED PERSONS IN PLANNING, IMPLEMENTATION AND MONITORING

## OVERVIEW

The involvement of involuntary resettled persons and hosts in planning prior to the move is critical and initial resistance to the idea of involuntary resettlement is expected. To obtain cooperation, participation and feedback, the resettled persons and hosts will be systematically informed and consulted during preparation of the resettlement plan about their options and rights. 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.

The plan will address and mitigate the resettlement's impact on host populations who should be informed and consulted. Any payments due to the hosts for land or other assets provided to resettled persons should be promptly made. Conflicts between hosts and resettled persons may develop as increased demands are placed on land, water, forests, services etc., or if the resettled persons are provided services and housing superior to that of the hosts.

Conditions and services in host communities should improve, or at least not deteriorate and provision of improved education, water, health and production services to both groups 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.

Public consultation 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 WaSSIP AF. The way land administration is undertaken in Kenya today based on long standing traditional and cultural practices makes public consultation with the rural communities, indispensable. Effective and close consultation with PAPs is a pre-requisite for project success. In recognition of this, particular attention would be paid to public consultation with potentially affected individuals/households/homesteads when resettlement and compensation concerns are involved.

Public consultation will take place at the inception of the planning stages when the potential land areas are being considered. The participation strategy would evolve around the provision of a full opportunity for involvement. Therefore, as a matter of

strategy, public consultation would be an on-going activity taking place throughout the entire project cycle. For example, public consultation would also occur during the preparation of the (i) the socio-economic study, (ii) the resettlement and compensation plan (iv) the environmental impact assessment and (v) during the drafting and reading of the compensation contract.

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

Monitoring of this process would be through the traditional leaders as part of the individual resettlement and compensation plans and overall the monitoring and evaluation mechanism of the entire project. This requirement is in line with the Bank policy on disclosure.

## **DATA COLLECTING PHASE**

After familiarizing themselves with the project area through reading and consultations with the Ministry of Water and Irrigation and WaSSIP AF /PCT, the consultants will design appropriate questionnaires intended for data collection at project location levels. The levels will vary from households to community groups, based on the TOR. The consultant will design questionnaires for data collection from various households, organizations and institutions such as women groups, farmers' Associations, individual farm units, primary and/or secondary schools, health centres and agricultural cooperative unions or individual farm units, depending on the nature of information source.

All the actors will constitute the main taskforce in the data collecting phase and PAPs will be consulted to participate in the process by providing socio-economic information about their livelihoods. This could be done through use of forms, questionnaires and interviews. Persons or groups of persons at the project sites, location, village levels, or household levels to be interviewed will also be identified and selected through stratified random sampling.

Those to be interviewed will include those directly affected by physical works and a scientifically accepted number of respondent households for each sub-project location. The PAPs will be consulted through meetings to share information about the project, discuss social impacts of project operations and the mitigation measures suggested. The

contribution of the PAPs will be integrated into the subproject implementation process, from planning to evaluation. Furthermore, data about socio-impacts of the subprojects and the mitigation measures suggested will be provided to the media. This data will serve as instruments for the monitoring of the social mitigation measures.

### **IMPLEMENTATION OPERATION**

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

### **MONITORING AND EVALUATION PHASE**

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

## 15. ARRANGEMENTS FOR MONITORING AND EVALUATION

This chapter sets out requirements for the monitoring of the implementation of the RPF. In addition, monitoring of social indicators will be mainstreamed into the overall monitoring and evaluation system for both projects.

