



THE GOVERNMENT OF KENYA

THE NATIONAL TREASURY

INFRASTRUCTURE FINANCE AND PUBLIC PRIVATE PARTNERSHIP (IFPPP) PROJECT

UPDATED VERSION

RESETTLEMENT POLICY FRAMEWORK (RPF)

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TABLE OF CONTENTS

TABLE OF CONTENTS	2
GLOSSARY OF TERMS	5
ACRONYMS & ABBREVIATIONS	8
EXECUTIVE SUMMARY	10
<i>Improved legal, institutional and technical PPP growth environment</i>	14
<i>Increased Private Sector Investment</i>	14
<i>Employment and Improved Service Delivery</i>	14
<i>Government Fiscal Efficiency and Transparency</i>	14
<i>Modernization</i>	15
<i>Reducing risk for the public sector</i>	15
<i>Providing alternative funding/freeing government funds</i>	15
<i>Provide funding to maintain infrastructure overtime</i>	15
<i>Improved economic growth</i>	15
I INTRODUCTION	21
1.1 Rationale for the RPF	21
1.2 Project Description	21
1.2.1 <i>Country and sector context/ Project Concept</i>	21
1.3 Sectoral and Institutional Context	22
1.4 Status of Safeguards Under the Parent Project	24
1.4.1 <i>Proposed Development Objectives (PDOs)</i>	26
1.4.2 <i>IFPPP-AF Components:</i>	26
1.5 Project Institutional and Implementation Arrangements	28
1.6 Alternative Considerations	31
1.6.1 <i>No Project Scenario</i>	31
2 METHODOLOGY AND CONSULTATION	33
2.1 Detailed & In-depth Literature Review	33
2.2 Stakeholder Consultation	33
3 principles governing resettlement preparation and implementation	34
3.1 Objectives of the Resettlement Policy Framework	34
3.2 Rationale for preparing the RPF	34
3.3 RPF Principles	35
3.4 Involuntary Resettlement	36
3.5 Minimization of Displacement	36
3.6 Fair and Adequate Compensation	37
3.7 Compensation Payment	37
3.8 Access to training, employment, and credit	37
3.9 Assistance to Vulnerable Persons	37
3.10 ENTITLEMENT UNDER RPF	38
3.10.1 <i>Physical Displacement</i>	38
3.11 Economic displacement	39
4 ADMINISTRATIVE, POLICY AND REGULATORY FRAMEWORK	41
4.1 The Legal, Regulatory and Policy Framework	42
4.1.1 <i>Constitutional provisions</i>	42
4.1.2 <i>The Land Act 2012</i>	43
4.1.3 <i>The Valuers Act</i>	43
4.1.4 <i>National Land Commission Act</i>	43
4.1.5 <i>Environment and Land Court Act</i>	45
4.1.6 <i>Community Land Act, 2016, and Possibilities for Land Donation</i>	46
4.1.7 <i>Evictions and Resettlement Bill 2014</i>	47
4.2 LAND ACQUISITION PROCESS	47

4.3	Relevant Sector Policies.....	54
4.3.1	<i>National Land Policy</i>	54
4.4	Kenya’s Land Tenure System	55
4.4.1	<i>Customary Land Tenure</i>	55
4.4.2	<i>Freehold Tenure</i>	55
4.4.3	<i>Leasehold Tenure</i>	56
4.4.4	<i>Public Tenure and the National Land Commission</i>	56
4.5	Relevant Institutions.....	57
4.5.1	<i>National Land Commission</i>	57
4.5.2	<i>Land and Environment Court</i>	58
5	comparison OF kenyan laws AND WORLD BANK resettlement POLICIES	59
5.1	Comparative Analysis of World Bank OP 4.12 and Kenya’s requirements Relevant to the Compensation Process.....	64
5.2	Requirements for Public Disclosure.....	65
6	ELIGIBILITY CRITERIA AND ENTITLEMENT	66
6.1	Category of Project Affected Persons	66
6.2	Eligibility Type for Compensation.....	68
6.3	Method to Determine the Cut – Off Date.....	68
6.4	Entitlement Matrix	70
	VALUATION AND COMPENSATION.....	75
6.5	METHODS OF ASSETS VALUATION.....	75
6.6	VALUATION PROCESS OF ASSETS.....	76
6.6.1	<i>Field preparation of asset inventory</i>	76
6.7	Asset Valuation Methods in Kenya.....	76
6.8	Other methods	77
6.9	Calculation of Compensation	78
7	preparing and approving resettlement action plans.....	82
7.1	Screening Process.....	82
7.2	Preparation of a Project Specific RAP	82
7.3	Approval of Resettlement Action Plans:	85
8	IMPLEMENTATION ARRANGEMENTS.....	86
8.1	Institutional Roles For RAP Preparation and Implementation	86
8.1.1	<i>Ministry of Finance</i>	86
8.1.2	<i>Project Implementation Unit (PIU)</i>	86
8.1.3	<i>Contracting Authorities</i>	87
8.1.4	<i>National Land Commission (NLC)</i>	87
8.1.5	<i>County Governments</i>	87
8.1.6	<i>Resettlement and Compensation Committees</i>	88
9	IMPLEMENTATION SCHEDULE	90
9.1	Resettlement/Civil Works Linkage	90
9.2	Implementation schedule.....	90
10	GRIEVANCE MANAGEMENT AND REDRESS	92
10.1	Overview	92
10.2	Grievance Redress Process.....	93
10.2.1	<i>Detail procedures for grievance management</i>	93
10.2.2	<i>Grievance Log</i>	94
10.2.3	<i>Monitoring Complaints</i>	95
10.3	Management of Grievances in the Kenya Land Laws.....	96
10.3.1	<i>Environment and Land Court</i>	96
10.3.2	<i>The Commission on Administrative Justice (CAJ) – Office of the Ombudsman</i>	97
10.3.3	<i>National Gender Equality Commission</i>	97
10.3.4	<i>Kenya National Commission on Human Rights</i>	98
10.3.5	<i>World Bank’s Grievance Redress</i>	98

11	IMPLEMENTATION BUDGET	99
12	PUBLIC CONSULTATION, PARTICIPATION AND DISCLOSURE	103
12.1	Data Collecting Phase	104
12.2	Implementation Operation.....	104
12.3	Monitoring and Evaluation phase.....	104
13	ARRANGEMENTS FOR MONITORING AND EVALUATION.....	105
13.1	Overview	105
13.2	Who will do the Monitoring.....	105
13.3	Methodology Use for the RAP Monitoring.....	105
13.4	Indicators to Determine Status of Affected People	106
13.5	Regular Monitoring of RPF/RAP Implementation.....	107
15	ANNEX.....	108
	Annex A. Stakeholders Consulted.....	109
	Annex B. Stakeholders Issues and Concerns Summary	110
	ANNEX C. FORMAT OF RAP STUDY REPORT	114
	ANNEX D: SAMPLE RESETTLEMENT SCREENING FORM	120
	ANNEX E: CENSUS AND LAND ASSET INVENTORY FORM .Error! Bookmark not defined.	
	ANNEX F: SAMPLE GRIEVANCE REDRESS FORM	138

GLOSSARY OF TERMS

Project Affected Person (PAP): any person who, on account of the execution of the Project, or any of its components or subprojects would have their:

- ⑩ Right, title or interest in any house, land (including residential, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, in full or in part, permanently or temporarily; or
- ⑩ Business, occupation, work, place of residence or habitat adversely affected; or
- ⑩ Standard of living adversely affected.

Project Affected Household (PAH) means the family or collection of PAPs that will experience effects from land acquisition regardless of whether they are physically displaced or relocated or not.

Compensation means payment in cash or kind for an asset to be acquired or affected by a project at replacement cost.

Cut-off-date is the date of commencement of the census of persons affected by the project within the project area. This is the date on and beyond which any person whose land is occupied for project use, will not be eligible for compensation i.e. they are not included in the list of PAPs as defined by the socio-economic survey.

Displaced Persons (DPs) means all the people affected by a project through land acquisition, relocation, or loss of incomes and includes any person, household, firms, or public or private institutions who as a result of a project would have their;

- ⑩ Standard of living adversely affected;
- ⑩ Right, title or interest in all or any part of a house, land (including residential, commercial, agricultural, plantations, forest and grazing land) or any other moveable or fixed assets acquired or possessed, in full or
- ⑩ in part, permanently or temporarily adversely affected; or
- ⑩ Business, occupation, place of work, residence, habitat or access to forest or community resources adversely affected, with or without displacement.

Encroachers mean those people who move into the project area after the cut-off date and are therefore not eligible for compensation or other rehabilitation measures provided by the project.

Entitlement means the range of measures comprising cash or kind compensation, relocation cost, income rehabilitation assistance, transfer assistance, income substitution, and relocation which are due to business restoration to PAPs, depending on the type and nature of their losses, to restore their social and economic base.

Full Cost of Resettlement Compensation based on the present value of replacement of the lost asset, resource or income without taking into account depreciation.

Income Restoration means the measures required to ensure that PAPs have the resources to *at least* restore, if not improve, their livelihoods.

Indigenous peoples mean the people indigenous to an area and include ethnic minorities as defined by World Bank Operational Policy on Indigenous Peoples (OP 4.10).

Involuntary Resettlement refers both to physical displacement (relocation or loss of shelter) and to 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 acquisition. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that result in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain; and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

Land acquisition means the process whereby a person or household is involuntarily alienated from all or part of the land s/he owns or possesses, to the ownership and possession of a project for public purposes, in return for fair compensation.

Market Value means the process of determining market value has sought to establish appropriate compensation figures so that the affected population is able to restore their standards of living to levels “at least as good as or better than” that they were prior to the project. Where the Government rates do not provide for this standard of value, CA with the technical support of the independent evaluator will calculate and adjust the compensation figures according to these principles.

O.P 4.12 World Bank Operational policy on Involuntary Resettlement

Relocation means the physical moving of PAPs from their pre-project place or residence, place for work or business premises

Resettlement Action Plan means the time-bound action plan with budget setting out resettlement strategy, objectives, entitlements, actions, responsibilities, monitoring and evaluation.

Resettlement Impacts The direct physical and socio-economic impacts of resettlement activities in the project and host areas.

Resettlement Policy Framework A resettlement policy framework is required for projects with subprojects or multiple components that cannot be identified before project approval. This instrument may also be appropriate where there are valid reasons for delaying the implementation of the resettlement, provided that the implementing party provides an appropriate and concrete commitment for its future implementation. The policy framework should be consistent with the principles and objectives of OP 4.12 of the World Bank.

Replacement cost is the method of valuation of assets that helps determine the amount sufficient to replace lost assets and cover transaction costs. In applying this method of valuation depreciation of structures and assets should not be taken into account.

Socio-economic survey means the census of PAHs/ PAPs of potentially affected people, which is prepared through a detailed field survey based on actual data collected. 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).

“Census” means a field survey carried out to identify and determine the number of Project Affected Persons (PAP) or Displaced Persons (DPs) as a result of land acquisition and related impacts.

Vulnerable means any people who might suffer disproportionately or face the risk of being marginalized from the effects of resettlement i.e.; (i) female headed households with dependents; (ii) disabled household heads; (iii) poor households; (iv) landless elderly households with no means of support.

ACRONYMS & ABBREVIATIONS

AF	Additional Financing
AFTFE	Finance and Private Sector Development Unit
APL	Adaptable Lending Program
APL	Adaptable Program Lending
BDM	Banking and Debt Management
CBK	Central Bank of Kenya
CBOK	Consolidated Bank of Kenya
CMA	Capital Markets Authority
CoK	Constitution of Kenya
CPS	Country Partnership Strategy
CSOs	Civil Society Organizations
DMD	Debt Management Department
ERS	Economic Recovery Strategy
ESMF	Environment and Social Management Framework
FCCL	Fiscal Commitment and Contingent Liability
GCRC	Gross Current Replacement Cost
GDP	Gross Domestic Product
GETPPP	Global Expert Team on PPPs
GOK	Government of Kenya
ICDC	Industrial and Commercial Development Corporation
ICT	Information Communication and Technology
IFPPP	Infrastructure Finance and Public-Private Partnership Program
KNCHR	Kenya National Commission on Human Rights
LRCCs	Locational Resettlement and Compensation Committees
MoF	Ministry of Finance
NBK	National Bank of Kenya
NEMA	National Environment Management Authority
NGEC	National Gender Equality Commission
NLC	National Land Commission
NLP	National Land Policy
NSE	Nairobi Stocks Exchange
NT	National Treasury
OAF	Officer Administering the Fund
OP	Operational Policies
PAPs	Project Affected Persons
PCN	Project Concept Note
PCT	Project Coordination Team
PDF	Project Development Fund
PDO	Project Development Objective
PER	Public Expenditure Report
PFF	Project Facilitation Fund
PIU	Project Implementation Unit
PLO	Project Liaison Officer
PPP	Public Private Partnership

PPPS	Public Private Partnership Secretariat
PREM	Poverty Reduction and Economic Network
RAP	Resettlement Action Plans
RPF	Resettlement Policy Framework
SDN	Social Development Network
SDP	Spatial Development Plan
TOR	Terms of Reference
WB	World Bank

EXECUTIVE SUMMARY

The Government of Kenya (GOK) through the National Treasury (NT) is seeking additional financing from the World Bank for the Infrastructure Finance and Public-Private Partnership Program (IFPPP) Additional Financing (AF) to support improvement in the legislative, institutional, financial, fiduciary and technical framework in order to continue in the generation of pipeline of bankable Public-Private-Partnership (PPP) projects.

Project Description

Kenya's economic growth remains robust and resilient in recent years amid weakness in the global economy. The country's GDP was estimated at US\$ 63.4 billion as of Oct 2016 (up from US\$ 61.4 billion in 2014), with GDP per capita standing at US\$ 1,377 (up from US\$1,368 in 2014). The growth is projected at 5.9 percent in 2016 from 5.6 in 2015 and strengthening to 6.1 percent by 2018. This is against the backdrop of the significant improvement in external and internal balances, such as falling oil prices; and public investment, mainly in infrastructure (energy and the standard gauge railway).¹

Project Development Objectives

The overall development objective of this project is to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time. The potential sub projects under various sectors in this IFPPP-AF are numerous and include “first mover” PPP transactions, which may include construction and rehabilitation projects in the sectors like: transport (roads, airports, ports, rail systems), energy (geo-thermal energy, liquefied natural gas), solid waste management infrastructure (including medical waste), water and sanitation infrastructure (bulk water supply including sanitation, sewerage systems), health infrastructure and housing.

Project Components

The additional financing will consist of three components:

1. Upstream support to PPP Institutions and capacity building;
2. Support to Project Preparation and Procurement; and
3. Support to Project Management

Component I: Support to Institutional Strengthening

The budget for this component is US\$10 million. This allocation was established based on lessons learned from prior technical assistance projects including the IFPPP project and PPIAF supported activities, an assessment of the remaining institutional strengthening activities following the activities undertaken under the IFPPP and the need for institutional strengthening based on future expected project activities. Current known parallel coordinated support from other donors such as PPIAF and DFID has been taken

¹ The World Bank Group, Kenya Economic Update: Beyond Resilience – *Increasing Productivity of Public Investments* 2016, Edition No. 14

into account while establishing the allocation. These donors are likely to continue supporting parallel activities through the life of the project.

Component II: Support to Project Preparation and Procurement

The budget for this component is US\$39.5 million. This component will assist the Government of Kenya, at national as well as county level, to prepare well-structured and bankable PPP projects with optimal risk allocation building on the experience in the development of the first mover PPPs under IFPPP. While transport, education, health and energy will continue to be sectors of focus for the national government, sectors of interest at county level appear to be housing, solid and medical waste management, health services, bulk water supply and distribution, county roads, agriculture, county markets, etc. Funds under this component will be used for engaging consultants for undertaking feasibility assessments, preparation of bid documents and hand-holding during bid-negotiations and other processes leading to commercial and financial close.

This will include the financing of safeguards assessments. The demand for funds under this component has been gauged based on the following: experience of the project preparation component under IFPPP, an examination of the current and potential pipelines at county and national levels in various sectors, and detailed discussions with government counterparts and coordination within the WBG GPs, including with IFC and MIGA.

Component III: Support for Program Management

The budget for this component is US\$ 0.5 million. This component will be used to support the Project Implementation Unit that is currently functioning under IFPPP. The PIU will continue to provide the fiduciary, safeguards, and Monitoring and Evaluation (M&E) expertise required for the implementation of the project in accordance with Bank policies and requirements. This component may include equipment, operating costs, organization and systems development, training, capacity building and technical assistance.

Component II will involve civil works in the development of these infrastructures and thus trigger the Involuntary Resettlement Policy (OP.4.12).

Objective of RPF

Since the pipeline of PPP projects to be supported by the IFPPP-AF program is evolving, the appropriate instrument at this stage is Resettlement Action Plan (RPF). RPF is an instrument used by the World Bank to ensure safeguards on displacement and resettlement at the initial project phase when the exact locations, scope and nature of proposed projects remain unknown.

The principal governing objectives of this Resettlement Policy Framework are as follows;

- 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.

Policy, Legal and Institutional Issues

The following legal instruments among others were reviewed in view of the fact that they provide guidance and regulations when implementing projects that lead to displacement. These are principally the GoK legislations that apply to this project and a comparative analysis has been made between some certain relevant regulations of the GoK and the bank safeguards.

- *Constitution of Kenya (2010)*
- *Land Act*
- *Community Land Act*
- *Evictions and Resettlement Bill*
- *Valuation Act*
- *National Land Commission Act*

GOK has through the Ministry of Finance prepared this RPF as the instrument which all the IFPPP investments resettlement impacts will be identified, assessed, evaluated and appropriate mitigation, management and monitoring measures, designed and incorporated within the proposed investment itself. This RPF provides standards and procedures for compensation for any land acquisition, assets, or restriction of access to resources that this project and associated investment may require, in accordance with World Bank OP 4.12 – Involuntary Resettlement.

There are 2 other safeguards instruments that will compliment this RPF and they are: Environmental and Social Management Framework (ESMF) and Vulnerable and Marginalised Groups Framework (VMGF).

Environmental and Social Requirements

In order to reduce, minimise and mitigate adverse impacts and undue harm of its development projects to the environment, all bank-financed projects are guided by environmental and social policies and procedures commonly referred to as safeguards instruments. A number of banks' policies² have been triggered as a result of this project and they include:

² The World Bank Safeguard Operational Policies (OPs) are OP4.01 – Environmental Assessment; OP4.04 – Natural Habitats; OP4.09 – Pest Management; OP4.10 Indigenous Peoples; OP4.11 – Physical Cultural Resources; OP4.12 –

Involuntary Resettlement; OP4.36 – Forests; OP4.37 Safety of Dams; OP7.50 – Projects on International Waterways; and OP7.60 – Projects in Disputed Areas. See www.worldbank.org/safeguards for more information.