### OVERVIEW

The arrangements for monitoring will fit the overall monitoring plan of the entire WaSSIP AF, which will be through the Ministry of Water and Irrigation and WaSSIP AF. 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. 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 PCT will institute an administrative reporting system that will:-

- *Provide timely information about all resettlement arising as a result of WaSSIP AF activities;*
- *Identify any grievances that have not been resolved at a local level and require resolution through the involvement of the PCT ;*
- *Document the timely completion of project resettlement obligations for all permanent and temporary losses;*
- *Evaluate whether all PAPs have been compensated in accordance with the requirements of this RPF and that PAPs have higher living standards in comparison to their living standards before physical or economic displacement.*
- *alerts project authorities to the necessity for land acquisition in WaSSIP AF's planned activities*

Consistent with the Environmental and Social Management Framework, the WaSSIP AF and the NEMA would be responsible for periodically transferring the information compiled "on the ground" to the MoWI and the respective line Departments so that it is alerted in a timely manner to any difficulties arising at the local level. The objective will be to make a final evaluation in order to determine;

- *If affected people have been paid in full and before implementation of WaSSIP AF's activity that is causing resettlement ,*
- *If the people who were affected by WaSSIP AF /the project activities have been affected in such a way that they are now living a higher standard than before, living at the same standard as before, or are they actually poorer than before.*

A number of indicators would be used in order to determine the status of affected people (land being used compared to before, standard of house compared to before, level of participation in project activities compared to before, how many kids in school compared to before, health standards, etc). Therefore, the resettlement and compensation plans will set two major socio-economic goals by which to evaluate its success:

- *Affected individuals, households, and communities are able to maintain their pre-project standard of living, and even improve on it;*
- *The local communities remain supportive of the project.*
- *The absence or prevalence of conflicts*

### **INDICATORS TO DETERMINE STATUS OF AFFECTED PEOPLE**

A number of indicators would be used in order to determine the status of affected people (land being used compared to before, standard of house compared to before, level of participation in project activities compared to before, how many kids in school compared to before, health standards, etc). Therefore, the resettlement and compensation plans will set two major socio-economic goals by which to evaluate its success:

- *Affected individuals, households, and communities are able to maintain their pre-project standard of living, and even improve on it; and*
- *The local communities remain supportive of the project.*
- *Specific indicators may include the following, which would indicate a change in:*
  - *yield/ produce quantity/quality from farming*
  - *access/ distance/ quality of agricultural plots*
  - *quality of, and access to, water*
  - *yield/ produce quantity/quality from livestock*
  - *number of people employed*
  - *number of people with agricultural plots*
  - *number of 'vulnerable' people*
  - *source of income*
  - *expenditure patterns (food for livestock, travel etc)*

Most of the information for these indicators will be gathered the farmer cooperative or information collated through survey. The information for these indicators should be collated at regular intervals (e.g., quarterly or half yearly depending on circumstances) and compared over time. The pre-project Census information should provide most, if not all of the required information to set a baseline against which performance can be tracked.

### **INDICATORS TO MEASURE RAP PERFORMANCE**

In order to access whether these goals are met, the resettlement and compensation plans will indicate parameters to be monitored, institute monitoring milestones and provide resources necessary to carry out the monitoring activities. The following provides a list

of potential indicators for monitoring, which assess the change in the following for those who have been resettled:

In terms of the resettlement process, the following indicators could be used to understand the success of the measures identified and the working of the relevant parties in implementation the RAP:

- *Percentage of individuals selecting cash or a combination of cash and in-kind*
- *Compensation;*
- *The number of contentious cases as a percentage of the total cases;*
- *The number of grievances and time and quality of resolution;*
- *The ability of individuals and families to re-establish their pre-displacement activities, land and crops or other alternative incomes;*
- *Agricultural productivity of new lands;*
- *Number of impacted locals employed by the civil works contractors;*
- *Seasonal or inter-annual fluctuation on key foodstuffs; and*
- *General relations between the project and the local communities.*

These will be determined through the following activities:

- *Questionnaire data will be entered into a database for comparative analysis at all levels of local government;*
- *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;*
- *The District authorities will maintain a complete database on every individual impacted by the sub-project land use requirements including*
- *Relocation/resettlement and compensation, land impacts or damages; and the PCT should prepare Resettlement Completion Reports for each RAP, in addition to other regular monitoring reports*

It is the responsibility of the District authorities to document information ideally integrated into existing databases. The District authorities will need to design a robust reporting system at the beginning of the project to ensure that these data are collated at appropriate intervals and in sufficient quantity and quality. The subproject Resettlement and Compensation Committee will facilitate coordination of information collation activities (such as surveys, supervising documentation) in accordance with procedures PCT put in place. The PCT will provide training, technical support and funding to ensure that this happens.

In order to assess whether these goals are met, the resettlement and compensation plans will indicate parameters to be monitored, institute monitoring milestones and provide resources necessary to carry out the monitoring activities. The following parameters and verifiable indicators will be used to measure the resettlement and compensation plans performance;

- *Questionnaire data will be entered into a database for comparative analysis at all levels of Government,*



- *Each individual will have a compensation signed dossier recording his or her initial situation, all subsequent program use of assets/improvements, and compensation agreed upon and received.*
- *WaSSIP AF will maintain a complete database on every individual impacted by the project land use requirements including relocation/resettlement and compensation, land impacts or damages*
- *Percentage of individuals selecting cash or a combination of cash and in-kind compensation,*
- *Proposed use of payments,*
- *The number of contention cases out of the total cases,*
- *The number of grievances and time and quality of resolution,*
- *Ability of individuals and families to re-establish their pre-displacement activities, land and crops or other alternative incomes*
- *Pastoral and Agricultural productivity of new lands,*
- *Number of impacted locals employed by the WaSSIP AF's civil works contractors,*
- *Seasonal or inter annual fluctuation on key foodstuffs,*
- *General relations between the project, WaSSIP AF and the local communities,*

## **MONITORING OF RPF IMPLEMENTATION**

Local Government Authorities will District assist in compiling basic information on all physical or economic displacement arising from the project, and convey this information to the PCT, on a quarterly basis.

They will compile the following statistics:-

- *Number of sub-projects requiring preparation of a RAP;*
- *Number of households and individuals physically or economically displaced by each sub-project;*
- *Length of time from sub-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 sub-project;*
- *Number of unresolved grievances.*

The PCT in each of the WSBs will scrutinize these statistics in order to determine whether the resettlement planning arrangements as set out in this RPF are being adhered to. The PCT will directly monitor compensation and loss of wages. Financial records will be maintained by the subprojects and the PCT, to permit calculation of the final cost of resettlement and compensation per individual or household. The statistics will also be provided to an independent consultant that will be contracted on an annual basis. The following indicators will be used to monitor implementation of the RPF.

**Table 7: Verifiable indicators**

<b>Monitoring</b>	<b>Evaluation</b>
Outstanding compensation contracts not completed before next agricultural season	Outstanding individual compensation or resettlement contracts
Subprojects unable to settle compensation after two years	Outstanding compensation contracts
Grievances recognised as legitimate out of all complaints lodged	All legitimate grievances rectified
Pre project production and income (year before land used) versus present production and income of resettled persons, off farm-income trainees, and users of improved agricultural techniques	Affected individuals and/or households compensated pr resettled in first year who have maintained their previous standard of living at final evaluation
Pre project production versus present production( crops for crops, land for land)	Equal or improved production per affected household/homestead

Financial records will be maintained by WaSSIP AF, the District and Regional Administrations and the MOWI, to permit calculation of the final cost of resettlement and compensation per individual or household.

### ***Storage of PAPs Details***

Each PAP household will be provided with a signed report recording his or her initial situation, all subsequent project use of assets and compensation agreed upon and received. The Local Authority and PCT will maintain a complete database on every individual impacted by the project land use requirements including relocation, resettlement and compensation, land impacts or damages.

Each recipient of compensation will have a record containing individual bio-data, number of household dependents and amount of land available to the individual or household when the report is opened. Additional information to be acquired for individuals eligible for resettlement and/or compensation include the level of income and of production, inventory of material assets and improvements in land and debts.