1. OP 4.01 (Environmental Assessment),
2. OP 4.12 (Involuntary Resettlement)
3. OP 4.10 (Indigenous People)
4. OP 4.09 (Pest Management)
5. OP.4.11 (Physical Cultural Resources), and,
6. OP.4.37 (Dam Safety)³

Displacement Impacts

Beneficial Impacts

The IFPPP-AF sub projects are aimed at targeting PPP infrastructure across several sectors of Kenya's economy and include among others; Energy/Power (including geothermal); Transport (roads, bridges, sea/lake port, railway); Water and Sanitation (solid waste management, bulk water); Information Communication and Technology (ICT); Housing; Health and Education. The expected positive impacts include among others;

Improved legal, institutional and technical PPP growth environment

The primary objective of the first phase of this Adaptable Program Lending (APL) program is to improve the legislative, institutional, financial, fiduciary and technical framework to generate a pipeline of bankable PPP projects. This is a definite positive impact that will result in improved legal, institutional, financial, fiduciary and technical framework supportive of pipeline bankable PPP projects.

Increased Private Sector Investment

By strengthening this PPP framework, the IFPPP-AF project will put in place the necessary foundation for Kenya to realize the benefits of PPPs, including increased private investments in infrastructure. This framework will allow increasing the availability and quality of infrastructure in different sectors to boost enterprise growth and productivity and improve the wellbeing of Kenyans.

Employment and Improved Service Delivery

Increased employment opportunities, improved service delivery to enterprises and the population across the stated sectors in general remains one of the positive benefits that will arise from the IFPPP-AF sub projects.

Government Fiscal Efficiency and Transparency

Improved fiscal impact on government from better project preparation, better risk allocation, increased transparency, wider quality control, and greater efficiency are other positive impacts expected as a result of implementing this project.

Modernization

The private sector is often ahead in deploying modern day technology and business tools for improved efficiency. Through PPP therefore, the public can benefit from more modern technology in infrastructure and associated services.

Reducing risk for the public sector

PPP can help the public sector reduce financial risk by passing the burden of economic performance of infrastructure projects to the private sector

Providing alternative funding/freeing government funds

PPP arrangements attract investors and financial institutions and this helps to mobilize alternative funding for projects that may have been financed by scarce government resources

Provide funding to maintain infrastructure overtime

As PPPs are run as revenue generating enterprises, often with loan repayment obligations, there is an underlying driver to maintain the income generating facilities. Indeed, lack of maintenance has been one major reason for Kenya's poor state of infrastructure.

Improved economic growth

Poor infrastructure has been identified as one of the primary causes of poor economic and employment growth in Kenya. If the PPP succeeds therefore, the program will translate to overall measurable economic growth for the country.

Adverse Impacts (Displacement)

The IFPPP-AF proposed sub project investments may have significant negative impacts with respect to displacement of persons within the project foot print.

The PPP 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 RPF focuses on direct physical, economic and social impacts that result from the projects, and are caused by:

- a) The involuntary taking of land or other resources resulting in
 - relocation or loss of shelter;
 - loss of assets or access to assets; or
 - 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.

This RPF has been designed to anticipate and address potential impacts at the planning stage of existing and new investments and related activities.

Procedure for Screening and Development of RAPs

Using this RPF which is in essence a guide, the development of sub project investment specific RAPs will be required for each proposed sub project investment once the nature, scope and location among others of the investments are known in order to ensure compliance with the World Bank safeguards policies. All sub project investments will be screened using the screening forms (*see annex*) and a determination will be made whether a RAP report is required or otherwise. The screening for all sub project investments will be undertaken by the IFPPP-AF/PIU based environmental and social safeguards advisor jointly with the Contracting Authority.

In order to ensure compliance with the Government of Kenya (GoK) regulatory requirements during the feasibility study stage of each investment, RAP reports will be prepared for each sub project investment by the Contracting Authorities/Transactional Advisors with the support of the IFPPP /PPPU and submitted to National Land Commission (NLC) and World Bank for approval before construction works commence.

Reporting and Performance Review Requirements

A Project Implementation Unit (PIU) for the IFPPP exists and will continue to exist during the IFPPP-AF phase. The PIU will prepare project specific quarterly environmental and social progress reports for submission to the Bank. The Contracting Authorities will prepare project (through TA/consultants) specific RAPs for identified investments during the feasibility study phase of the project following detailed screening. Environmental and social safeguards technical assistance to the IFPPP-AF Contracting Authorities will be provided by the IFPPP-PPPU's safeguards advisor who has been recruited for this purpose. These reports will be submitted to the World Bank's implementation support and review missions.

Capacity Building and Training

Capacity development and strengthening remains a crucial component in this RPF and will be integrated all through the project implementation phase. Capacity building will be in the form of training seminars/ workshops and short courses for project implementing partner staff from the implementing agencies to be able to successfully implement environmental and social aspects of the IFPPP-AF. The proposed training modules will cover among others:

- a) *World Bank safeguards policies specifically covering RPF;*
- b) *Subproject Screening Checklist;*
- c) *Resettlement Implementation and Monitoring*
- d) *Development of Terms of Reference for RAPs;*
- e) *Resettlement Clauses in Contractors' contract and bidding documents.*

The estimated cost of capacity building and other support to implement the RPF is given as **US \$, 2,260,000** and the breakdown is summarized:

1. Training workshops/ seminars
2. Public awareness creation/ communication plans
3. Preparation of RAPs for the sub project investments
4. Monitoring and evaluation exercises

Public Consultations

Stakeholders were identified and consulted as part of the preparation of the RPF. A stakeholder consultation was held on the 16th December 2016 in Nairobi at Intercontinental hotel. Annex A shows the institutions and stakeholders consulted thus far and the issues and responses from the consultation process.

Project Implementation

The Ministry of Finance (MoF) will be the overall implementation agency for the IFPPP project. The Project Facilitation Fund (PFF), established under section 68 of the PPP Act, 2013, will manage day-to-day activities for the IFPPP additional financing project. PFF is as a multi-purpose fund to provide financial support for the implementation of PPP projects under the Act, which may be provided in the form of grants, loans, equity, guarantees and other financial instruments approved by the Cabinet Secretary (CS) from time to time.

PFF will have four windows: i) contracting authorities in the preparation, appraisal and tendering phase of their PPP projects; ii) the activities of the PPP Unit in its delivery of its mandate; iii) extend viability gap finance to PPP projects; and iv) provide a source of liquidity to meet any contingent liabilities arising from a PPP project. PFF will be operationalized during the project implementation phase.

The PPP committee will act as the oversight body of the PFF. An Officer Administering the Fund (OAF) will be designated to manage and administer the Fund. The OAF reports to the Auditor General and has responsibilities of: i) Review and assess requests for Government support in relation to a project and advise the Committee on the support that should be accorded in relation to the project; ii) Put in place measures to eliminate constraints limiting the realization of benefits expected from a PPP; and iii) Monitor contingent liabilities and accounting and budgetary issues related to PPPs with the relevant offices within the State department responsible for finance.

The OAF be supported by a Secretariat who shall provide technical and administrative support to the OAF. The PPP Unit and PIU supporting the IFPPP Project will be the Secretariat to the Fund/OAF.

The PPP Unit and PIU combined currently have 27 staffs, the majority of which are support and non-technical staff. The unit is planning to recruit additional staffs to have a total staffing number of close to 50, including 29 technical officers. The additional staffing plan aims to enhance the technical capacity in core areas of PPP project development and implementation, such as finance, legal, technical, and procurement; and

accelerate program implementation and disbursement. Figure 1 illustrates the governance structure of the PFF.

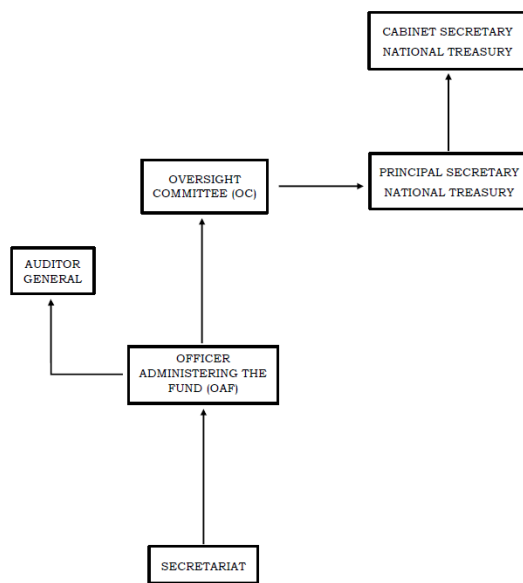


Figure 1. Project Framework

Role of PPP Institutions in the PPP Process

Implementation of PPPs Based on the National Policy on PPP: The PPP Policy outlines the roles of the various Ministries and Agencies for the successful processing and implementation of a PPP program. In general, the various institutions will be supporting the following broad functions: (a) PPP awareness building and communication campaign; (b) Individual project sponsorship, design, preparation and execution; (c) Financial management of funded and contingent obligations; (d) Gate-keeping and approval functions, and (e) PPP project advice, support and promotion. Below are the specific roles of the various institutions.

Ministry of Finance (MoF): Is spearheading the development of PPP and is responsible for developing the legal, institutional, and regulatory framework for the PPP program. MoF is also responsible for the issuing of Standardized PPP provisions and PPP Manual/Guidelines for effective management of PPP Projects.

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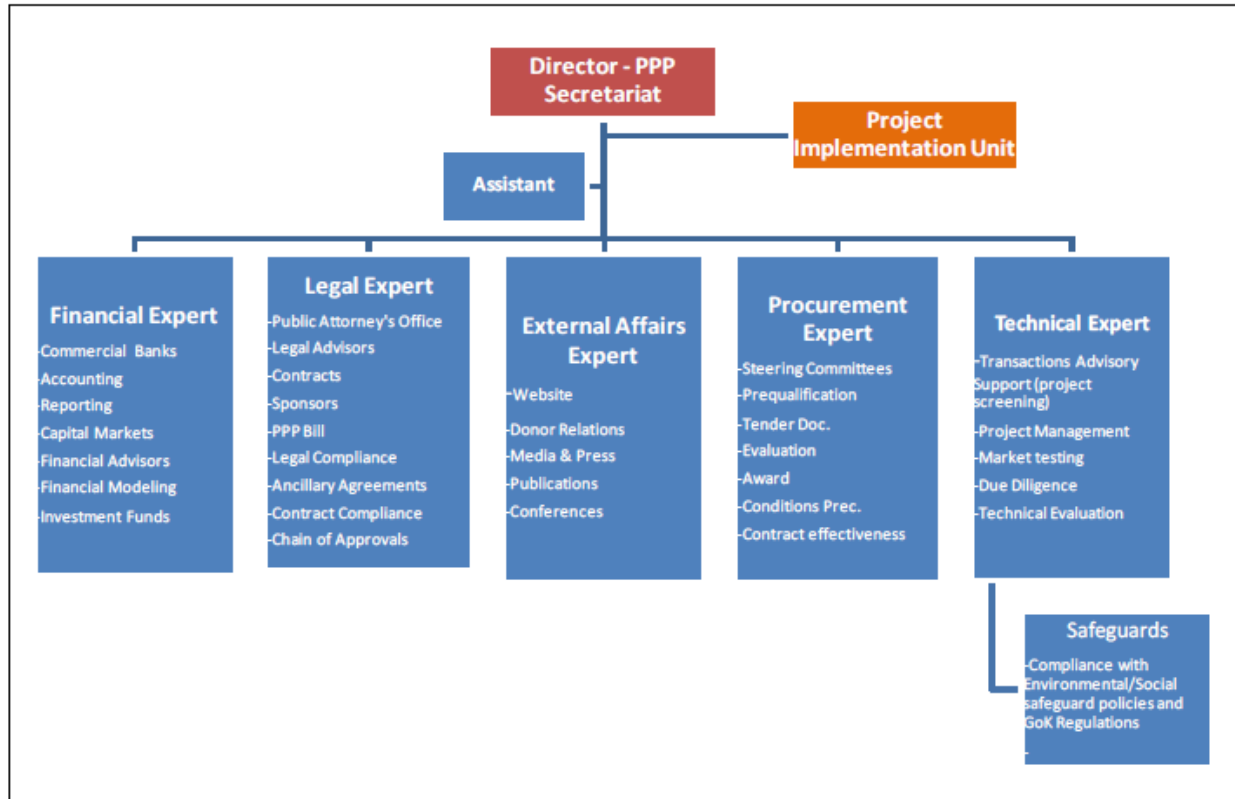
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Figure 2: PPPU Organization Chart



Cost implication of this RPF

An estimated **USD 2,260,000 Million** is considered the amount that will be necessary for implementing the activities in this RPF excluding the costs related to sub project specific feasibility studies or actual RAPs which will be handled on a case by case basis once the actual sites and locations are known.

I INTRODUCTION

I.1 Rationale for the RPF

As many specific project investments in the IFPPP-AF have not been clearly identified at this stage, hence RPF remains the safeguard instruments that will be used at this stage to set out the procedures for the development of more detailed RAPs for those investments/sub projects and associated facilities that have an impact on land, assets, and livelihoods. The RPF ensures that any possible adverse impacts are addressed through appropriate mitigation measures, in particular, against potential impoverishment risks

I.2 Project Description

1.2.1 Country and sector context/ Project Concept

Kenya's economic growth remains robust and resilient in recent years amid weakness in the global economy. The country's GDP was estimated at US\$ 63.4 billion as of Oct 2016 (up from US\$ 61.4 billion in 2014), with GDP per capita standing at US\$ 1,377 (up from US\$1,368 in 2014). The growth is projected at 5.9 percent in 2016 from 5.6 in 2015 and strengthening to 6.1 percent by 2018. This is against the backdrop of the significant improvement in external and internal balances, such as falling oil prices; and public investment, mainly in infrastructure (energy and the standard gauge railway).⁴

Despite the positive growth outlook, poverty levels remain high and income distribution is uneven. The World Bank Country Partnership Strategy 2014-18 for Kenya recognizes that 4 out of 10 Kenyans live in poverty, and the richest 10 percent of the population receive 40 percent of the nation's income. Poverty in Kenya continues to be closely associated with poor infrastructure.

Infrastructure and logistics are the backbone of Kenya's long term growth. The Government's second Medium-Term Plan calls for huge investments in infrastructure. In an effort to close the infrastructure deficit, Kenya has quadrupled spending in the infrastructure sector. About half of its capital budget is allocated for infrastructure. This budget increased from about 4.5 percent of GDP to 7 percent of GDP in 2014/2015. However, the gap still remains and more effort is needed to further close the gap.

Private domestic investment remains constrained by high cost of credit (notwithstanding the decline in interest rates) and a challenging business regulatory environment (Kenya ranks 92 in the World Bank's Doing Business rankings). Nonetheless, there has been an increasing investor confidence of prospects in the Kenyan economy, which is reflected in a surged foreign direct investment (FDI) in the recent years (the FDI increased by 52 percent in 2015).

⁴ The World Bank Group, Kenya Economic Update: Beyond Resilience – *Increasing Productivity of Public Investments* 2016, Edition No. 14

The Kenya Country Partnership Strategy 2014-2018 identifies a key opportunity to address this by leveraging private sector resources through innovative public-private partnerships (PPPs), which is currently being implemented through the World Bank Kenya Infrastructure Finance and Public Private Partnership Project (IFPPP), in partnership with the PPP Unit of the National Treasury.

1.3 Sectoral and Institutional Context

The IFPPP Additional Financing Project supports Kenya’s Vision 2030 and Second Medium Term Plan 2010-2017 (MTP2). Vision 2030 aims to transform Kenya into a newly industrializing, middle-income country whilst making the country globally competitive.⁵ The vision aspires to “strengthen the framework for infrastructure development and enhance private sector participation in the provision of infrastructure facilities and services strategically complemented by government interventions.” The MTP2 also addresses the challenges of an inclusive growth model with high cost of infrastructure and calls for infrastructure investments and leveraging of private sector resources.

Unlocking infrastructure gap is the key to increase international competitiveness of Kenya’s national economy, facilitate domestic and international trade, and enhancing the country’s integration into the global economy. One of the top constraints identified by Kenyan businesses are infrastructure services, especially in affordable and reliable power supply, as well as dilapidated transportation infrastructure. Close to 80 percent of firms in Kenya experience losses because of power interruptions. As a consequence, almost 70% of firms have generators, which are costly to obtain and to operate. Similarly, Kenyan companies lose 2.6 percent of their sales because of spoilage and theft during transportation⁶.

The country’s current infrastructure funding gap stands at about US\$ 4 billion per annum⁷. Addressing the funding gap in the infrastructure is one of the key enablers to help eliminate inefficiencies and allow the sector to adopt the appropriate financing strategies and technologies. Kenya’s infrastructure budget allocation amounted to KSH 244 billion (or US\$ 2.4 billion) in 2013/14, equivalent to 4.9 percent of GDP⁸. Since public resource alone is not sufficient to cover the infrastructure funding gap, the ability to bring in private sector investment would be crucial to tap on the gap.

The Kenyan financial sector is the third largest in sub-Saharan Africa (SSA) and has been relatively stable through recent slowdowns and shocks, both domestic and global. It is comprised of (i) a large banking sector that has leveraged its gains in resilience and growth to establish a notable sub-regional presence; (ii) a relatively large securities market (third in terms of capitalization in SSA and degree of sophistication), and; (iii) a relatively large pensions and growing insurance sector.

⁵ Kenya Vision 2030 Progress Report

⁶ Investment Climate Assessments (ICA 2008)

⁷ Bloomberg, 2014

⁸ Kenya Public Expenditure Review Report 2014, Volume 1, the World Bank

The financial system continues to be dominated by a growing banking sector. Total assets of the banking sector amounts to KSH 3.4 trillion (USD 35 billion) in 2015, which accounts for 53 percent of GDP. Credit extended to the private sector amounted to almost 34.8 percent of GDP in 2015. The banking sector is comprised 43 commercial banks, 1 mortgage finance company, 9 deposit taking microfinance institutions (DTMs), 7 representative offices of foreign banks, 105 foreign exchange bureaus, and 2 credit reference bureaus.

The Kenyan capital market is the largest in East Africa and third in terms of capitalization in Sub-Saharan Africa after South Africa and Nigeria. Capital markets are dominated by equities and government bonds, with an incipient, yet fast growing, non-government bond market. A total of 64 companies are listed on the Nairobi Stocks Exchange (NSE) with a total market capitalization of over Ksh 2.3 trillion in the fourth quarter of 2014. The ten largest listed companies, the majority of which are commercial banks, account for over 70 percent of market capitalization and almost 80 percent of traded values. A total of 97 institutions are licensed to operate by the Capital Markets Authority (CMA), including the NSE, a central depository, 12 investment banks, and 10 stockbrokers.