Each time land is used by a sub-project; the report will be updated to determine if the individual or household is being affected to the point of economic non-viability and eligibility for compensation or its alternatives. These reports will provide the foundation for monitoring and evaluation, as well as documentation of compensation agreed to, received, and signed for.

It is normal that some compensation procedures and rates may require revision at some time during the project/program cycle. WaSSIP AF, the NEMA, the District and Regional Administrations and MoWI, will implement changes through the Change Management Process in the Monitoring and Evaluation manuals of the project (PIM or Project Implementation Manual), which will require feedback from:

Indicators monitored by the local regional governments to determine whether goals are being met, and a grievance procedure for the local community to express dissatisfaction about implementation of compensation and resettlement.

This framework is suggesting that the office of the NEMA is structured into the whole M&E component of the project. This would take the form of giving the NEMA the mandate to carry out independent monitoring of the implementation of the resettlement and compensation plans at periodic intervals of quarterly or half yearly (as circumstances dictate) during the project life. Their report would then be sent to MoWI, the World Bank and WaSSIP AF and become part of the official documents of the project.

### *Annual Audit*

The annual audit of RPF implementation will include (i) a summary of the performance of each sub-project vis-à-vis its RAP, (ii) a summary of compliance and progress in implementation of the process s and (iii) a presentation of compliance and progress in the implementation of the RPF.

The audit will verify results of internal monitoring and assess whether resettlement objectives have been met irrespective of whether livelihood and living standards have been restored or enhanced. The audit will also assess the resettlement efficiency, effectiveness, impact and sustainability, drawing lessons for future resettlement activities and recommending corrections in the implementation. Finally, the audit will ascertain whether the resettlement entitlements were appropriate to meeting the objectives and whether the objectives were suited to PAPs conditions. Annual audit reports will be submitted for scrutiny to the World Bank.

## **SOCIO-ECONOMIC MONITORING**

The purpose of socio-economic monitoring is to ensure that PAPs are compensated and recovering on time. During implementation of each sub-project RAP, an assessment will be undertaken on payment of compensation, restoration of income delivery of resettlement objectives. Monitoring of living standards will continue following resettlement. A number of indicators will be used to determine the status of affected people and appropriate parameters and verifiable indicators will be used to measure the resettlement and compensation plans performance. For each sub-project with adverse social impacts, a monitoring and evaluation plan of the mitigation measures will be established. As part of the preparation of each RAP, a household survey will be conducted of all PAPs, prior to physical or economic displacement, and this will provide baseline data against which to monitor the performance of the RAP.

# ANNEX

## ANNEX A: SAMPLE RESETTLEMENT SCREENING FORM

**Sub-project name:**

**Subproject Location**

(Include map/sketch): (e.g. District, Division, Location, Village etc).

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

**Estimated Cost:**

(Kenyan Shillings)

**Proposed Date of**

**Commencement of Work:**

**Technical**

**Drawing/Specifications**

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

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

### 1. Site Selection:

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

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

**2. Checklist questions:**

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

*Refer to project application for this information.*

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

*Refer to the Resettlement Policy Framework.*

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

*Recommendations:*

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

Does not require further studies

Reviewer: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

## ANNEX B: CENSUS AND LAND ASSET INVENTORY FORM

Socio-economic Household Datasheet of PAPs

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

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

Date: .....  
 Day Month Year

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

### Household Interview

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

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

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

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

Occupations :-

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

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

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

### Land asset inventory for Project Affected People

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

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

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

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

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

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



**Entitlements of Project Affected People**

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

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

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

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

## ANNEX C: SAMPLE GRIEVANCE REDRESS FORM

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

## **ANNEX D: TERMS OF REFERENCE FOR RPF FOR WASSIP AF**

### **TERMS OF REFERENCE**

#### **Background Information**

The Government of the Republic of Kenya (GoK) has mainstreamed its National Water Policy to envisage 100% access to safe water for the country's population by 2030. To achieve this target, the GoK has been implementing far-reaching sector reforms program since 2002 aimed at harmonizing the management of water resources and water supply and sanitation (WSS) throughout the country. This reform has been propelled by the Water Act (2002), which aims at harmonizing the management of water resources and water supply and sanitation services.

The World Bank has been supporting the GoK in its water sector reforms through financing of programmes towards improvement of water and sanitation services in the country. The GOK and the World Bank, through the International Development Association, (IDA) have agreed on the implementation of the Kenya Water Supply and Sanitation Improvement Project (WaSSIP) in three water services boards namely Athi (AWSB), Coast (CWSB) and Lake Victoria North (LVNWSB).

This project aims at supporting the water sector reform effort in the three Water Boards by achieving the following three objectives namely:

- (i) Increase access to reliable, affordable and sustainable water supply and sanitation services
- (ii) Improve the water and wastewater services
- (iii) Institutional strengthening and capacity building of water service providers, within the coverage areas of the three water services boards (Athi, Coast and Lake Victoria North)

It is envisaged that implementation of the WaSSIP will trigger the following four Operation Policy safeguards:

- (i) Environmental Assessment (OP/BP 4.01)
- (ii) Involuntary Resettlement (OP/BP 4.12)

In order to address these safeguard policy issues and to ensure that implementation of project activities will be carried out in an environmentally and socially sustainable manner, the GOK prepared an Environmental and Social Management Framework (ESMF), and a Resettlement Policy Framework (RPF) for WaSSIP. The completed ESMF and RPF have since been disclosed by the GOK in the country and the Bank's Information Centre (Infoshop) in Washington D.C.

The ESMF for this project has allowed the implementing agencies- Water Services Boards (WSBs), to identify, assess and mitigate potential negative environmental and social impacts of sub-projects, through preparation of Environmental Impact Assessments (EIA) and Environmental Management Plans (EMP) as well as Resettlement Action Plans (RAPs) where necessary. The ESMF presents guidelines and procedures consistent with the Environmental Management and Coordination Act (EMCA 1999) of Kenya and the World Bank's safeguard policy on Environmental Assessment (OP/BP 4.01).

In accordance with the World Bank's social safeguard policy on Involuntary Resettlement (OP/BP 4.12), which has been triggered by WaSSIP, the GOK prepared a social safeguards instrument. Since the sub-projects were not known in advance, the appropriate instrument was the RPF, which was employed in conjunction with the ESMF to ensure that social impacts due to sub-project activities are appropriately addressed. The RPF document outlines the principles and procedures to be followed in the event that a sub-project leads to land acquisition, impact on assets, and/or the loss of livelihoods.

### **Guiding Principles**

World Bank Operational Policy (OP 4.01 on Environmental Assessment together with relevant Kenyan environmental legislation and guidelines will be the guiding principles for this consultancy. The objective of OP 4.01 is to ensure that projects financed by the Bank are environmentally and socially sustainable, and that the decision making process is improved through an appropriate analysis of the actions including their potential environmental impacts. Environmental assessment (EA) is a process whose breadth, depth, and type of analysis depend on the nature, scale, and potential environmental impact of the proposed project. EA takes into account the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and cultural property); and trans-boundary and global environmental aspects.

EA considers natural and social aspects in an integrated way. OP 4.01 is triggered if a project is likely to present some risks and potential adverse environmental impacts in its area of influence. Potential negative environmental and social impacts due to project activities are likely to include loss of vegetation, soil erosion, soil and groundwater pollution, air pollution, public health impacts such as traffic hazards, noise, dust, and loss of livelihoods. These must be fully identified and the appropriate mitigating measures should be clearly defined and budgeted.

### **Objective of the Assignment**

The purpose of the technical assistance (TA) is to support and facilitate the AWSB to realize its development objectives of increasing access to safe water and sanitation services without resulting in serious negative environmental, economic and social impacts by complying with relevant legislation/policies of donor and borrower.

### **Statement/Scope of Services**

The consultant will refer to the existing Environmental and Social Management Framework (ESMF), Resettlement Policy Framework (RPF), EIA, EMP and RAPs reports for WaSSIP among any other relevant documents.