The Government bond market is relatively developed by sub-Saharan Africa Standards. The outstanding government bond market represents about 26 percent of GDP, although volumes remain shallow at around 53 percent of outstanding debt in 2014. There has been considerable improvement in its debt structure, including ongoing efforts to develop an incipient benchmark strategy and a greater and longer-term variety of instruments. Between 2000 and 2014, the debt structure shifted from 78 percent in T-bills and 22 percent in T-bonds to the reverse, 77 percent in T-bonds and 23 percent in T-bills. Significant work is still required to build benchmark bond programs, strengthen associated liability management processes, and develop the secondary markets in order to establish more credible yield curves that can be used as a pricing reference for non-government issues. The secondary bond market liquidity is low, partly as a result of an inefficient market structure, infrastructure and fragmentation in the primary market.

The non-government bond market in Kenya is still in the early stage of development. Outstanding public offers of non-government bonds stood at Ksh.64 billion in 2014, representing only 1% of GDP. There are only a handful of issuers and non-government bonds represent an insignificant holding in institutional investor portfolios, which, in large part is understandably due to the small supply of corporate paper. There is a relatively large variety of issuers represented amongst the issuers but with a general bias towards financial institutions. The longest tenor is 10 years, but most have tenors of between 5 and 7 years.

There are gaps in systemically important infrastructure particularly the post-trade infrastructure, which is misaligned with current market needs (processes and institutional arrangements), as well as not being fully in line with international best practice. This

makes the trading and settlement processes a stumbling block for further development of the capital markets, in addition to being less attractive to international investors.

Government intervention in the financial sector in Kenya is relatively low. Among the 44 Commercial banks and Mortgage Finance Institution, 5 have certain level of government participation, and 3 are defined by the Central Bank of Kenya (CBK) as public financial institutions with the majority shareholding owned by Government of Kenya (GoK) and state corporations.⁹ These include Consolidated Bank of Kenya (CBOK), Development Bank of Kenya (DBK) and National Bank of Kenya (NBK). The ownership structure of these three commercial banks varies from one to another: While the DBK is 100 percent owned by GoK through the Industrial and Commercial Development Corporation (ICDC, 89.3 percent) and TransCentury Investments, CBOK and NBK are 100 percent by GoK through 11 state-owned financial institutions, which include Deposit Protection Fund (owns 50 percent of CBOK) and National Social Security Fund (owns 48 percent of NBK). Together, these banks have total assets of \$14 billion USD as at December 2013, representing 0.5 percent of total banking sector assets.

In order to support GoK to address the infrastructure financing gap and develop a robust market for private sector financing, the WB launched the IFPPP project, a US\$ 40 million IDA credit that became effective in February 2013 and is currently scheduled to close on December 31, 2017. The IFPPP project was conceived as the first stage of a two-phase Adaptable Lending Program (APL), a lending instrument that no longer exists. The Project Development Objective (PDO) was to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time. The specific development objective of the first phase of the Project is to improve the enabling environment to generate a pipeline of bankable PPP projects. The components of the Project are: *Component 1:* Institutional Development and Regulatory Reform. *Component 2:* Preparation of a pipeline of PPP transactions. *Component 3:* Improvement of Fiscal Commitment and Contingent Liability (FCCL) framework associated with PPP projects (especially infrastructure); and *Component 4:* Program Implementation Support.

1.4 Status of Safeguards Under the Parent Project

The IFPPP project has successfully improved the enabling environment and is generating a pipeline of bankable PPP projects. Following the enactment of the PPP law in 2013, the project has established well-functioning PPP institutions including a PPP unit and 53 PPP nodes. The project has also built capacity and awareness among key stakeholders, as well as developed 66 PPP pipeline projects. In addition, 13 large-scale transactions at the national level, in the transport, energy, education and health sectors, with an estimated compound capex of USD 4-5 billion are currently under preparation with IFPPP financing.

⁹ In addition to the 3 banks that are defined as public financial institutions by the CBK, Kenya Commercial Bank (KCB) also has 17.74% of shareholding by the Kenyan Government.

Preparation entails development of feasibility studies reports (including preliminary ESIA and RAPs) and procurement of private investor using IFPPP financing but only on projects investments that have been determined as viable during feasibility study stage. Viable PPP sub-projects proceed to procurement of private investors upon approval by the PPP Committee.

11 sub-projects have been subjected to preliminary feasibility detailed designs and preliminary environmental and social impact assessments. Also, preliminary RAPs have been prepared to inform potential private investors who express interest in the investments. It is important to note that private investors will be expected to prepare detailed designs and update of the preliminary safeguards instruments.

Preliminary ESIA and RAP documents have been prepared for the following 11 sub-projects thus far:

1. Nairobi-Mombasa Highway;
2. Nairobi-Nakuru Highway;
3. Second Nyali Bridge;
4. Nairobi Southern Bypass;
5. Nairobi-Thika Highway;
6. Embu University Hostel;
7. Moi University Hostel;
8. Egerton University Hostel;
9. South Eastern Kenya University Hostel;
10. Kenya Technical Training College Hostel; and,
11. Kisumu Port Project.

The other remaining 2 sub-projects - Olkaria VI and the 300-private bed hospital at Kenyatta National Hospital - are still undergoing feasibility studies and safeguards documents are part of the preparations.

The implementation for IFPPP is largely on track. The project has now reached a stage of maturity in creating enabling environment, made reasonable progress towards actual transactions, as well as embarked on the next stage of PPPs at subnational and county level.

As mentioned in the earlier section, the IFPPP was initially designed as a two-phase APL project. The overall APL was expected to be a US\$130 million program, comprising US\$40 million for APL1 and US\$90 million for APL2. Given that the APL instrument no longer exists, the proposed additional financing of US\$50 million is intended to scale up the existing PPP program in Kenya. It will benefit from the sound legal and regulatory framework and well-established institutional capacity that is accomplished under its parent project, help foster private sector investment in a more efficient and sustainable manner, and bridge the country's infrastructure gap in the long run.

The additional financing is anticipated to be used for the following activities:

- Upstream support for PPP Institutions and Capacity Building
- Support for PPP Project Preparation and Procurement
- Support for Project Management

1.4.1 Proposed Development Objectives (PDOs)

The overall development objective of this project is to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time.

1.4.2 IFPPP-AF Components:

The additional financing will consist of three components: 1) Upstream support to PPP Institutions and capacity building; 2) Support to Project Preparation and Procurement; and 3) Support to Project Management.

Component I: Support to Institutional Strengthening

The budget for this component is US\$10 million. This allocation was established based on lessons learned from prior technical assistance projects including the IFPPP project and PPIAF supported activities, an assessment of the remaining institutional strengthening activities following the activities undertaken under the IFPPP and the need for institutional strengthening based on future expected project activities. Current known parallel coordinated support from other donors such as PPIAF and DFID has been taken into account while establishing the allocation. These donors are likely to continue supporting parallel activities through the life of the project.

Sub-Component I.A: Upstream Support to PPP Institutions

This sub-component will provide support for the sustainable functioning of the Project Facilitation Fund, the PPPU, the Contracting Authorities and selected county governments. It will specifically support activities focusing on:

- Further policy dialogue and design of strategies and policies relating to specific sectors. This will also include the preparation of standard procurement documentation for sectors where there is a strong potential pipeline such as in the energy, transport, education and health sectors.
- Enhancing the ability of these entities to support project preparation, procurement and implementation, including policy, planning and analysis through embedded advisory (including through resident advisors) and consultancy services. Staffing of the PPPU is still inadequate and needs to be supplemented by embedded advisory services given the increasing number of projects in the pipeline. The PFF in its newly established state would need hand-holding, at least in the initial years, in order to become a sustainable funding source for project preparation, contingent payments and viability gap funding. The competence of the current county team is limited to finance and legal. Creation of the complete spectrum of

PPP expertise at county level would require additional support from individuals with technical, sectoral and social and environmental background.

- Review of national law, regulations and policy to support drafting of practice notes and guidelines on application and process at county level. This will include review of policies and related applicable law and regulations vis-à-vis counties to ensure suitability of current frameworks and tools to county PPPs which face unique challenges in their implementation – for example, county PPPs are smaller in scale, have high transaction costs proportionate to total project cost, and face financing constraints due to the risk profile of projects, lower creditworthiness of the entities sponsoring these projects, and overall limited capacity and experience of local investors. Some of the areas that would require review/reform for a customized county-level solution include:
 - Draft County PPP Regulations
 - Draft FCCL Management Framework
 - Draft PPP PFF Regulations
 - Draft PPP Manual

Sub-Component I.B: Support to Capacity Building Activities

This sub-component will provide support for:

- Specific hands-on skill-based and specific project based training to teams within national ministries and county governments to enhance the ability of project teams to support project related activities, including preparation, procurement and implementation. Sector ministries with projects in the pipeline or where there is potential for PPPs and a majority of the 47 counties will be involved in the program which will consist of a structured learning program geared towards creating a moderate level of awareness and understanding of principles, concepts and processes of PPPs. This will also include benchmarking visits to successful projects.
- Preparation of a PPP curriculum and study material for national and county governments.
- Activities relating to PPP certification of government officials at national and county levels
- Public awareness campaigns, workshops and investment conferences to inform external stakeholders on evolving and new policy as well as pipeline status and projects being brought to market. This will also include bidders' conferences for projects already brought to market.

Component II: Support to Project Preparation and Procurement

The budget for this component is US\$39.5 million. This component will assist the Government of Kenya, at national as well as county level, to prepare well-structured and bankable PPP projects with optimal risk allocation building on the experience in the development of the first mover PPPs under IFPPP. While transport, education, health and energy will continue to be sectors of focus for the national government, sectors of

interest at county level appear to be housing, solid and medical waste management, health services, bulk water supply and distribution, county roads, agriculture, county markets, etc. Funds under this component will be used for engaging consultants for undertaking feasibility assessments, preparation of bid documents and hand-holding during bid-negotiations and other processes leading to commercial and financial close. This will include the financing of safeguards assessments.

The demand for funds under this component has been gauged based on the following: experience of the project preparation component under IFPPP, an examination of the current and potential pipelines at county and national levels in various sectors, and detailed discussions with government counterparts and coordination within the WBG GPs, including with IFC and MIGA.

Component III: Support for Program Management

The budget for this component is US\$ 0.5 million. This component will be used to support the Project Implementation Unit that is currently functioning under IFPPP. The PIU will continue to provide the fiduciary, safeguards, and Monitoring and Evaluation (M&E) expertise required for the implementation of the project in accordance with Bank policies and requirements. This component may include equipment, operating costs, organization and systems development, training, capacity building and technical assistance.

1.5 Project Institutional and Implementation Arrangements

The Ministry of Finance (MoF) will be the overall implementation agency for the IFPPP project. The Project Facilitation Fund (PFF), established under section 68 of the PPP Act, 2013, will manage day-to-day activities for the IFPPP additional financing project. PFF is as a multi-purpose fund to provide financial support for the implementation of PPP projects under the Act, which may be provided in the form of grants, loans, equity, guarantees and other financial instruments approved by the CS from time to time. PFF will have four windows: i) contracting authorities in the preparation, appraisal and tendering phase of their PPP projects; ii) the activities of the PPP Unit in its delivery of its mandate; iii) extend viability gap finance to PPP projects; and iv) provide a source of liquidity to meet any contingent liabilities arising from a PPP project. PFF will be operationalized during the project implementation phase.

The PPP committee will act as the oversight body of the PFF. An Officer Administering the Fund (OAF) will be designated to manage and administer the Fund. The OAF reports to the Auditor General and has responsibilities of: i) Review and assess requests for Government support in relation to a project and advise the Committee on the support that should be accorded in relation to the project; ii) Put in place measures to eliminate constraints limiting the realization of benefits expected from a PPP; and iii) Monitor contingent liabilities and accounting and budgetary issues related to PPPs with the relevant offices within the State department responsible for finance. The OAF be supported by a Secretariat who shall provide technical and administrative support to the OAF. The PPP Unit and PIU supporting the IFPPP Project will be the Secretariat to the Fund/OAF.

The PPP Unit and PIU combined currently have 27 staffs, the majority of which are support and non-technical staff. The unit is planning to recruit additional staffs to have a total staffing number of close to 50, including 29 technical officers. The additional staffing plan aims to enhance the technical capacity in core areas of PPP project development and implementation, such as finance, legal, technical, and procurement; and accelerate program implementation and disbursement. **Figure 3** illustrates the governance structure of the PFF.

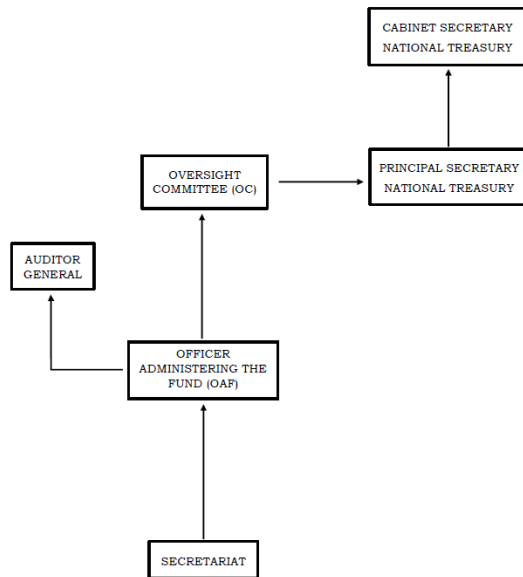


Figure 3. Governance structure of the PFF.

Role of PPP Institutions in the PPP Process

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Regulatory Authorities shall ensure that the PPP contract, insofar as it will have an impact on customer tariffs is consistent with and furthers good regulatory principles.

Figure 4: PPPU Organization Chart

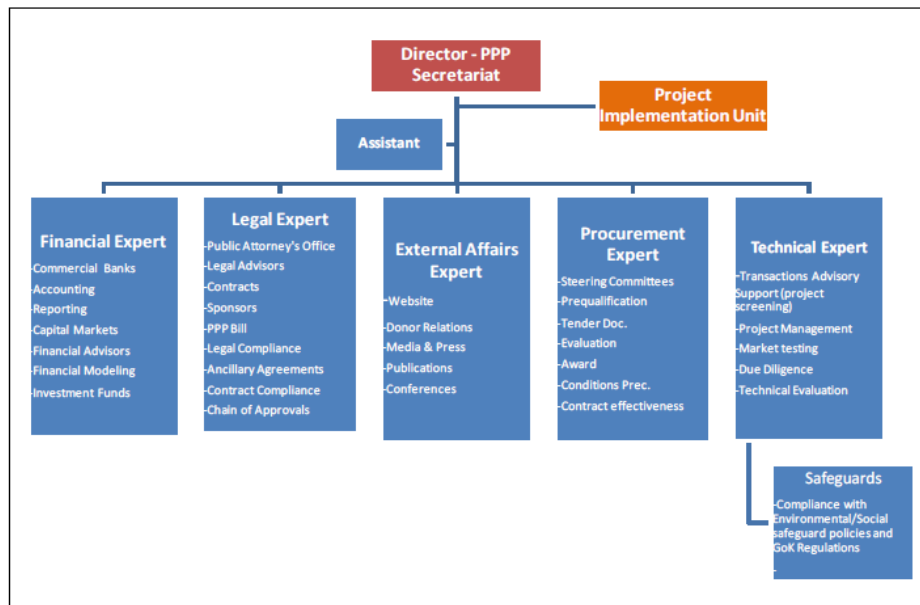


Figure 4: IFPPP-PIU Design

1.6 Alternative Considerations

1.6.1 No Project Scenario

Project Beneficiaries and Stakeholders

PPPs involve a range of stakeholders from public and private sectors, as well as the wider citizenship. More specifically:

- The Public Sector, covering central agencies, line ministries and at the sub-national level.
- The public sector will have contractual and fiduciary obligations to fulfil under concession agreements that can extend in excess of 20 years;
- The Private Sector, covering both concessionaires and their sub-contracted companies and financial partners;
- Citizens in five roles: (i) as end-users of PPP service provides; (ii) as taxpayers contributing through the government budget to the financing of the projects; (iii) as providers of labor and other services to the project; and (iv) as investors channelling long-term savings, such as pension funds, to the financing of the

projects; (v) as members of communities for whom safeguards issues may arise in regard to specific PPP projects; Civil Society Organizations (CSOs) with different social, community, safeguards and other specific interests related to project development and implementation, which have an “oversight role” in the form of their “third party” role in monitoring and evaluating specific transactions.

The ultimate beneficiaries of the technical assistance component of the IFPPP will be the users (enterprises and the population in general) of the new/improved infrastructure services, provided under an enhanced governance framework.

The no-project scenario means that the status-quo is maintained and the above benefits of IFPPP-AF will be unrealised.

2 METHODOLOGY AND CONSULTATION

2.1 Detailed & In-depth Literature Review

Review of the existing baseline information and literature material was undertaken and helped in gaining a further and deeper understanding of the proposed project. A desk review of the Kenyan legal framework and policies was also conducted in order to the relevant legislations and policy documents that should be considered during project implementation. Among the documents that were reviewed in order to familiarise and further understand the project included:

World Bank Related Documents

- *Aide Memoire for the IFPPP-AF*
- *Draft Project Appraisal Document (PAD)*
- *World Bank Safeguards Policies*

Kenyan Legislative Documents

- *Constitution of Kenya*
- *Land Act*
- *Land Registration Act*
- *National Land Commission Act*
- *Community Land Act*
- *Evictions and Resettlement Bill*
- *Valuers Act*

2.2 Stakeholder Consultation

Stakeholder consultation formed part of the methodology in preparing this RPF where the project interested and affected stakeholders who could be identified at this early stage were consulted. The issues raised and concerns expressed including possible mechanisms of addressing these issues and concerns are appended as **Annex B** of this document. The stakeholder consultation was significant to the preparation of this RPF and formed the basis for the determination of potential project impacts and design of viable mitigation measures.

3 PRINCIPLES GOVERNING RESETTLEMENT PREPARATION AND IMPLEMENTATION

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

3.1 Objectives of the Resettlement Policy Framework

The objectives of the RPF are to:

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

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

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

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

3.2 Rationale for preparing the RPF

Given the nature of the IFPPP-AF, project investments have not been identified at the time of preparation of this RPF. This RPF therefore will be the basis for preparing the project investments specific RAPs. The RPF will set out the procedures for the development of more detailed RAPs for those investments/sub projects and associated facilities that have an impact on land, assets, and livelihoods. The RPF ensures that any possible adverse

impacts are addressed through appropriate mitigation measures, in particular, against potential impoverishment risks.

3.3 RPF Principles

1. Involuntary resettlement and land acquisition will be avoided where feasible, or minimized, where it cannot be eliminated.
2. This RPF applies to all PAPs regardless of the total number affected, the severity of the impact and whether or not they have legal title to the land. Informal or customary tenure is to be treated in the same manner as formal, legal titles.
3. Where involuntary resettlement and land acquisition are unavoidable, resettlement and compensation activities will be conceived and executed as sustainable development programs, providing resources to give PAPs the opportunity to share project benefits.
4. PAPs will be meaningfully consulted and will participate in planning and implementing of the resettlement activities.
5. PAPs will be assisted in their efforts to ideally improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or levels prevailing prior to the beginning of the project implementation, whichever is higher.
6. Measures to address resettlement shall ensure that project affected peoples are informed about their options and rights pertaining to resettlement, are included in the consultation process and given the opportunity to participate in the selection of technically and economically feasible alternatives. They will also be provided prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project investments.
7. Projected affected persons if resettled will be supported to integrate economically and socially into host communities so that adverse impacts on host communities and vice versa are minimized. To this end, appropriate patterns of social organization will be promoted and existing social and cultural institutions of PAPs will be supported to the greatest extent possible.
8. All PAPs will be identified and recorded as early as possible, preferably at project investment identification stage, in order to protect those affected by the project and prevent an influx of illegal encroachers, squatters, and other non-residents who will wish to take advantage of such benefit.
9. Particular attention will be paid to the needs of vulnerable groups among those displaced; especially those below the poverty line, the landless, the elderly, women and children, orphans, marginalized groups and the ethnic minorities or other displaced persons who may not be protected through the Kenyan law. The

objective is to provide whatever additional assistance may be necessary to restore pre-project living standards.

10. The implementation of individual RAPs must be completed prior to the implementation of the investments under IFPPP-AF.

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

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

3.4 Involuntary Resettlement

Involuntary resettlement, if left unmitigated, normally gives rise to severe economic, social, and environmental risks. People face impoverishment when their productive assets or income sources are lost and social networks are weakened. Some of the impacts of resettlement, if not mitigated, include: (a) **Landlessness** (b) **Joblessness** (c) **Homelessness** (d) **Marginalization** (e) **Increased morbidity and mortality** (f) **Food insecurity** (g) **Educational loss** (h) **Loss of access to common property** and (i) **Social displacement**.

3.5 Minimization of Displacement

Minimization of displacement will be observed for all the PPP projects in line with the World Bank safeguard policy OP 4.12, through the following design procedures:

- Wherever inhabited dwellings may potentially be affected by a component of a project/subproject, the sub-project shall be redesigned (facility relocation, rerouting) to avoid any impact on such dwellings and to avoid displacement/relocation accordingly;
- Wherever the impact on the land holding of one particular household is such that this household may not be sustainable in the long term, even if there is no need to physically displace this household, the sub-project shall be redesigned (facility relocation, rerouting) to avoid any such impact;
- For major works e.g., ports development, highways and railways, construction of raw water treatment plants, minimization of land impact will be factored into site and technology selection and design criteria;
- Costs associated with displacement and resettlement will be internalized into project/ sub-project costs to allow for fair comparison of processes and sites; and
- To the extent possible, Project facilities will be located on public spaces.

These principles are intended to minimize negative impacts related to involuntary displacement of PAPs. However, it is a fact that it will not be always feasible to avoid

displacement or land acquisition, therefore in addition to minimization of displacement, mitigation measures are needed to be identified at the RAP stages, hence this RPF to guide in this process.

3.6 Fair and Adequate Compensation

One of the key principles of World Bank safeguards is that where people are affected by a project undertaking, the aim of compensation or resettlement must be that they should be “no worse-off if not better off” after the compensation or resettlement has taken place. The compensation package will include loss of income or livelihood restoration assistance or relocation assistance as appropriate plus a disturbance allowance.

3.7 Compensation Payment

The guiding principles for Compensation will be:

- Compensation shall be paid prior to displacement / land entry;
- Compensation will be at full replacement value.
- By contrast with the depreciated or net value of a structure, the “replacement value” shall include the full cost of materials and labour required to reconstruct a building of similar surface and standing. In other words, the affected person must be able to have their structure rebuilt in a different location using the compensation paid for the old building.

3.8 Access to training, employment, and credit

Normally, general economic growth cannot be relied upon to protect the welfare of the project-affected population. Thus, alternative employment strategies are needed for non-agricultural displaced farmers. Where feasible, the PAPs displaced should be offered vocational training, employment counselling, transportation, and employment in the main investment project to offer them new economic activities. In addition, during the resettlement activities, establishment of industries, incentives for firms to locate in the area, credit extension for small businesses, and preference in public sector employment should all be considered in the areas where applicable to benefit the displaced persons.

To address the impacts under this policy, resettlement action plans (RAP) must include measures to ensure that the affected and/or displaced persons are:

- a) Informed about their options and rights pertaining to resettlement
- b) Consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives.
- c) Provide prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project.

3.9 Assistance to Vulnerable Persons

Assistance to vulnerable persons may include but not limited to the following:

- Identification of vulnerable people and identification of the cause and impacts of their vulnerability, either through direct interviews by the Project Staff or through the community. This step is critical because often vulnerable people do not participate in community meetings, and their disability/vulnerability may remain unknown; identification of required assistance at the various stages of the process:

- Negotiation and compensation payment as well as moving from the project impacted area;
- Implementation of the measures necessary to assist the vulnerable person; and
- Monitoring and continuation of assistance after resettlement and/or compensation, if required.

Assistance may take the following forms, depending upon vulnerable persons' requests and needs:

- Assistance in the compensation payment procedure (e.g., going to the bank with the person to cash the compensation cheque);
- Assistance in the post payment period to secure the compensation money and reduce risks of misuse/robbery;
- Assistance in moving from project impacted area in the form of providing vehicle, driver and assistance at the moving stage;
- Assistance in building new structures by providing materials, workforce, or building new houses entirely; and
- Health care if required at critical periods during the transition period and the stage of moving from the project impacted area.

3.10 ENTITLEMENT UNDER RPF

3.10.1 Physical Displacement

If people must move to another location due to the implementation of a sub project under IFPPP-AF, the GoK, through the Implementing Agency (IA) with engagement of National Land Commission¹⁰ (NLC) as is required by the Land Act 2012 will ensure that just compensation is provided. This RPF offers displaced persons' choices among others feasible resettlement options, including adequate replacement housing, land or cash compensation based on the replacement cost where appropriate. In accordance with OP.4.12, displaced PAPs will also be provided full relocation costs above the compensation amount. Particular attention will be paid to the needs of the poor and the vulnerable, who will be assisted through capacity empowerment during the RAP implementation to adapt to new environments.

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

Compensation in kind may be offered in lieu of cash compensation based upon mutual agreement between the Contracting Authorities and PAPs as provided for by the Land

¹⁰ National Land Commission (NLC) is the legally constituted body authorized to undertake or give approval to compulsory acquisition of Land, according to Land Act 2012.

Act 2012. The Land Act 2012, the legal instrument governing land acquisition and compensation in Kenya, specifies that all PAPs must receive just compensation. It is specific in regard to costs related to moving, disturbances, and legal fees for land transactions of the PAPs. This presents a gap where if not properly interpreted may not see the PAPs getting compensation for the above related costs unless the Bank procedures are followed. For that reason, in all instances where compensation will be undertaken, unless the interpretation of just compensation by NLC is taken to mean all other related costs of relocation mentioned above then the Bank policies will apply and will require that these costs are fully met by the implementing agency.

3.1 | Economic displacement

The Land Act 2012, Part VIII, section 111 and 125, talks of just, full and prompt payment in the assessment of NLC in case of economic displacement. There is no specific mention of moving allowance and disturbance allowance as part of the compensation. Again, as highlighted above unless “just payment” is interpreted to include related costs of economic displacement, the bank procedures that provide for the same will be followed instead of the host country regulation. If land acquisition for a given sub project funded under IFPPP-AF causes loss of income or livelihood, regardless of whether or not the affected people are physically displaced, the project will meet the following requirements:

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

In particular, the taking of land and related assets will take place only after full compensation has been paid and where applicable, resettlement sites, new homes, related

infrastructure, public services and relocation costs have been provided to economically or physically displaced persons.

4 ADMINISTRATIVE, POLICY AND REGULATORY FRAMEWORK

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

Table 1. Summary of relevant legal statutes applicable to IFPPP-AF

Legal Framework	Functional Relationship to Resettlement
Constitution of Kenya 2010	Constitution of Kenya 2010 recognizes individuals’ right to acquire and own property provided they are citizens of the country in article 40. However, Article 66 of the same provides for the State to regulate the manner in which these rights may be curtailed for the benefit of the general public. Article 47 of the Constitution provides for administrative action to override the individual rights but the victim has to be given written reason for the action taken that undermines the right.
The Land Act 2012 Laws of Kenya	It is the substantive law governing land in Kenya and provides legal regime over administration of public and private lands. It also provides for the acquisition of land for public benefit. The government has the powers under this Act to acquire land for projects, which are intended to benefit the general public. The projects requiring resettlement are under the provision of this Act.
Land Registration Act, 2012	The law provides for the registration of absolute proprietorship interests over land (exclusive rights) that has been adjudicated or any other leasehold ownership interest on the land. Such land can be acquired by the state under the Land Act 2012 in the project area.
National Land Commission Act 2012	The act establishes the National Land Commission with the purpose of managing public land and carrying out compulsory acquisition of land for specified public purposes.
The Land Adjudication Act Chapter 95 Laws of Kenya	Provides for ascertainment of interests prior to land registrations under the Land Registration Act 2012 through an adjudication committee that works in liaison with adjudication officers.
The Valuers Act 532	The act establishes valuers registration board, which has the responsibility of regulating the activities and conduct of registered valuers in accordance with the provision of the act.
Environment and Land Court Act, 2011	This act establishes Environment and Land Court, a court with status of high court which shall facilitate the just, expeditious, proportionate and accessible resolution of disputes related to land and environment, including compulsory land acquisition, land tenure, titles, boundaries, compensation, valuations, rates, land use and environmental planning.
Community Land Act 2016	Provides for allocation, management and administration of community land.

4.1 The Legal, Regulatory and Policy Framework

4.1.1 Constitutional provisions

The Constitution of Kenya, 2010,¹¹ protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except in accordance with law.¹² Article 40(3) states:

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

- a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or*
- b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that –*
 - (i) Requires prompt payment in full, of just compensation to the person; and*
 - (ii) Allows any person who has an interest in or right over, that property a right of access to a court of law.¹³*

The Constitution empowers the state to exercise the authority of compulsory acquisition. Land Act, 2012 designates the NLC as the institution empowered to compulsorily acquire land.¹⁴ Article 40 of the Constitution provides that the state may deprive owners of property only if the deprivation is "for a public purpose or in the public interest," but neither the Constitution nor any law provides an exclusive list of permissible public purposes or interests. The state's exercise of this power is left at the discretion of NLC, and requires the state to make full and prompt payment of "just compensation" and an opportunity for appeal to court.

Article 40(3)(a) refers to acquisition and conversion of all kinds of land in Kenya (private, public, community land and foreign interests in land). The Constitution further provides that payment of compensation shall be made to “occupants in good faith” of land acquired by the state who do not hold title for such land.¹⁵ An occupant in good faith is a “bona fide” occupant. On the other hand, under the Constitution, those who have acquired land illegally are not regarded as deserving any compensation.¹⁶

In addition to Article 40, Chapter 5 of the Constitution is relevant to compulsory acquisition. This chapter, entitled "Land and Environment," is divided into two parts. Part 1 deals with land, and Part 2 deals with environment and natural resources. Part 1 of Chapter 5, articles 60 – 68, describes the principles of land policy. Land should be held,

¹¹ The Constitution of Kenya, 2010, was adopted by the Government of Kenya on 27 August 2010. The full text is available at http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya2010.pdf, accessed May 25, 2011.

¹² Constitution of Kenya, art. 40.

¹³ Id.

¹⁴ The Land Act, 2012 The Government of Kenya, Section 8.

¹⁵ Constitution of Kenya. Id. at art. 40(5).

¹⁶ Constitution of Kenya. Id. at art. 40(6).

used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with security of land rights, sound conservation and protection of ecologically sensitive areas.¹⁷ These principles must be implemented through a national land policy reviewed regularly by the national government and through legislation.¹⁸

4.1.2 The Land Act 2012

It is very explicit in the Land Act, 2012, Section 107, that whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110 of Land Act 2012, the possession of the land must be necessary for public purpose or public interest, such as, in the interests of public defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having right over the property, and so certifies in writing, possession of such land may be taken.

4.1.3 The Valuers Act

Valuation of land is a critical aspect of compulsory acquisition practice. Compensation awards will be made by the National Land Commission based on land valuation determined by registered valuers. The Valuers Act¹⁹ establishes the Valuers Registration Board, which regulates the activities and practice of registered valuers. All valuers must be registered with the Board to practice in Kenya. The Board shall keep and maintain the names of registered valuers which shall include the date of entry in the register, the address of the person registered the qualification of the person and any other relevant particular that the Board may find necessary. As of March 2011, there were 285 registered valuers in Kenya.²⁰ The Valuers Act does not provide for a description of the valuation procedures and methods.

In case of professional misconduct, the registered valuer is guilty of an offense punishable with a fine (not exceeding Ksh. 10,000) and/or imprisonment for three years. Fees for land valuation in case of compulsory acquisition are established based on the value of the property as “the first Kshs 400,000 at 1 per cent. Residue at 0.5 per cent”²¹ and are paid by those who requested the valuation.

4.1.4 National Land Commission Act

The National Land Commission (NLC) will undertake compensation. NLC is an independent government commission whose establishment was provided for by the Constitution of Kenya, 2010 to, amongst other things, manage public land on behalf of the national and county governments, initiate investigations into present or historical land injustices and recommend appropriate redress, and monitor and have oversight

¹⁷ Id. at art. 60.

¹⁸ Id. at art. 60(2).

¹⁹ The Valuers Act, Chapter 532, http://www.kenyalaw.org/kenyalaw/klr_app/frames.php, accessed May 25, 2011.

²⁰ Government of Kenya, Kenya Gazette notice no. 2892, March 18, 2011. Registered and Practicing Valuers.

²¹ *Legal Notice 32*.

responsibilities over land use planning throughout the country. [1] It was officially established under The National Land Commission Act, 2012. Pursuant to

Article 67(2) of the Constitution, the functions of the Commission are —

- to manage public land on behalf of the national and county governments;
- Compulsory acquire land for national and county governments
- Compensate acquired land on behalf of national and County government
- To recommend a national land policy to the national government;
- To advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- To conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- To initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- To encourage the application of traditional dispute resolution mechanisms in land conflicts;
- To assess tax on land and premiums on immovable property in any area designated by law; and
- Monitor and have oversight responsibilities over land use planning throughout the country.

Under the National Land Commission Act, the Commission shall:

- On behalf of, and with the consent of the national and county governments, alienate public land;
- Monitor the registration of all rights and interests in land;
- Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;
- Develop and maintain an effective land information management system at national and county levels;
- Manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and
- Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.
- Implement Settlement programmes on behalf of national and county governments as outlined in section 134 of the Land Act.
- Administer the Land Settlement Fund in accordance with section 135 of Land Act 2012
- Manage the Land Compensation Fund
- Identify ecologically sensitive areas that are within public land and demarcate and take any other justified action on those areas and act to prevent environmental degradation and climate change in accordance with the Land Act.
- Reserve public land for the establishment of approved settlement programmes, and where public land is not available, purchase private

land subject to the Public Procurement and Disposal Act, 2005 or any other law as provided for in section 134 (5) of the Land Act.

- Set aside land for investment purposes in accordance with section 12(3) of the Land Act.
- Approve compulsory acquisitions, wayleaves, easements and analogous rights.
- Ensure that the investments, in land benefit local communities and their economies.
- Make regulations prescribing the criteria for allocation of public land, such regulations to prescribe forms of ownership and access to land under all tenure systems.
- The procedure and manner of setting aside land for investment should respect mechanisms of benefit sharing with local communities.

As a result, NLC will compensate all affected PAPs, since legally they are the constitutional body charged with this responsibility.

4.1.5 Environment and Land Court Act

The Kenya Constitution establishes Environment and Land Court²². Article 162 of the constitution provides for the creation of specialized courts to handle all matters on land and the environment. Such a court will have the status and powers of a High Court in every respect. Article 159 on the principles of judicial authority, indicates that courts will endeavour to encourage application of alternative dispute resolution mechanisms, including traditional ones, so long as they are consistent with the constitution. Section 20, of the Environment and Land Court Act, 2011 empowers the Environment and Land Court, on its own motion, or on application of the parties to a dispute, to direct the application of including traditional dispute resolution mechanisms.

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

- The determination of such person's right over the land;
- The amount offered in compensation; and
- The amount offered in compensation for damages for temporary dispossession in the case of the Government's withdrawal of its acquisition of the land.²³

Parties will pay fees as determined by Land and Environment or the court may choose to waive them completely or in part on grounds of financial hardship.²⁴

²² Land Act 2012, Section 128

²³ Land Acquisition Act. at article 29(7).

²⁴ Land Acquisition Act at article 43.

4.1.6 Community Land Act, 2016, and Possibilities for Land Donation

The Community Land Act, 2016 was assented to by the President on 31st August 2016. The Act enables the implementation of Article 63 (1) of the Constitution: *Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar cultural interest.* The Act provides for: the **recognition, protection and registration** of community land rights; **management and administration** of community land; and provides a **clear role for county governments on all unregistered community land.**

Article 16 (5) of the Community Land Act, 2016, states that: *Any decision of a registered community to dispose of or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of that community...* By implication therefore, a community is allowed by the act to donate land for public good, provided it is in accordance with the provisions of this article of the Act.

The implementation of the Act urgently requires the Cabinet Secretary for land to prepare regulations with public participation to guide the process of registration, as well as assigning roles and responsibilities and prescribing performance standards. The Act implies considerable land use planning by communities, in terms of human settlement, livelihood and socio economic activities. However, the procedures and responsibilities for supporting this land use planning are yet to be defined.

Land Administration and Management under this Act:

To register and manage community land the communities shall be registered. A registered community shall have a community assembly which shall consist of all adult members of the community.

The community assembly shall elect community land management committee that will comprise of between seven and fifteen members of the community assembly. The community land management committee will:

1. manage and administer registered community land on behalf of the respective community,
2. co-ordinate the development of community land use plans in collaboration with the relevant authorities,
3. promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land;
4. prescribe the rules and regulations, to be ratified by the community assembly.

Any decision of a registered community to dispose of or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community, while all other decisions of the registered community shall be by a simple majority of the members present in a meeting.