The TA will besides reviewing existing Environmental and Social Impact Assessment reports and Environmental Management Plans for the various identified sub projects make field verifications to ensure accuracy of the information in the reports and EMPs.

## **REVISED SCOPE OF SERVICES**

### **Review of the Environmental and Social Management Framework and Resettlement Policy for the Water) Proposed Additional Financing (WaSSIP)**

In 2007, a revised Environmental and Social Management Framework (ESMF) and Resettlement Policy Framework (RPF) was prepared for the investments funded by the World Bank under the Water and Sanitation Services Improvement Project (WASSIP). The objective of this portion of the assignment is to revise and update, in consultation with stakeholders, these two framework

documents, to take into consideration new forms of investments and additional geographical areas to be covered by the Additional Financing of WASSIP. These updates will also incorporate any changes in Kenyan legislature, regulations and practices, and any updates in Bank Operational Policies which have occurred since 2007 when the original documents were prepared.

### **Objective of Reviewing EMSF**

The objective of this assignment is to revise and update, in consultation with stakeholders, the Environmental and Social Management Framework (ESMF) of the WASSIP to ensure that the project continues to be implemented in an environmentally and socially sustainable manner and in full compliance with Kenya's and the World Bank's environmental and social policies and regulations.

### **Scope of work**

The consultant will review, and where necessary, update, the following elements of the existing ESMF:

- i. An established clear procedure and methodologies for the environmental and social planning, review, approval and implementation of subprojects.
- ii. Specification of appropriate roles and responsibilities, and outline of the necessary reporting and management procedures.
- iii. Determination of training, capacity building and technical assistance needed to successfully implement the provisions of the ESMF.
- iv. Establishment of the project funding mechanism for implementation of ESMF requirements.
- v. Organizational structures to include recognized and established local environmental and social entities (within Government, NGOs, and civil society) to screen and assess sub-project applications to determine their viability before approval.
- vi. A clear delineation of the role of all stakeholders (whether to be informed and/or consulted) in approval of subproject applications, and subsequent implementation and monitoring of sub-projects
- vii. Establishment of practical information resources requirements for implementing the ESMF.

The revision of the WASSIP ESMF will include the following specific tasks:

- i. Review the 2007 WASSIP ESMF in a consultative process with GoK counterparts, NGOs, communities and other project beneficiaries, and local authorities in order to determine what opportunities exist to improve implementation and monitoring of environmental and social management issues under the Additional Financing of WASSIP .
- ii. Revise key lessons learned from environmental and social safeguards management in the 2007 WASSIP ESMF.
- iii. Review publicly available (at [www.worldbank.org](http://www.worldbank.org) in the Projects page) ESMFs for similar operations in other countries.
- iv. Briefly revise the biophysical and social-economic characteristics of the diverse locations covered by the WASSIP Additional Financing that will be covered by the ESMF.

- v. Review/update the major needs/gaps in environmental and social management to be addressed during the course of project implementation.
- vi. Review/update the assessment of potential environmental and social impacts of WASSIP interventions (in particular at regional, district and community level) and propose measures to mitigate them.
- vii. Assess whether riparian notifications are required and if so conduct analysis and process riparian notification.
- viii. Include a section on procedures necessary to measure and maintain minimum ecological flow, in compliance with the Water Act 2002.
- ix. Review/update specific environmental and social management recommendations for the interventions close to or affecting sensitive ecosystems such as wetlands, protected areas and others of special conservation importance
- x. Review/update a monitoring and evaluation system with easily monitorable indicators to track EMSF implementation.
- xi. Review/update the summary of the Kenyan environmental policies, legislation, regulatory and administrative framework relevant to the EMSF, and the relevant World Bank's safeguard policies
- xii. Review/update the set WASSIP sub-projects screening criteria to identify those sub-projects which need further environmental and social follow up work, including those that may need environmental impact assessment subject to National Environment Management Authority approval.
- xiii. Identification of possible involvement of other stakeholders such as the Civil Society Organizations (CSOs), NGOs, and development agencies operating locally.
- xiv. Thoroughly assess and recommend measures to improve the existing capacity of the WASSIP project implementers at national, district and local level to implement or supervise the necessary environmental and social management activities.