Responsibility of County Government Regarding Unregistered Community Land:

The county governments shall hold in trust all unregistered community land on behalf of the communities for which it is held. The county government shall hold in trust for the

community, any monies payable as compensation for compulsory acquisition of any unregistered community land, which shall be deposited in a special interest earning account. Upon registration of such community land, the county government shall promptly release all such monies payable for all compulsory acquisition, including the amount and the interest earned to the registered communities as may be prescribed. Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.

4.1.7 Evictions and Resettlement Bill 2014

This Bill seeks to provide for procedures for the evictions of unauthorized occupants from private or public land and the resettlement of displaced persons coerced or involuntary displacement and for matters incidental and related thereto. This Act apply in respect of –

- a) evictions of unauthorized persons occupying private, community or public premises or land;
- b) resettlement of persons affected by acts or omissions involving the coerced or involuntary displacement of individuals, groups or communities to reside or work in a particular dwelling, residence or location, without the provision of and access to appropriate forms of legal or other protection.

The implementation of this Act shall be guided by the following principles-

- a) Every person shall be protected from arbitrary eviction;
- b) the persons, affected by an eviction should not suffer detriment to their human rights;
- c) the State while carrying out eviction and resettlement, must observe the human dignity, equity, social justice, human rights, non-discrimination and protection of the marginalized and vulnerable groups; and
- d) every person has the right to administrative action that is expeditious, efficient, reasonable and procedurally fair;

4.2 LAND ACQUISITION PROCESS

Proof that compulsory possession is for public good

It is very explicit in the Land Act, 2012, Section 107, that whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110 of Land Act 2012, the possession of the land must be necessary for public purpose or public interest, such as, in the interests of public defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having right over the property, and so certifies in writing, possession of such land may be taken.

Respective government agency or cabinet must seek approval of NLC

The respective Cabinet Secretary or Government agency or the County Executive Committee Member must submit a request for acquisition of private land to the NLC to acquire the land on its behalf. The NLC will prescribe a criteria and guidelines to be

adhered to by the acquiring authorities in the acquisition of land. But at the same time the NLC may reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed.

Inspection of Land to be acquired

NLC may physically ascertain or satisfy itself whether the intended land is suitable for the public purpose which the applying authority intends to use as specified. If it certifies that indeed the land is required for public purpose, it shall express the satisfaction in writing and serve necessary notices to land owners and or approve the request made by acquiring authority intending to acquire land.

Publication of notice of intention to acquire

Upon approval, NLC shall publish a notice of intention to acquire the land in the *Kenya Gazette and County Gazette*.²⁵ It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar²⁶ The courts have strictly interpreted this provision, requiring that the notice include the description of the land, indicate the public purpose for which the land is being acquired and state the name of the acquiring public body.²⁷ NLC will therefore be required to make a comprehensive notice that includes description of land, public purpose for which the land is acquired and the acquiring public body.

The Land Registrar shall then make entry in the master register on the intention to acquire as the office responsible for survey, at both national and county level, geo-references the land intended for acquisition.

Serve the notice of inquiry

Thirty days after the publication of the Notice of Intention to Acquire, the NLC then schedules a hearing for public inquiry. NLC must publish notice of this hearing in the *Kenya Gazette and County gazette 15 days before the inquiry meeting* and serve the notice on every person interested in the land to be acquired. Such notice must instruct those interested in the land to deliver to the NLC, no later than the date of the inquiry, a written claim for compensation.²⁸

Holding of a public hearing

The NLC convenes a public hearing not earlier than 30 days after publication of the Notice of Intention to Acquire. On the date of the hearing, the NLC must conduct a full inquiry to determine the number of individuals who have legitimate claims on the land, the land value and the amount of compensation payable to each legitimate claimant.²⁹

²⁵ The *Kenya Gazette* is the official government journal in Kenya published by the Government Printing Press.

²⁶ Land Act, 2012, 107

²⁷ Government of Kenya 1994. Coastal Aquaculture Limited v. The Commissioner of Lands and Settlement and the Minister of Lands and Settlements. Mombasa H.C. Misc. Appl., No. 55 of 1994, http://www.kenyalaw.org/CaseSearch/case_download.php?go=97115264151454584840489&link=, accessed May 25, 2011.

This ruling was upheld by the Court of Appeal. Coastal Aquaculture Limited v. the Commissioner of Lands and Settlement and the Minister of Lands and Settlements. Nairobi. No. 252 of 1996, http://www.kenyalaw.org/CaseSearch/view_preview1.php?link=49186237036025529910634, accessed May 25, 2011.

²⁸ Land Act, 2012 (112).

²⁹ *Id.* at article 112.

Besides, at the hearing, the Commission shall— make full inquiry into and determine who are the persons interested in the land; and receive written claims of compensation from those interested in the land. For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the NLC of documents of title to the land. The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry. It will also provide opportunity to those interested in the land to hear the justification of the public authority in laying claims to acquire the land.

Valuation of the land

Part III of the Land Act 2012, section 113 (2a) states that “*the Commission shall determine the value of conclusive evidence of (i) the size of land to be acquired; (ii) the value, in the opinion of the Commission, of the land; (iii) the amount of compensation payable, whether the persons interested in the land have or have not appeared at the inquiry.*” This can be interpreted that NLC must determine the value of the land accordingly and pay appropriate just compensation in accordance with the principles and formulae stipulated that it will develop. Nonetheless, just compensation could also be interpreted as market rated. The final award on the value of the land shall be determined by NLC and shall not be invalidated by reason of discrepancy which may be found to exist in the area.

Matters to be considered in determining compensation:

Market value of the property, which is determined at the date of the publication of the acquisition notice.³⁰ Determination of the value has to take into consideration the conditions of the title and the regulations that classify the land use e.g. agricultural, residential, commercial or industrial. Increased market value is disregarded when:

- *It is accrued by improvements made within two years before the date of the publication of the acquisition notice, unless it is proved that such improvement was made in good faith and not in contemplation of the proceedings for compulsory acquisition.*
- *It is accrued by land use contrary to the law or detrimental to the health of the occupiers of the premises or public health.*
- *Any damages sustained or likely to be sustained by reason of severing such land from other land owned by the claimant.*
- *Any damage sustained or likely to be sustained if the acquisition of the land had negative effects on other property owned by the claimant.*
- *Reasonable expenses, if as a consequence of the acquisition, the claimant was compelled to change his residence or place of business (i.e., compensation for disruption to the claimant’s life).*

³⁰ *Id.* at article 112 and article 111.

- *Any damage from loss of profits over the land occurring between the date of the publication of the acquisition notice and the date the Commissioner takes possession of the land.*³¹

³¹ Schedule 2 governing compensation.

Matters not to be considered in determining compensation:

- a) *The degree of urgency which has led to the acquisition.*
- b) *Any disinclination of the person's interest to part with the land.*
- c) *Damages sustained by the claimant which will not represent a good cause of action.*
- d) *Damages which are likely to be caused to the land after the publication of the acquisition notice or as a consequence of the future land use.*
- e) *Increased land value accrued by its future use.*
- f) *Any development at the time of acquisition notice, unless these improvements were necessary for maintaining the land.³²*

Award of compensation

Under the Land Act 2012 section 117, the State may award a grant of land in lieu of money compensation ("land for land"), upon agreement, and provided the value of the land awarded does not exceed the value of the money compensation that would have been allowable.³³ The law stipulates that any dispossessed person shall be awarded the market value of the land.³⁴ The new law is silent on relocation support or disturbance allowance support.

Upon the conclusion of the inquiry, and once the National Land Commission (NLC) has determined the amount of compensation, the NLC prepares and serves a written award of compensation to each legitimate claimant.³⁵ The NLC will publish these awards which will be considered "final and conclusive evidence" of the area of the land to be acquired, the value of the land and the amount payable as compensation.³⁶ LA, Section 115 further stipulates that an award shall not be invalidated by reason only of a discrepancy between the area specified in the award and the actual area of the land. Compensation cannot include attorney's fees, costs of obtaining advice, and costs incurred in preparing and submitting written claims.

Payment of Compensation

A notice of award and offer of compensation shall be served to each person by the Commission. Section 120 provides that "first offer compensation shall be paid promptly" to all persons interested in land³⁷ before a notice of acquisition is issued. Section 119 provides a supplementary condition and states that if the size of land is greater than the size of land in respect of which the award has been made, then NLC shall compensate for excess size "as soon as practicable."³⁸ Where such amount is not paid on or before the taking of the land, the NLC must pay interest on the awarded amount at the market rate yearly, calculated from the date the State takes possession until the date of the payment.³⁹

³² Schedule 3 governing compensation for compulsory acquisition.

³³ *Land Act*, 117.

³⁴ *Land Act*, Schedule

³⁵ *Land Act*, 115

³⁶ *Land Act*, 115

³⁷ *Land Act*, This language reflects the language of the Kenya Constitution, 1963.

³⁸ *Land Act*, 119

³⁹ *Land Act* 115.

In cases of dispute, the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying any persons interested accordingly. If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the rate prevailing bank rates from the time of taking possession until the time of payment.

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

Transfer of Possession and Ownership to the State

Once first offer payment has been awarded, the NLC serves notice to all persons with interest in the property indicating the date the Government will take possession. Upon taking possession of land, the commission shall ensure payment of just compensation in full. When this has been done, NLC removes the ownership of private land from the register of private ownership and the land is vested in the national or county Government as public land free from any encumbrances.⁴⁰

Temporary Possession

The commission has also the power to obtain temporary occupation of land. However, the commission shall as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.

Urgent Acquisition

In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the Commission may take possession of uncultivated or pasture or arable land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commission shall, notwithstanding that no award has been made, take possession of that land. If the documents evidencing title to the land acquired have not been previously delivered, the Commission shall, in writing, require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar. On receipt of the documents of title, the Registrar shall— cancel the title documents if the whole of the land comprised in the documents has been acquired; if only part of the land comprised in the documents has been acquired, the Registrar shall register the resultant parcels and cause to be issued, to the parties, title documents in respect of the resultant parcels. If the documents are not forthcoming, the Registrar will cause an entry to be made in the register recording the acquisition of the land under this Act.

⁴⁰ *Land Act, 115 and 116*

4.3 Relevant Sector Policies

4.3.1 National Land Policy

The National Land Policy (“NLP” or “Policy”)⁴¹ was adopted in August 2009 with the aim of providing an overall framework for new legislation and defining key measures required to address critical issues such as land administration, access to land, land use, and restitution related to historical injustices and an outdated legal framework. The NLP addresses constitutional issues such as compulsory acquisition and development control.⁴² Section 45 of the NLP defines compulsory acquisition as “the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation.”⁴³ Under the current Constitution,⁴⁴ the Land Act 2012 empowers the National Land Commission (under the guidance of Minister for Lands) to exercise the power of compulsory acquisition on behalf of the State.⁴⁵ Similarly, the NLP empowers the National Land Commission to compulsorily acquire land.⁴⁶

According to the NLP, the exercise of compulsory acquisition in the past has been conducted with abuses and irregularities.⁴⁷ The NLP therefore calls for a revision of such power and requires the GoK:

1. To review the law on compulsory acquisition to align it with the new categories of land ownership (public, private and community land);⁴⁸
2. To harmonize the framework for compulsory acquisition to avoid overlapping mandates;⁴⁹
3. To establish compulsory acquisition criteria, processes and procedures that are efficient, transparent and accountable;⁵⁰
4. To institute legal and administrative mechanisms for the exercise of the power of compulsory acquisition by the State through the National Land Commission;⁵¹ and

⁴¹ *Sessional Paper No. 3 of 2009 on National Land Policy* (referred to as the “National Land Policy” in this report) was adopted in August 2009 by the Ministry of Lands. Available at http://www.lands.go.ke/index.php?option=com_content&task=view&id=238&Itemid=48, accessed May 25, 2011.

⁴² Development control is the power of the State to regulate the property rights in urban and rural areas and is derived from the State’s responsibility to ensure that the use of land promotes the public interest.

⁴³ *Sessional Paper No. 3 of 2009 on National Land Policy*, § 45.

⁴⁴ The Constitution of Kenya, 1963, was replaced in 2010.

⁴⁵ Land Act, § 6, 2012.

⁴⁶ *Sessional Paper No. 3 of 2009 on National Land Policy*. §233(d).

⁴⁷ *Id.* at Chapter 3.2.1.1, article. 46.

⁴⁸ *Id.* at Chapter 3.2.1.1, article. 47(a).

⁴⁹ *Id.* at Chapter 3.2.1.1, article. 46 and 47(b). Under the previous Constitution, Chapter IX (Trust Land), Art. 18, the President and local authorities had the power to set apart Trust Land for the purposes of the Government of Kenya or any corporate body established by an Act of Parliament, or companies which shares are held on behalf of the GoK and for extraction of minerals and oils. This power does not exist under the new Constitution. Under the Government Lands Act, the President has special powers with regards to government land, and he may exercise these powers through the Commissioner of Lands. (Government Lands Act, Chapter 280, §3.)

⁵⁰ *Sessional Paper No. 3 of 2009 on National Land Policy*, Chapter 3.2.1.1, § 47(c).

⁵¹ *Id.* at Chapter 3.2.1.1, p. 47(d).

5. To confer pre-emptive rights on the original owners or their successor in title where the public purpose or interest justifying the compulsory acquisition fails or ceases.⁵²

4.4 Kenya's Land Tenure System

Land tenure in Kenya is classified as public, community or private.⁵³ Public land consists of government forests (other than those “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines”⁵⁴), government game reserves, water catchment areas, national parks, government animal sanctuaries and specially protected areas.⁵⁵ Public land will be managed by the National Land Commission (NLC).⁵⁶ Community land includes land that is “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines,” and “ancestral lands and lands traditionally occupied by hunter-gatherer communities.”⁵⁷ Rights are also held through traditional African systems, and rights that derive from the English system introduced and maintained through laws enacted by colonial and then the national parliament. The former is loosely known as customary tenure bound through traditional rules (customary law). The latter body of law is referred to as statutory tenure, secured and expressed through national law, in various Act of parliament e.g. Land Act 2012, Land Registration Act, 2012, Trust Land Act (cap 288) of the Laws of Kenya.)

4.4.1 Customary Land Tenure

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

- 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.

4.4.2 Freehold Tenure

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. Freehold land is governed by the Land Registration Act, 2012. The Act provides that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights, privileges relating thereto. A freehold title generally has no restriction as to the use and occupation but in practice there are conditional freeholds,

⁵² *Id.* at Chapter 3.2.1.1, §47(e).

⁵³ *Id.* at art. 61.

⁵⁴ *Id.* at art. 63(d)(i).

⁵⁵ *Id.* at art. 62(g).

⁵⁶ *Id.* at arts. 62(3), 67(2)s (a).

⁵⁷ *Id.* at art. 63(d)(i) and (ii).

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

4.4.3 Leasehold Tenure

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

4.4.4 Public Tenure and the National Land Commission

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

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

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

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

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

4.5 Relevant Institutions

4.5.1 National Land Commission

The National Land Commission (NLC) will undertake compensation. NLC is an independent government commission whose establishment was provided for by the Constitution of Kenya, 2010 to, amongst other things, manage public land on behalf of the national and county governments, initiate investigations into present or historical land injustices and recommend appropriate redress, and monitor and have oversight responsibilities over land use planning throughout the country. [1] It was officially established under The National Land Commission Act, 2012. Pursuant to

Article 67(2) of the Constitution, the functions of the Commission are —

- to manage public land on behalf of the national and county governments;
- Compulsory acquire land for national and county governments
- Compensate acquired land on behalf of national and County government
- To recommend a national land policy to the national government;
- To advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- To conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- To initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- To encourage the application of traditional dispute resolution mechanisms in land conflicts;
- To assess tax on land and premiums on immovable property in any area designated by law; and
- Monitor and have oversight responsibilities over land use planning throughout the country.

Under the National Land Commission Act, the Commission shall:

- On behalf of, and with the consent of the national and county governments, alienate public land;
- Monitor the registration of all rights and interests in land;
- Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;
- Develop and maintain an effective land information management system at national and county levels;
- Manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and

- Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.
- Implement Settlement programmes on behalf of national and county governments as outlined in section 134 of the Land Act.
- Administer the Land Settlement Fund in accordance with section 135 of Land Act 2012
- Manage the Land Compensation Fund
- Identify ecologically sensitive areas that are within public land and demarcate and take any other justified action on those areas and act to prevent environmental degradation and climate change in accordance with the Land Act.
- Reserve public land for the establishment of approved settlement programmes, and where public land is not available, purchase private land subject to the Public Procurement and Disposal Act, 2005 or any other law as provided for in section 134 (5) of the Land Act.
- Set aside land for investment purposes in accordance with section 12(3) of the Land Act.
- Approve compulsory acquisitions, wayleaves, easements and analogous rights.
- Ensure that the investments, in land benefit local communities and their economies.
- Make regulations prescribing the criteria for allocation of public land, such regulations to prescribe forms of ownership and access to land under all tenure systems.
- The procedure and manner of setting aside land for investment should respect mechanisms of benefit sharing with local communities.

As a result, NLC will compensate all affected PAPs, since legally they are the constitutional body charged with this responsibility.

4.5.2 Land and Environment Court

The Constitution of Kenya (CoK) has further provided for specific courts to deal with land and environment (Land and Environment Courts) that are charged with playing a vital role in reconciling environmental related disputes and these courts will serve as the ultimate stop in the event of disputes or complaints that cannot be resolved through other alternative means.

5 COMPARISON OF KENYAN LAWS AND WORLD BANK RESETTLEMENT POLICIES

The World Bank Operational Policy 4.12, Framework of November 2002, is a standard of approved principles and guidelines for compensation/resettlement for this type of project. World Bank principles should, however, be harmonised with the national laws of the subject country where the project is to be funded.

World Bank's Safeguard Operational Policy O.P. 4.12 on 'Involuntary Resettlement' requires that displaced persons should be compensated at full replacement cost, assisted with relocation/resettlement and during the transition period. The developer is encouraged to offer replacement land rather than cash compensation when the residual landholdings are not economically viable.

The World Bank Group O.P. 4.12 on Involuntary Resettlement is, therefore, applicable to the project. The main features of this directive are as follows:

- (a) All viable alternative project designs should be explored to avoid or minimise the need for resettlement and when it cannot be avoided, to minimise the scale and impacts of resettlement.
- (b) Resettlement measures are to be conceived and executed as development activities.
- (c) Assistance should be given to the community in their efforts to improve former production levels, income-earning capacity and living standards, or at least restore them to the levels at which they would have been without the project.
- (d) Displaced persons should be:
 - Compensated at full replacement cost prior to the actual move;
 - Assisted with relocation; and
 - Assisted and supported during the transition period.
- (e) Particular attention will be given to socially disadvantaged and vulnerable groups such as the very poor, the disabled, minorities, orphans and child-headed families, squatters and others without clear legal rights to land, those incapacitated by advanced age, among others. This has been complied with. Vulnerable groups have been identified and earmarked for special assistance.⁵⁸

Table 2: Comparison of the World Bank's OP 4.12 and the Kenyan laws on land acquisition and involuntary resettlement

⁵⁸ There appears to be no legal basis for special resettlement compensation assistance within, although the World Bank and RPF, 2012 advocates it. This has been considered

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

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p>Grievance: For physical resettlement, appropriate and accessible grievance mechanism will be established.</p>	<p>Land Act 2012 clearly outline the steps and process for grievance redress that includes alternative dispute resolution, re-negotiation with NLC and is backed by the judicial system through Environmental and Land Court</p>	<p>Kenyan legislation meets OP4.12 requirements.</p>	<p>N/A</p>
<p>Eligibility Criteria <i>Defined as:</i> (a) those who have formal legal rights to land (including customary, communal and traditional rights recognized under the laws of the country); (b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan (see Annex 10 A, para. 7(f)); and (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 Act 2012 provides that written and unwritten official or customary land right are recognized as valid land right. The Law provides that people eligible for compensation are those holding land tenure rights</p> <p>Land Act also recognizes those who have interest or some claim in the land such pastoralist or who use the land for their livelihood.</p> <p>The constitution recognizes ‘occupants of land even if they do not have titles’ and payment made in good faith to those occupants of land. However, this does not include those who illegally acquired land</p> <p>Land Act 2012 provides for census through NLC inspection and valuation process</p>	<p>Kenya’s Land Law defines eligibility as both formal (legal) and informal (customary) and communal owners of expropriated land. However, it does not specifically recognize all users of the land to be compensated.</p> <p>The constitution of Kenya on the other hand recognizes ‘occupants of land’ who do not have title and who the state has an obligation to pay in good faith when compulsory acquisition is made.</p> <p>Same as World Bank</p>	<p>Ensure ALL users (including illegal squatters, labourers, rights of access) of affected lands are included in the census survey or are paid (see Section 4).</p> <p>Implement cut-off procedures as outlined in the RPF and Kenyan Law</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p>Measures: Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land-based.</p>	<p>Legislation provides for land for land compensation but the Land Act 2012 does not state whether preference should be granted to land to land compensation.</p>	<p>Land for Land provided for in the Land Act but act not specific on when it should be applied except when the affected person chooses to receive land to land award.</p>	<p>Ensure that all alternative options are considered in preference to providing cash compensation (as outlined in the Entitlement Matrix).</p>
<p>Cash based compensation should only be made where (a) land taken for the project is a small fraction of the affected asset and the residual is economically viable; (b) active markets for lost assets exist and there is sufficient supply of land and housing; or (c) livelihoods are not land-based.</p>	<p>Land Act 2012 appears to prefer mode of compensation by the Government to the affected population.</p>	<p>Cash based compensation seems to be the preferred mode of awarding compensation to the affected population by Government of Kenya</p>	<p>Use World Bank OP4.12 procedures in determining form of compensation</p>
<p>World Bank OP4.12 Article 6(a) requires that displaced persons are provided with prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project. If physical relocation is an impact, displaced persons must be provided with assistance during relocation and residential housing, housing sites and/or agricultural sites to at least equivalent standards as the previous site. Replacement cost does not take depreciation into account. In terms of valuing assets, if the residual of the asset being taken is not economically viable, compensation and assistance must be provided as if the entire asset had been taken.</p>	<p>Land Act talks of prompt, just and full compensation before the acquisition of land. However, interpretation of just compensation is yet to be clearly outlined through a specific schedule defining just and fair compensation have not been put in place.</p>	<p>Just compensation as stipulated in the Land Act not yet specifically defined.</p>	<p>Implement prompt and effective compensation at full replacement cost for the losses of the assets.</p>
<p>Compensation and other assistance required for relocation should be determined prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required</p>	<p>Attorney's fees, cost of obtaining advice or cost incurred in preparing and making written claim not included in just compensation</p>	<p>Land Act very clear on attorney fees that it is not included. OP 4.12 includes those cost as part of full replacement</p>	<p>Implement World Bank policy on Attorney's fees.</p>
	<p>The Act does not outrightly stipulate assistance for relocation but we can interpret that relocation cost will be included in just compensation.</p>	<p>OP4.12 requires that displacement must not occur before all necessary measures for resettlement are in place, i.e., measures over and above simple compensation</p>	<p>Ensure that ALL resettlement options are agreed on with PAPs and put in place BEFORE displacement of affected persons.</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p>Valuation: With regard to land and structures, “replacement cost” is defined as follows:</p> <p>For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes.</p> <p>For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors’ fees, plus the cost of any registration and transfer taxes.</p>	<p>Valuation is covered by the Land Act 2012 and stipulates, as already mentioned, that the affected person receive fair and just compensation from NLC, as determined by National Land Commission. Valuers Act stipulates that a residual amount of 0.5% of the total valuation of an asset is expected to pay the valuer.</p> <p>Land Act 2012 talks of fair and just compensation for the lost assets but it is not specific of the exact amount or procedures on the same.</p> <p>The Land Act 2012 stipulates just and fair compensation.</p>	<p>Though one could argue that there is some form of consistency between the Kenyan Law and World Bank OP.4.12, interpretation of ‘just and fair compensation has not be defined.</p> <p>Interpretation of just and fair compensation not clear</p> <p>Interpretation of just and fair compensation not clear.</p>	<p>Apply the World Bank OP4.12 valuation measures, as outlined in Section 6, in order to fully value all affected assets in a consistent manner.</p> <p>Apply World Bank OP4.12 on valuation and compensation measures.</p> <p>Apply World Bank OP4.12 on valuation and compensation procedures.</p>
<p>Monitor Adequate monitoring and evaluation of activities to be undertaken.</p>	<p>According to Land Act can be undertaken County Land Boards.</p>	<p>Both Kenyan Law and World Bank policy advocates for Monitoring and Evaluation</p>	<p>Implement as prescribed in the World Bank OP4.12 and Kenyan Law.</p>

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

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

Category of PAPs and Type of Lost Assets	Kenyan Law	World Bank OP4.12
Land Owners	Fair and just compensation which could be in form of cash compensation or Land for Land	Recommends land-for-land compensation. Other compensation is at replacement cost
Land Tenants including encroachers	Constitution says that 'occupants of land' entitled to some level of pay in good faith. Land Act stipulates that they are entitled to some compensation based on the amount of rights they hold upon land under relevant laws. However, those who acquired land illegally not entitled to any.	PAPs are entitled to some form of compensation whatever the legal/illegal recognition of their occupancy.
Land Users	Land Act not clear on Land Users although in some cases they can receive some form of compensation depending on the determination by NLC	Entitled to compensation for crops and investments made on the land; livelihood must be restored to at least pre-project levels.
Owners of Temporary Buildings	The constitution of Kenyan respects the right to private property and in case of compulsory acquisition, just compensation must be granted to the owner for the loss temporary buildings.	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Owners of Permanent buildings	The constitution of Kenyan respects the right to private property and in case of compulsory acquisition, just compensation must be granted to the owner for the permanent building	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Tenants of buildings	Not entitled to compensation other than notice (3 months) by land lord to vacate dwelling	PAPs are entitled to some form of compensation specifically livelihood restoration
Perennial Crops	Just and fair compensation for the loss of crops	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop,

5.2 Requirements for Public Disclosure

Prior to appraisal of the IFPPP-AF, this RPF will be disclosed in country through posting on the National Treasury website www.treasury.go.ke as well as in the Bank's infoshop. If there are any changes, a final version will be disclosed in the same manner and places described later.

6 ELIGIBILITY CRITERIA AND ENTITLEMENT

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

6.1 Category of Project Affected Persons

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

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

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

- *any members in the households, men, women, children, dependent relatives and friends, tenants;*
- *vulnerable individuals who may be too old or ill to farm along with the others;*
- *relatives who depend on one another for their daily existence;*

Vulnerable Groups and Households-Vulnerable groups, individual or part of the households may have different land needs from most households or needs unrelated to the amount of land available to them, e.g.:

- Female headed households;
- Elderly;
- Disabled;
- Persons Living With HIV/AIDS
- Marginalized and Vulnerable Persons; and
- Orphans and Vulnerable Children

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

- **Orphans** -Due to the impacts of the AIDS crisis in Kenya and the past conflicts around the country, there are a considerable (some estimates put it at 20% of all children or 1.7⁵⁹ million) number of orphaned children, who have lost at least one parent. These children today fall into three categories of care namely (i) those being looked after by close relatives, (ii) those being looked after by the government, local authorities or NGOs and (iii) those living alone and providing

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

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.

- ***HIV/AIDS afflicted persons:*** Relatively high percentages of the poor and total population are living with HIV or are terminally ill with HIV/AIDS. Many are beneficiaries of numerous health programmes from the government, international organizations and the NGO community.
- ***Widow-Female-headed households:*** These may depend on relatives, sons, brothers, or others for support. These women should not be resettled in a way that separates them from their households as the very survival of their households may depend on them. Their compensation must take into account all these factors.
- ***Elderly persons:*** Elderly people farm or work as long as they are able. Their economic viability may depend on how much land they farm or how much they produce because, by producing even small amounts of food to “exchange” with others, they can subsist on cooked food and generous return gifts of cereal from people such as their kith, kin and neighbours. Losing land will affect their economic viability and resettlement would damage their economic viability even more than losing land since it will separate them from the person or household on whom they depend for their support.
- ***Non-farming households depending on farming household's-***This is another category of affected people who could be among the vulnerable. They are non-farming individuals who are engaged in other works, including some agricultural work and their livelihoods could be affected as a result of the project they include landless labourer, fishermen, whose main income come from fishing, sand harvesters, and small businesses relaying on the farming communities. In addition, women non-farmers. These women earn income from other sources and/or depend on relatives for “exchanges” of staple foods. Since they do not farm they will not be affected by the sub-projects need for agricultural land. However, if their buildings lie on land needed by a sub project. They will lose at minimum their social network that they rely on if not resettled together.

These household types are not mutually exclusive, and a female heading a household may be a small-scale farmer or an orphan may be an HIV/AIDS affected person. These groups are particularly vulnerable to land acquisition activities, and as such the following considerations will be made when sub project sites are identified and PAPs listed. In addition, the list above is not an exhaustive list and the socioeconomic survey which will

be done for preparation of sub project specific RAPs under the IFPPP-AF needs to be exhaustive in the category of the affected people and their sources of livelihoods.

6.2 Eligibility Type for Compensation

The following are some of the category of impacts eligible for compensation.

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

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

6.3 Method to Determine the Cut – Off Date

The cut-off date refers to the time when the assessment of persons and their property in the sub-project area is carried out, i.e. the time when the sub-project area has been identified and when the site-specific socio-economic study is taking place. Thereafter, no new cases of affected people will be considered. The establishment of a cut-off date is required to prevent opportunistic invasions/rush migration into the chosen land areas thereby posing a major risk to the sub-project. Therefore, establishment of a cut-off date is of critical importance. The Project Planning Team's 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 customary heads.

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

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.

6.4 Entitlement Matrix

Table 4: Entitlement Matrix

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

Land and Assets	Types of Impact	Person(s) Affected	Compensation/Entitlement/Benefits
			Relocation assistance (costs of shifting + assistance in re-establishing economic trees + livelihood rehabilitation assistance) Relocation assistance (costs of shifting + assistance in re-establishing economic trees + livelihood rehabilitation assistance)
		Tenant/Lease holder	Cash compensation equivalent to average of last 3 years' market value for the mature and harvested crop, or market value of the crop for the remaining period of tenancy/ lease agreement, whichever is greater. Relocation assistance (costs of shifting + assistance in re-establishing economic trees + livelihood rehabilitation assistance
Land users	Impact on livelihood	Land less, encroachers	Compensation to restore livelihood and ensure they will not be worse off as a result of the investments' activities.
Commercial Land	Land used for business partially affected Limited loss	Title holder/ business owner	Cash compensation for affected land Opportunity cost compensation equivalent to 5% of net annual income based on tax records for previous year (or tax records from comparable business, or estimates where such records do not exist).
		Business owner is lease holder	Opportunity cost compensation equivalent to 10% of net annual income based on tax records for previous year (or tax records from comparable business, or estimates where such records do not exist)
	Assets used for business severely affected If partially affected, the remaining assets become insufficient for business purposes	Title holder/business owner	Land for land replacement or compensation in cash according to PAP's choice. Land for land replacement will be provided in terms of a new parcel of land of equivalent size and market potential with a secured tenure status at an available location which is acceptable to the PAP. Transfer of the land to the PAP shall be free of taxes, registration, and other costs. Relocation assistance (costs of shifting + allowance) Opportunity cost compensation equivalent to 2 months net income based on tax records for previous year (or tax records from comparable business, or estimates)
		Business person is lease holder	Opportunity cost compensation equivalent to 2 months net income based on tax records for previous year (or tax records from comparable business, or estimates), or the relocation allowance, whichever is higher. Relocation assistance (costs of shifting) Assistance in rental/ lease of alternative land/ property (for a maximum of 6 months) to re-establish the business.
Residential Land	Land used for residence partially affected,	Title holder	Cash compensation for affected land

Land and Assets	Types of Impact	Person(s) Affected	Compensation/Entitlement/Benefits
	limited loss Remaining land viable for present use.		
	Land and assets used for residence severely affected Remaining area insufficient for continuing use or become smaller than minimally accepted under zoning laws	Rental/lease holder Title holder	Cash compensation equivalent to 10% of lease/ rental fee for the remaining period of rental/ lease agreement (written or verbal) Land for land replacement or compensation in cash according to PAP's choice, based on the replacement cost. Land for land replacement shall be of minimum plot of acceptable size under the zoning law/ s or a plot of equivalent size, whichever is larger, in either the community or a nearby resettlement area with adequate physical and social infrastructure systems as well as secured tenure status. When the affected holding is larger than the relocation plot, cash compensation to cover the difference in value. Transfer of the land to the PAP shall be free of taxes, registration, and other costs. Relocation assistance (costs of shifting + allowance)
	Land and assets used for residence severely affected Remaining area insufficient for continued use or becomes smaller than minimally accepted under zoning laws	Rental/lease holder	Refund of any lease/ rental fees paid for time/ use after date of removal Cash compensation equivalent to 3 months of lease/ rental fee Assistance in rental/ lease of alternative land/ property Relocation assistance (costs of shifting + allowance)
Buildings and structures	Structures are partially affected	Owner	Cash compensation for affected building and other fixed assets
	Remaining structures viable for continued use	Rental/lease holder	Cash assistance to cover costs of restoration of the remaining structure Cash compensation for affected assets (verifiable improvements to the property by the tenant). Disturbance compensation equivalent to two months rental costs
	Entire structures are affected or partially affected Remaining structures not suitable for continued use	Owner	Cash compensation for entire structure and other fixed assets without depreciation equal to replacement cost, or alternative structure of equal or better size and quality in an available location which is acceptable to the PAP. Right to salvage materials without deduction from compensation Relocation assistance (costs of shifting + allowance) Rehabilitation assistance if required (assistance with job placement, skills training)

Land and Assets	Types of Impact	Person(s) Affected	Compensation/Entitlement/Benefits
		Rental/lease holder	<p>Cash compensation for affected assets (verifiable improvements to the property by the tenant)</p> <p>Relocation assistance (costs of shifting + allowance equivalent to four months rental costs)</p> <p>Assistance to help find alternative rental arrangements</p> <p>Rehabilitation assistance if required (assistance with job placement, skills training)</p>
		Squatter/informal dweller	<p>Cash compensation for affected structure without depreciation</p> <p>Right to salvage materials without deduction from compensation</p> <p>Relocation assistance (costs of shifting + assistance to find alternative secure accommodation preferably in the community of residence through involvement of the project)</p> <p>Alternatively, assistance to find accommodation in rental housing or in a squatter settlement scheme, if available)</p> <p>Rehabilitation assistance if required assistance with job placement, skills training)</p>
		Street vendor (informal without title or lease to the stall or shop)	<p>Opportunity cost compensation equivalent to 2 months net income based on tax records for previous year (or tax records from comparable business, or estimates), or the relocation allowance, whichever is higher.</p> <p>Relocation assistance (costs of shifting)</p> <p>Assistance to obtain alternative site to re- establish the business.</p>
Standing crops	Crops affected by land acquisition or temporary acquisition or easement	PAP (whether owner, tenant, or squatter)	Cash compensation equivalent to average of last 3 years market value for the mature and harvested crop, plus the labour cost.
Trees	Trees lost	Title holder	Cash compensation based on type, age and productive value of affected trees plus 10% premium
Loss of access to grazing	On livelihood	Households undertaking grazing activities in the affected areas.	<p><i>Alternate Arrangements:</i> Encourage adoption of zero-grazing techniques,</p> <p><i>Economic rehabilitation assistance:</i> Provide assistance to facilitate this transition... For example, assistance with and payment for construction of new zero-grazing structures on alternative lands; provision of buffer lands for growth of cattle fodder; assistance with cultivation of fodder, provision of cattle fodder for lag period until cultivated cattle fodder becomes available.</p> <p>Ensure that the livestock owners have access to land for grazing or ways to sustain</p>

Land and Assets	Types of Impact	Person(s) Affected	Compensation/Entitlement/Benefits
			their livelihoods.
Loss of access to water sources	Loss of access to water for household use, for household plots, etc.	Affected households	<i>Replace water access:</i> Provide alternate access to water sources in the interim period. Ensure that the investments' design take into consideration different use and need for water and accommodate the users accordingly.
Loss of communal properties such as burial grounds and places of worship, community centres, and social buildings	Loss of access to these sites, temporarily or permanently, loss of investment made.	Communities affected	<i>Consultation:</i> Undertake consultation with affected households to determine appropriate arrangements and compensation if suitable. Replacing the social building such as schools and dispensaries.
Loss of livelihoods	Loss of means of livelihoods such as small production, such as collection of forest product, fishery, bee keeping, small dependent jobs on affected assets, such as sand, forest, inaccessible water bodies and forest	Communities engaging in non-farming livelihoods such as hunters and gatherers, fisher folk, beekeeper.	Livelihood restoration programs: Undertake to help the affected communities restore their livelihood.
Temporary Acquisition	Temporary acquisition	PAP (whether owner, tenant, or squatter)	Cash compensation for any assets affected (e. g. boundary wall demolished, trees removed)

VALUATION AND COMPENSATION

6.5 METHODS OF ASSETS VALUATION

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

- Loss of Land;
- Loss of Residential buildings,
- Loss of Commercial buildings,
- Loss of Cultivated crops (cash and food) and trees;
- Loss of businesses or employment
- Loss of Communal assets (e.g. land, wells, grazing areas)

Replacement cost will be used for land and properties affected by investments under the IFPPP-AF.