### **Output**

The consultant will prepare revised and updated ESMF document (draft for comments and final report) for WASSIP Additional Financing based on the 2007 WASSIP ESMF. The ESMF can follow the structure of the existing ESMF, but should include the following sections:

- i. Cover page
- ii. Table of contents
- iii. List of acronyms
- iv. Executive summary
- v. Introduction
- vi. Project description
- vii. Objectives of ESMF
- viii. Methodology used in preparation of the ESMF
- ix. Result of the public consultations process (including feedback on previous safeguards approaches).
- x. Overview of policies, legislation, regulatory and administrative framework
- xi. Overview of the World Bank safeguard policies
- xii. Description of the general biophysical and socio-economic environment

- xiii. Describe in detail the environmental and social screening process
- xiv. Key baseline information
- xv. Guidance on potential impacts
- xvi. Reporting and responsibilities in the ESMF
  - a. Institutional capacity assessment and recommendations, including concrete, Budgeted capacity building measures
  - b. Estimated costs (if information is available)
  - c. List of institutions and individuals consulted
  - d. References

### **Objective of Reviewing RPF**

The objective of this assignment is to revise and update, in consultation with stakeholders, the Resettlement Policy Framework (RPF) of the WASSIP to ensure that the project continues to be implemented in full compliance with Kenya's and the World Bank's social policies and regulations.

### **Scope of work**

The consultant will:

- i. Update the existing WASSIP RPF in accordance with World Bank standards taking into consideration incorporating any changes in Kenyan legislature, regulations and practices
- ii. Review procedures used to acquire land for WASSIP -financed infrastructure to determine the extent to which compensation given to affected persons/ users of land under Kenyan law and customary procedures conforms to the requirements for an RPF under Bank OP 4.12
- iii. Review relevant Kenyan law and procedures regarding land taking and expropriation, and compensation for lost assets or loss of livelihood;,
- iv. Review RPFs prepared for other recent World Bank projects in Kenya
- v. Undertake a sample review of existing Resettlement Action Plans under the RPF

The consultant will update the existing WASSIP RPF to ensure that requirements elaborated below are addressed. The RPF will specifically follow the World Bank requirements as stated in OP 4.12. It will also meet the legal requirements of the Government of Kenya. Gaps between Bank and Government of Kenya resettlement requirements will be clearly identified as well as the proposed methods for gap-filling measures.

The RPF should be a relatively short operational document (i.e who does what, why, when, where and how) with annexes providing more detailed supportive and background information. The consultant will refer to OP 4.12 for specific direction concerning the preparation and content of the RPF. At a minimum

- i. Project (RSSP) description;
- ii. Impacts, Land Acquisition, and Resettlement;
- iii. Principles and Objectives Governing Resettlement Preparation and Implementation;
- iv. Legal Frameworks for Resettlement;

- v. Estimated Population Displacement and Categories of Affected People;
- vi. Organizational Elements, Responsibilities and Procedures for Delivery of Entitlements;
- vii. Eligibility Criteria of Various Categories of Affected People;
- viii. Methods of Valuing Affected Assets;
- ix. Grievance Redress Mechanisms;
- x. Budget Estimation, and Funding Arrangements;
- xi. Methods for Consultation with, and Participation of Affected People;
- xii. Mechanisms for Monitoring the Effective Implementation of Resettlement; and
- xiii. Preparation of Individual RAPs/ARAPs