Agricultural Land

For agricultural land, the replacement value 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.

Structures (commercial and residential)

For houses and other structures, it is the market cost for replacing the property, including the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors' fees, plus the cost of any registration and transfer

Resettlement Assistance

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

Although the type of compensation will be the individual's choice, compensation in kind (land for land) will be preferred as cash payments raises issues regarding inflation and security. In addition, provision of cash does not ensure that the PAP's income will be restored. **Table 5** below describes the forms of compensation.

Table 5. Forms of Compensation

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

6.6 VALUATION PROCESS OF ASSETS

6.6.1 *Field preparation of asset inventory*

The first step will be to carry out an asset valuation survey as part of the RAP preparation. The team will include the consultant contracted by the implementing agency to carry out the RAP and the who will work closely with resettlement and compensation committees, which will be established for the implementation of the RAP for a given sub project investment.

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

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

6.7 Asset Valuation Methods in Kenya

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

Investment Method

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

Direct Comparison Method

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

Replacement Cost Approach

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

Gross Current Replacement Cost

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

6.8 Other methods

Rates from Contractors:

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

Schedule of rates from Ministry of Public Works

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

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

6.9 Calculation of Compensation

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

Compensation for Land (Urban Areas)

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

Compensation for Agricultural Land

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

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

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

Land Measurement

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

However, in such an event, the unit that is being used must be explained to the affected farmers/users and must somehow be related to easily recognizable land features that the communities are familiar with, such as using location of trees, stumps, etc. as immovable pegs. The most important concern of this exercise is to ensure that the affected person is

able to verify using his/her own standards/units of measurement, the size of land that is being lost. This will ensure transparency in the system and will thus avoid subsequent accusations of wrong measurements or miscalculation of areas. A farmer should know how much land he/she is losing, in terms of size and the replacement land must be at least of that same size and comparable value as land lost.

Calculation of Crops Compensation Rate

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

Crop Values Determination

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

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

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

Compensation for Buildings and Structures

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

- Measurements of structures and detail of materials used;
- Average replacement costs of different types of household buildings and
- Structures based on collection of information on the numbers and types of materials used to construct different types of structures (e.g. poles, bricks, rafters, bundles of straw, corrugated iron sheets, doors etc.).

- Prices of these items collected in different local markets;
- Costs for transportation and delivery of these items to acquired/ replacement land or building site;
- Estimates of construction of new buildings including labor required;
- Any associated taxes, registration fees.

Compensation for Community Assets

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

Compensation for Sacred Sites

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

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

Compensation for Loss of Enterprises

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

Other domestic fruit, shade trees,

As defined in this RPF, individuals will be compensated for wild trees which are located in their land. Wild productive trees belong to the community when they occur in the

bush as opposed to fallow land. These trees will be compensated for under the umbrella of the community compensation.

Compensation for livelihood that are not necessarily land base

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

7 PREPARING AND APPROVING RESETTLEMENT ACTION PLANS

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

7.1 Screening Process

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

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

7.2 Preparation of a Project Specific RAP

Once the decision is made on the location of a given sub project under IFPPP-AF, the Contracting Authority (s) starts the RAP processes, including the preparation of the RAP as explained below.

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

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

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

- (i). Consultation and participatory approaches; A participatory approach will be adopted to initiate the compensation process. Consultations will start during the planning stages when the technical designs are being developed, and at the land selection/screening stage. The process therefore seeks the involvement of PAPs throughout the census and socioeconomic study for identifying eligible PAPs and throughout the RAP preparation process.
- (ii). Notification; All eligible PAPs will be informed about the project and the RAP process. A cut-off date will be established as part of determining PAPs eligibility, which is the date the census or the socioeconomic survey is initiated. In special cases where there are no clearly identifiable owners or users of the land or asset, the RAP team must notify the respective local authorities and leaders. A “triangulation” of information – affected persons; community leaders and representatives; and an independent agent (e.g. local organization or NGO; other government agency; land valuer) – may help to identify eligible PAPs. The RAP team will notify PAPs about the established **cut-off date** and its significance. They will be notified both in writing and by verbal notification delivered in the presence of all the relevant stakeholders.
- (iii). Notification to NLC: One of the first steps in this process once the census undertaken for the preparation of the RAP is done, the implementing agency makes a written request to NLC⁶⁰ of the intention for the acquisition of the identified area for a given investment under the IFPPP-AF. NLC will inspect the land and grant approval for the land to be acquired for the implementation of the project. With this approval, NLC will make a written notification through the *Kenya Gazette* or *County gazette* of the intention to acquire the identified land for public purposes.
- (iv). Documentation and verification of land and other assets; NLC, the legal agency responsible for the approval of compulsory land acquisition and compensation for national and county development projects, together with a contracted registered valuer, and the DRCC, will arrange meetings with PAPs to discuss the compensation and valuation process. For each individual or household affected by a given investment/sub-project, the RAP preparation team will complete a **Compensation Form** containing necessary personal information on the PAPs and their household members; their total land holdings; inventory of assets affected; and demographic and socio-economic information for monitoring of impacts. This information will be documented in a report, and witnessed by an independent or locally acceptable and respected community member. The reports will be regularly updated and monitored.

⁶⁰ NLC is the legal body, approved by the law to make all compulsory acquisitions (Land Act 2012, National Land Commission Act 2012 and Constitution of Kenya 2010).

- (v). Compensation and valuation. All types of compensation will be clearly explained to the individual and households involved by consultant, NLC representative and the established resettlement and compensation committees. This will refer especially to the basis for valuing the land and other assets, which will always be done in the presence of the PAPs or their representatives. Once such valuation is established, the NLC will produce, in presence of resettlement and compensation committees, a contract or agreement that lists all property and assets that will be acquired by the project and the types of compensation selected. Table 4 provides a sample of entitlements that are eligible for compensation. These options include in-kind (e.g. replacement housing) and cash compensation. All compensation should occur in the presence of the affected persons and the community local leaders. If cash compensation is the preferred choice of the PAPs, the means to provide such cash compensation will be decided by the PAPs, e.g., through a cheque, direct deposit to the PAPs account or direct payment in cash to PAPs given that access to banking is sometimes a challenge in remote environment. In such cases, [sub project RAPs will investigate secure methods for payments to PAPs in any given area, and may provide additional assistance in establishing bank accounts, etc. where possible.](#) Compensation costs will be met by the Government of Kenya.
- (vi). From this point, the provisions of this RPF will be utilised up to payment of the compensation package including resettlement support where appropriate. The costs associated with resettlement or relocation will be included in the RAP budgets for all investments under IFPPP-AF.
- (vii). Payments: The Government of Kenya through the Ministry of Finance will provide funding for RAP implementation for each investment where a RAP is prepared. The compensation amount for assets for each RAP will then be provided to the NLC, which will be in charge of land acquisition. The NLC will make award to the PAPs for the affected land and properties
- (viii). Grievance Mechanism: Establishment of grievance mechanism will be one of the key requirements of the RAP processes in every IFPPP-AF investment. One of the key roles of resettlement and compensation committees will be to address disputes. All PAPs will be informed by the resettlement and compensation committees how to register grievances or complaints, including specific concerns about compensation and relocation as well as dispute regarding livelihood restoration measures. The PAPs will be informed about the dispute resolution process, specifically about how the disputes will be resolved in an impartial and timely manner.
- (ix). Environmental and Land Court will provide opportunity for appeal when a solution will not be found using the established local mechanisms. The court will deal with land and compensation related disputes. However, the Land Act 2012 and Environment and Land Court Act 2011 advocates for alternative dispute resolution (ADR) methods in tackling land related disputes. Alternative dispute resolution approaches will be given preference and based on customary rules, arbitration or

third-party mediation. ADR will be promoted or defended as a resolution to disputes related to resettlement and land.

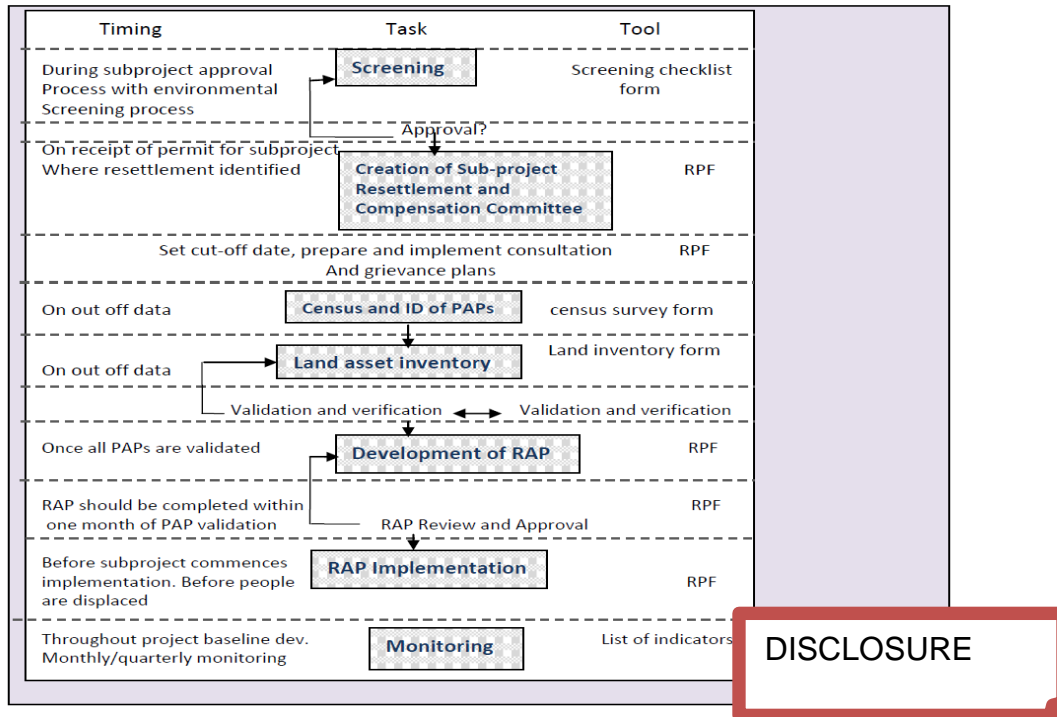
Consultation: All the IFPPP-AF investments/sub projects will provide for informed participation of affected persons and communities, including host communities, in decision making processes related to resettlement.

7.3 Approval of Resettlement Action Plans:

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

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

FIGURE 1. RAP SCREENING AND APPROVAL PROCESS



8 IMPLEMENTATION ARRANGEMENTS

The overall coordination of the sub projects under the IFPPP-AF will be provided by the NT through the IFPPP/PIU. The PIU has the overall role of the coordination and quality control, and among its other roles, it ensures that each investment prepare the needed safeguards instrument, in this case the RAP, in accordance to the RPF. However, each investment is implemented by a Contracting Authority. IFPPP/PPPU will screen proposed sub projects to determine their viability and feasibility. Once a sub project is proposed for funding, PPPU will prepare a TORs for the RAP consultant, the RAP developed as required, and subsequently reviewed. The preparation and implementation of individual RAPs is the responsibility of the relevant implementing agencies.

8.1 Institutional Roles For RAP Preparation and Implementation

Resettlement implementation under IFPPP-AF, will be implemented at different levels by the following institutions namely:

1. National-Ministry of Finance
2. IFPPP-PIU/PPPU
3. County Governments
4. Contracting Authority
5. National Land Commission;
6. Resettlement and Compensation Committees (RCCs)

8.1.1 Ministry of Finance

National Treasury has the responsibility for the mobilization of funds from Government for resettlement and compensation purposes of specific approved RAPs.

8.1.2 Project Implementation Unit (PIU)

The PIU role is day-to-day coordination of the IFPPP-AF investment pipeline, screening of sub projects and keeping records of the implementation of IFPPP-AF individual sub projects. To assist implementing agencies, the PPPU, is staffed with a safeguards advisor. The first role of the PPPU with regards to the preparation of the RAPs will be to screen all sub projects to determine if they need to prepare a RAP.

The necessary screening will be done through a clearly outline screening procedure as outlined in *Figure 1* of this RPF. Once a proposed sub project is accepted to be funded under the IFPPP-AF, the PPPU will prepare the TOR before it is used to hire the consultant to prepare the RAP, which is done though the implementing agency for a given investment.

Once the RAP is prepared, under the supervision of the implementing agency, the PPPU will review the RAP for consistency of such document with RPF under all IFPPP-AF financed sub projects.

8.1.3 Contracting Authorities

Each Contracting Authority for a given investment/sub project is in charge of preparation and implementation of the sub project specific RAPs. In this case, specific responsibilities will include: contracting the RAP consultants and overseeing the consultant's work; based on the census done for the RAP, notifying the NLC of its intention to acquire land; establishing the RCC; establishing the budget needed for the implementation of the RAP and request the budget from NT; providing the budget for the land and property compensation to the NLC, which in turn will compensate the affected people; working with the NLC on the processes of land compensation (see "Formal Processes Involved With Compulsory Acquisition of Land" discussed earlier).

The implementing agencies will also provide budget for RCC operations; ensure the grievance committees are established and working; collect all the needed documentation for compensation as well as grievances and compile them; send a copy of all the documents to the PIU; and monitor RAP implementation.

8.1.4 National Land Commission (NLC)⁶¹

The National Land Commission (NLC) is the legal agency under the new constitutional dispensation responsible for compulsory acquisition of private land for public development by national government and county governments. NLC is governed by National Land Commission Act 2012, which stipulates one of its roles as that of compulsory acquiring land for national government and county governments' development projects among other roles.

Key roles of NLC in the implementation of this RPF and subsequent RAPs under IFPPP-AF will include: provision of approval to request made by implementing agency under IFPPP-AF to acquire land; notify landholders in writing of the intention to acquire land; assist in resolving disputes related to compensation; undertake public consultation on intended acquisition with the help of RCC; receive money from implementing agencies for actual payment of entitlement awards to PAPs.

8.1.5 County Governments

County government have a role in land acquisition especially communal land a highlighted in Community Land Act. According to the Act, county governments shall hold in trust all unregistered community land on behalf of the communities for which it is held. The county government shall hold in trust for the community, any monies payable as compensation for compulsory acquisition of any unregistered community land, which shall be deposited in a special interest earning account. Upon registration of such community land, the county government shall promptly release all such monies payable for all compulsory acquisition, including the amount and the interest earned to the registered communities as may be prescribed. Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.

⁶¹ National Land Commission is established by National Land Commission Act 2012 and Chapter 8 of Land Act 2012 outlines its specific role in compulsory acquisition process.

Upon the registration of any unregistered community land in accordance with this Act, the registered community shall, assume the management and administrative functions and the trusteeship role of the county government in relation to such land shall cease. A county government shall not sell, dispose, transfer, and convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held.

8.1.6 Resettlement and Compensation Committees

For the purposes of efficient implementation of the RAPs, this RPF proposes the constitution of RCCs for each sub project at County, Sub County, Location and Project levels. RCCs will be established to ensure participatory and transparent implementation of the RAP. The RCCs will not engage in land acquisition or compensation as this remains the prerogative of the NLC. For purposes of this RPF, RCCs will help NLC carry out its mandate efficiently- particularly ensuring effective communication of NLC with the affected communities. Members to RCC will include representation from the following agencies and entities

- Representative of NLC, as the chair of CRCC to grant legitimacy to the acquisition and resettlement process and ensure that legal procedures as outlined in Land Act 2012 and binding document of the RPF are adhered to.
- Representative of the implementing agency as the acquiring institution.
- The County Administration representative, which will provide the much needed community mobilization, and support to the sub project and to the process of resettlement
- County Land Survey Officer will survey all affected land and produce acquisition map.
- County Gender and Social Development Officer which will be responsible for livelihood restoration programs.
- County Lands Registrar will verify all affected land and validate the same.
- Two PAP representative from Location Resettlement Committee – act as voice for the PAPs
- The locational Chief, who is the Government administrative representative at the locational unit and who deals with community disputes
- Assistant Chiefs, who supports the locational Chief and Government in managing local community disputes in village units
- Female PAP, elected by women PAPs, will represent women and children related issues as regards resettlement and compensations
- Youth representative, elected by youths,
- Male representatives elected by the members of the PAPs
- Vulnerable person’s representative, will deal and represent vulnerable persons.
- Business representative, will represent business people concerns

- NGOs and CBOs locally active in relevant fields to ensure effectiveness, fairness, just compensation, and transparent process in the whole acquisition process.

The RCCs will have the following specific responsibilities:

- Ensuring effective flow of information between NLC and PAPs and the implementing agency and the PAPs
- Coordinate Locational Resettlement and Compensation Committees (LRCCs), validate inventories of PAPs and affected assets;
- Coordinate activities between the various organizations involved in relocation; facilitate grievance and conflict resolution; and provide support and assistance to vulnerable groups.
- Conducting extensive public awareness and consultations with the affected people so that they can air their concerns, interests and grievances.
- Resolving disputes that may arise relating to resettlement process. If it is unable to resolve any such problems, channel them through the appropriate formal grievance procedures laid out in this RAP.
- Conducting extensive public awareness and consultations with the affected people.
- Help ensure that local concerns raised by PAPs as regards resettlement and compensation among others are promptly addressed by relevant authorities.
- Assist the effective working of RAP consultants in preparation and validation of the RAP
- Ensure that the concerns of vulnerable persons such as the disabled, widowed women, orphaned children affected by the sub project are addressed.
- Assist the PAPs in the process of compensation, including helping those who cannot write or read.
- Help the vulnerable during the compensation and restoration of the livelihoods
- Ensure that all the PAPs in their locality are informed about the content of the RAP.

9 IMPLEMENTATION SCHEDULE

This chapter describes the linkage between commencement of construction works and resettlement implementation.

9.1 Resettlement/Civil Works Linkage

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

The schedule for the implementation of activities related to specific RAPs, will be prepared based on the principles of this RPF, and must be agreed between the NLC, NT, IFPPP/PIU, implementing agencies, County Governments, RCCs and affected PAPs to give legitimacy to the whole process as outlined in the law.

These will include the target dates for start and completion of civil works, the dates of the possession of land and properties used by PAPs, dates of the full compensation, dates of transfer of titles to NLC, and date of hand over of land to implementing agency. This schedule will be determined by the NLC in consultation with the implementing agency, RCCs and the PAPs.

The consultation process will ensure that RAPs contains acceptable measures agreed upon among all stakeholders that link resettlement activity to civil works under each specific investment in compliance with this policy.