### **Additional Scope of Services**

- i. Strengthen the capacity and skills of focal persons (Environmental committee/unit) in the AWSB and WSPs on environmental management and issues on resettlement /compensation and mechanisms for dispute resolution. Design and deliver an environmental and social safeguards capacity building program for the staff of AWSB. The program will include formal training sessions as well as on-the-job coaching. The intention is to strengthen the capacity of the Water Services Board to effectively implement environmental and social safeguard programs within the context of larger infrastructure investments. Training is an integral part of the Consultant's assignment.
- ii. Support the Board by ensuring successful implementation of EMPs and RAPs.
- iii. Conduct regular performance monitoring to establish effectiveness of recommended measures in EMPs and RAPs and recommend apt actions where applicable to ensure successful execution of the projects
- iv. Submit quarterly progress reports detailing success and challenges of implementing RAPs and EMPs and recommending appropriate actions to enhance effectiveness of the process
- v. Undertake periodic supervision of resettlement activities to ensure they are complete and that Project Affected Persons (PAPs) are compensated before the civil works commence.
- vi. Develop and implement an internal administrative tracking system in order to monitor the progress of sub-project investments in terms of meeting environmental and social safeguard requirements. The system will include the planning, assessment, approval, implementation and monitoring phases of sub-project investments. The system will be computer-based (e.g. using a spreadsheet) and designed for easy data entry and report generation. Reports generated by the system should be simple to produce, showing progress of a specific investment or a portfolio of investments, and highlighting critical items such as pending or overdue action Enhance, strengthen and reinforce the effective participation of key stakeholders, sector players and influential opinion leaders in the environmental management system.
- vii. Support the AWSB to establish organizational Environmental policy



- viii. Support the AWSB to initiate the process of achieving the Environmental management system ISO certification.(ISO14001:2004)

In carrying out this consultancy, emphasis will be placed on public/community participation and consultation, in a local language, since local knowledge is important in identifying, designing and planning the implementation of practical mitigation measures.

### **Consultant's Qualification**

The Consultant should meet the following criteria:

- i. Key staff of the consultant team will include an environmental Specialist, a land economist and a sociologist. There must be a team leader to coordinate the various experts. Each expert must have at least 7 years experience of practice in their respective fields and be registered by relevant professional bodies. The team leader must have at least 10 years of progressively senior experience in the environmental and social aspects of planning, assessing and managing civil works projects at various scales, 3 years of which should have been at team leadership level. ;
- ii. Have thorough working knowledge of World Bank environmental and social safeguards policies, especially the Environmental Assessment (OP 4.01) and Involuntary Resettlement (OP 4.12) policies, and have demonstrated experience in successfully preparing EMPs and RAPs of a standard acceptable to the World Bank;
- iii. Have experience with designing and delivering capacity building programs;
- iv. Be familiar with environmental, social and economic conditions prevailing in Kenya or have relevant experience of other countries in the region with similar socio-economic and environmental characteristics; and
- v. Have excellent oral and written communications skills in English, as well as strong team participation and management skills. Experience in conducting public stakeholder consultation is required.

### **Equipment, Logistics and Facilities**

The Consultant shall be responsible for the provision of all the necessary resources to carry out the services and shall make arrangements for the establishment of office, supporting office equipment and furniture, vehicles, accommodation, utilities, communications, and any other required resources.

### **Client Inputs**

The Client will collaborate with the Consultant in making accessible all data, maps Readily available documents include ESMF, RPF and IPPF. The Client will also facilitate the Consultant's access to Government and local authorities.

### **Institutional Arrangements**

The Client will appoint the environmental officer as the liaison person. The Consultant is encouraged and requested to work in close collaboration with key stakeholders in the project area. The Consultant will enter into one year contract with AWSB. The consultant will report to CEO of AWSB.

IN WITNESS WHEREOF, the Parties hereto have caused this Terms of Reference to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of Client]*

---

*[Authorized Representative]*

For and on behalf of *[name of Consultant]*

---

*[Authorized Representative]*

*[Note: If the Consultant consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Consultant

*[name of member]*

---

*[Authorized Representative]*

*[name of member]*

---

*[Authorized Representative]*