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

9.2 Implementation schedule

Given the nature of IFPPP-AF, preparing an implementing schedule at moment is not possible. Each investment/sub project once identified and screened, if required, will prepare an individual implementation schedule together with PIU which will be included in the RAP for that investment. Therefore, all RAPs will include an implementation schedule for each activity covering initial baseline and preparation, actual relocation, and post relocation economic and social activities. The plan will include a target date when

the expected benefits for resettled persons and hosts community, if relevant, would be achieved. Arrangements for monitoring of implementation of the resettlement and evaluating its impact will be developed during the preparation of individual RAPs implementation schedules. Target dates for achievement of expected benefits to resettled persons and hosts will be set and the various forms of assistance to the resettled persons will be disseminated to them.

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

10 GRIEVANCE MANAGEMENT AND REDRESS

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

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

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

10.1 Overview

A key element of resettlement activities will be the development and implementation of a grievance mechanism in all IFPPP-AF investments. Grievances will be actively managed and tracked to ensure that appropriate resolution and actions are taken. A clear time schedule will be defined for resolving grievances under each investment, ensuring that they are addressed in an appropriate and timely manner.

The grievance procedure will be simple and will be administered, as far as possible, at the sub project level. In each project affected area, there will be a County Resettlement and Compensation Committee; Sub Resettlement and Compensation Committee. Cascading down, there will be Locational Resettlement and Compensation Committees (LRCCs) based in each administrative location. It will be established by SRCC through PAPs consultative meetings chaired the representative of implementing agency. LRCCs will act as the voice of the PAPs and will work under guidance and coordination of SRCCs in handling PAPs' grievances.

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

Based on consensus, the SRCCs and LRSCs will seek to resolve issues quickly in order to expedite the receipt of entitlements, without resorting to expensive and time-consuming legal actions that may delay the implementation of a sub project. If the grievance procedure fails to provide a result, complainants can still seek legal redress.

Steps involved with the grievance management include:

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

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

10.2 Grievance Redress Process

As noted earlier, grievance redress will be the functions of the RCCs at different levels. A grievance log will be established by RCCs and copies of the records kept to be used for monitoring of complaints.

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

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

10.2.1 Detail procedures for grievance management

The procedure for managing grievances under all IFPPP-AF investments will be as follows:

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

The PLO will be working in collaboration with the other LRCCs members as well as SRCCs. Where the affected person is unable to write, the PLO will write the note on the aggrieved person's behalf. Any informal grievances will also be documented by the sub Project Liaison officer. The note should be embossed with aggrieved person's signature or thumbprint.

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

10.2.2 Grievance Log

The Project Liaison officer will ensure that each complaint has an individual reference number, and is appropriately tracked and recorded actions are completed. The log also

contains a record of the person responsible for an individual complaint, and records dates for the following events:

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

10.2.3 Monitoring Complaints

The Project Liaison Officer will be responsible for:

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

Table 6: Grievance Redress Process

Process	Description	Time frame	Other information
Identification of grievance	Face to face; phone; letter, e-mail; recorded during public/community interaction; others	1 Day	Email address; hotline number
Grievance assessed and logged	Significance assessed and grievance recorded or logged (i.e. in a log book)	4-7 Days	Significance criteria: Level 1 –one off event; Level 2 – complaint is widespread or repeated; Level 3- any complaint (one off or repeated) that indicates breach of law or policy or this ESMF provisions
Grievance is acknowledged	Acknowledgement of grievance through appropriate medium	7-14 Days	
Development of response	Grievance assigned to appropriate party for resolution Response development with input from management/ relevant stakeholders	4-7 Days 7-14 Days	
Response signed off	Redress action approved at appropriate levels	4-7 Days	Project staff to sign off
Implementation and communication of response	Redress action implemented and update of progress on resolution communicated to complainant	10-14 Days	
Complaints Response	Redress action recorded in grievance log book Confirm with complainant that grievance can be closed or determine what follow up is necessary	4-7 Days	

Close grievance	Record final sign off of grievance If grievance cannot be closed, return to step 2 or refer to sector minister or recommend third-party arbitration or resort to court of law.	4-7 Days	Final sign off on by IFPPP/PIU Coordinator
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10.3 Management of Grievances in the Kenya Land Laws

The current Kenyan constitution section 159, Land and Environmental Court Act 2011, National Land Commission Act 2012 and Land Act 2012 advocates for alternative dispute resolution mechanisms before seeking formal legal redress in disputes relating to land and resettlement. In practise this can be the village head and other local or traditional dispute resolution mechanisms.

10.3.1 Environment and Land Court

The Constitution of Kenya (CoK) has further provided for specific courts to deal with land and environment (Land and Environment Courts) that are charged with playing a vital role in reconciling environmental related disputes and these courts will serve as the ultimate stop in the event of disputes or complaints that cannot be resolved through other alternative means.

The Kenya Constitution establishes Environment and Land Court⁶². Article 162 of the constitution provides for the creation of specialized courts to handle all matters on land and the environment. Such a court will have the status and powers of a High Court in every respect. Article 159 on the principles of judicial authority, indicates that courts will endeavor to encourage application of alternative dispute resolution mechanisms, including traditional ones, so long as they are consistent with the constitution. Section 20, of the *Environment and Land Court Act, 2011* empowers the Environment and Land Court, on its own motion, or on application of the parties to a dispute, to direct the application of alternative dispute resolution (ADR), including traditional dispute resolution mechanisms.

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

- *The determination of such person's right over the land;*
- *The amount offered in compensation; and*
- *The amount offered in compensation for damages for temporary dispossession in the case of the Government's withdrawal of its acquisition of the land.*⁶³

Parties will pay fees as determined by Environment and Land Court, which may waive them completely or in part on grounds of financial hardship.⁶⁴

⁶² Land Act 2012, Section 128

⁶³ *Land Acquisition Act*. at article 29(7).

⁶⁴ *Land Acquisition Act* at article 43.

10.3.2 The Commission on Administrative Justice (CAJ) – Office of the Ombudsman

Kenya has a formal Feedback and Complaints Handling Mechanism. The Commission is the national/constitutional stakeholder instrument for grievance redress. Its mandate is to receive and address complaints against public officers and public institutions to improve service delivery. Three types of complaints can be made to the office of the Ombudsman including: (i) Citizen against State/public officers and institutions; (ii) Public officers against fellow public officers; and, (iii) Public institutions against other public institutions. **Table 6** below provides the steps and process for feedback and complaints redress by the Ombudsman. The Ombudsman has a three step and time bound mechanism for feedback and grievance redress, as shown below.

Table 7: Feedback and Complaints Redress by the CAJ (the Ombudsman)

Step 1	<p>Complainant fills in a Complaint Form</p> <ul style="list-style-type: none"> • Complaint is assessed for compliance with CAJ Mandate; • If within mandate, CAJ commences inquiries and complainant is issued with copy of communication – CAJ 2 [Sec. 43]; • If NOT within CAJ mandate, Complainant is advised accordingly and/or referred to appropriate government agencies; • If a response is not received from the respondent after 14 working days, CAJ sends a first reminder giving the respondent 7 days to comply; • If no response is received after this, a final reminder of 7 days is sent; • If there is still no response after 28 days, summonses are issued to the respondent in line with [Sec. 27(a)].
Step 2	<p>If after the summonses the respondent still fails to comply, the Ombudsman proceeds to:</p> <ul style="list-style-type: none"> • Determines the complaint in the absence of the respondent; • Institutes legal proceedings against the respondent [according to Sec. 52]; • Cites the respondent as an unresponsive State or Public Office or Officer, and/or declares such State or Public Officer to be unfit to serve in the Public Service;
Step 3	<p><i>How the Ombudsman undertakes grievance redress action:</i> In resolving a complaint, the Ombudsman may:</p> <ul style="list-style-type: none"> • Conduct investigations according to articles [A.59 (2)(i)] [Sec 8 b)] [A.252(1)(g)] [Sec. 53 (1)]; • Demand and obtain information or documents [S.26 (d)]; • Conduct an inquiry [A.252(1)(g)] • Undertake mediation, negotiation and conciliation [A.252 (1) (b)]; • Constitute a hearing panel; • Invite or summon any person or persons to attend to the Commission [S.26 (f)]; • Obtain orders from the Court authorizing Searches or Seizures [Sec.26 (e)]. • Obtain warrants of arrest for breach of any summons or orders of the Commission.

10.3.3 National Gender Equality Commission

National Gender Equality Commission is a constitutional Commission established by an Act of Parliament in August 2011, as a successor commission to the Kenya National Human Rights and Equality Commission pursuant to Article 59 of the Constitution. NGEC derives its mandate from Articles 27, 43, and Chapter Fifteen of the Constitution; and section 8 of NGEC Act (Cap. 15) of 2011, with the objectives of promoting gender equality and freedom from discrimination.

The over-arching goal for NGECC is to contribute to the reduction of gender inequalities and the discrimination against all; women, men, persons with disabilities, the youth, children, the elderly, minorities and marginalized communities.

10.3.4 Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights (KNCHR) is an autonomous national Human rights institution established under article 59 of the Constitution of Kenya 2010 with the core mandate of furthering the promotion and protection of human rights in Kenya. The Commission plays two key broad mandates;

- It acts as a watch-dog over the Government in the area of human rights.
- Provides key leadership in moving the country towards a human rights state.

The main goal of KNCHR is to investigate and provide redress for human rights violations, to research and monitor the compliance of human rights norms and standards, to conduct human rights education, to facilitate training, campaigns and advocacy on human rights as well as collaborate with other stakeholders in Kenya.

10.3.5 World Bank's Grievance Redress

Communities and individuals who believe that they are adversely affected by a World Bank (WB) supported project may submit complaints to existing project-level grievance redress mechanisms or the WB's Grievance Redress Service (GRS). The GRS ensures that complaints received are promptly reviewed in order to address project-related concerns. Project affected communities and individuals may submit their complaint to the WB's independent Inspection Panel which determines whether harm occurred, or could occur, as a result of WB non-compliance with its policies and procedures. Complaints may be submitted at any time after concerns have been brought directly to the World Bank's attention, and Bank Management has been given an opportunity to respond.

For information on how to submit complaints to the World Bank's corporate Grievance Redress Service (GRS), please visit <http://www.worldbank.org/GRS>. For information on how to submit complaints to the World Bank Inspection Panel, please visit www.inspectionpanel.org. It is however recommended that a project level grievance mechanism that has been agreed upon by all stakeholders is put in place early, to avoid small matters snowballing into conflicts that may lead to delayed disbursement and implementation.

II IMPLEMENTATION BUDGET

The actual cost of resettlement and compensation for each IFPPP-AF investment will be determined during preparation of the individual RAPs. The Government of Kenya will finance all the resettlement compensations cost. The total cost of resettlement under IFPPP-AF will depend on the number of investments made.

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

However, when these locations are known, and after the conclusion of the site specific socio-economic study, information on specific impacts, individual and household incomes and numbers of affected people and other demographic data will be available, a detailed and accurate budget 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.

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

Table 8. Illustrative Budget Template for the RAP

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

Table 9: Explanation of Assumptions on Indicative Budget

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

In addition to the budget for compensation, budget is needed for the following activities. The budget presented here is indicative and may change substantially depending on the type of sub projects and the number of training and workshops. This is just a sample to indicate the need for these other budget items.

Table 10: Indicative Budget for the Next 5 years

	Indicative Budgetary Item	No.	Unit cost (USD\$)	Total cost (USD\$)
1.	Stakeholders trainings/ consultation forums on RPF	5 ⁶⁵	100,000	500,000
2.	Monitoring and evaluation studies on the implementation of RAPs under IFPPP-AF	10 ⁶⁶	40,000	400,000
3.	Evaluation of Livelihood empowerment programs under IFPPP-AF ⁶⁷	10	30,000	300,000
4.	IFPPP-AF RAP training manual ⁶⁸	1	50,000	50,000
5.	Annual RPF audit	8	100,000 ⁶⁹	800,000
6.	20% contingency	-	-	210,000
	Total			2,260,000

Table 11: Assumptions for the RPF Budget line

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

⁶⁵ In the 5 years, at least 5 meetings are envisaged for stakeholders involved in resettlement and compensation for IFPPP-AF. They will be organized at cost of US\$100,000 per meeting to update and share lessons learnt in the implementation of the RPF

⁶⁶ To ensure compliance to the principles of RPF, it is expected that the PIU will recruit consultants to carry out 10 independent studies assessing compliance of the implemented IFPPP-AF RAPs with RPF principles.

⁶⁷ As part of economic rehabilitation, PIU will assess effectiveness of economic rehabilitation of RAPs under IFPPP-AF to ensure lesson learning and improvement.

⁶⁸ A consultant will be recruited to prepare a RAP training manual for easier implementation of the IFPPP-AF. RAPs

⁶⁹ An annual audit will be carried out with the engagement of the stakeholder. The amount is the cost of each audit meetings

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

12 PUBLIC CONSULTATION, PARTICIPATION AND DISCLOSURE

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

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

Public participation and consultations will take place through meetings, radio programs, public meetings for the explanations of project ideas and requirements, preparation of the RAPs and ESIA's, making public documents, including the RPF and consequent RAPs, available at the national, local levels at suitable locations like the official residences/offices of local chiefs/elders. These measures will take into account the low literacy levels prevalent in these rural communities in Kenya by allowing enough time for responses and feedback.

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

The involvement of the PAPs, including the host communities, in case there is physical resettlement and there is a host community, in planning prior to the move will be critical since initial resistance to the idea of involuntary resettlement is expected. To obtain cooperation, participation and feedback with the resettled persons and hosts, space will be provided for both to be actively involved in the preparation phase of the RAPs. They will also be able to choose from a number of acceptable resettlement alternatives. Particular attention will be given to vulnerable groups such as the landless, and women to ensure that they are represented adequately in such arrangements.

Conflicts between hosts and resettled persons may develop as increased demands are placed on land, water, forests, services etc. To mitigate the resettlement's impact on host

populations, they will be informed and consulted and included in the planning meetings for the resettlement exercise of affected person and impact mitigation plan for the expansion of services. Any payments due to the hosts for land or other assets provided to resettled persons will be promptly made.

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

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

12.1 Data Collecting Phase

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

12.2 Implementation Operation

During RAP 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.

12.3 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 IFPPP-AF supported projects. After completion of all expropriation/compensation operations, the PAPs will be consulted in a household survey to be undertaken as a monitoring and evaluation exercise.

13 ARRANGEMENTS FOR MONITORING AND EVALUATION

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

13.1 Overview

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

The objective of the monitoring will be to determine;

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

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

13.2 Who will do the Monitoring

RAP monitoring will be done at two levels, during the regular monitoring of the project by the implementing agency every six months and by an external independent consultant/agency that will be contracted on an annual basis. For the internal monitoring, the RCCs will be records are used. The TOR for the independent consultant/agency or a research institute in charge of independent monitoring should be cleared by the PPPU.

13.3 Methodology Use for the RAP Monitoring

Base line data will be collected from different sources, including the census and socioeconomic study undertaken for the preparation of individual RAPs. In addition, the information collected by the RCCs will be used. Finally, questionnaire (in the case of independent monitoring), and focus groups discussions will be used to collect data and information.

13.4 Indicators to Determine Status of Affected People

A number of indicators will be used in order to determine the status of all affected people under IFPPP-AF sub projects.

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

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

- *access/ distance/ quality of agricultural plots*
- *quality of, and access to, water*
- *number of people employed*
- *number of 'vulnerable' people*
- *number of grievances and time taken to resolve them. If not resolved, what were the next steps*
- *The local communities remaining supportive of the project.*
- *The local communities reporting satisfaction with project resettlement*

Most of the information for these indicators will be collected through survey, interviews and focus group discussions with the affected communities. The data for these indicators will be collected every six months during the RAP implementation by the implementing agency, RCCs and an independent agency such as a research institute, a university or an NGO. RCCs will also assist with collection of monitoring data of the RAPs implementation.

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

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

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

13.5 Regular Monitoring of RPF/RAP Implementation

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

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

The PIU will review the statistics in order to determine whether the resettlement planning arrangements as set out in this RPF are being adhered to. The implementing agencies will directly monitor compensation as undertaken by NLC (or in case of Cabinet authorization for initial sub-project if NLC will not be in place, the entity mandated with actual compensation and acquisition).

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

I5 ANNEX

Annex A. Stakeholders Consulted

-See separate attachment-

Annex B. Stakeholders Issues and Concerns Summary

Institution	Issue	Response
Kenya Forest Service	I am aware that the Bank has been reviewing its safeguards policies and procedures. What is the status of this review and did the preparation of the safeguards instruments use the new policies?	It is correct that the safeguards policies of the Bank have been undergoing review over the last 4 years. The review is complete and now the new policies are referred to as Environmental and Social Frameworks (ESF). The Bank is yet to give guidance on when the new frameworks commence and hence these instruments prepared for IFPPP-AF have used the existing/old policies.
Pamoja Trust	It appears that the safeguards instruments prepared for IFPPP-AF are to ensure due diligence prior to disbursement of the loan. How will due diligence be assured during the sub project implementation?	During the sub project implementation, after the loan award, the safeguard instruments or frameworks require the preparations of ESIA/RAPs/VMGPs to ensure due diligence.
Pamoja Trust	Is the IFPPP-AF considering recruitment of social specialist as part of the team of experts to advise the project? In your presentation, I did not see this position.	The IFPPP-AF has already recruited the Environmental and Social Safeguards Consultant under the PPPU, who is responsible for environmental and social safeguards.
Kenya National Highways Authority	What are the sub projects likely to be funded under the IFPPP-AF?	Actual sub projects are not yet known but will include infrastructure projects across sectors including, water, roads, ports, housing, waste management, railways, marinas etc.
Kenya Electricity Transmission Company	Is there a criteria or characteristics for determining who are Vulnerable and Marginalized Groups (VMGPs) in Kenya and by	The World Bank policy on VMGs has 4 characteristics that it uses to determine if a group qualifies to be vulnerable. The Constitution of Kenya (COK) has a clearly

	the World Bank?	defined characteristic of vulnerable and marginalized groups. The IFPPP-AF has used these characteristics in preparation of the Vulnerable and Marginalized Groups Framework.
Ministry of Water and Irrigation.	You have indicated that in the application of the Bank policies and host country regulations, the principle is to review both and apply the more stringent of the two. Who makes this determination? Is it the borrower or the Bank?	Frameworks and other safeguard instruments are prepared by the borrower. The borrower undertakes a detailed comparative analysis of its regulations and the Bank policies and identifies gaps and areas of weaknesses. Therefore, the borrower determines if its laws are stronger or otherwise. The instruments are also reviewed by the Bank and during the review, the findings of the borrower on strengths and weaknesses are also subject to review by the Bank.
Kenya Wildlife Service	After preparations of the frameworks, when does the application of the instruments commence? Does the frameworks indicate at what point in sub project implementation should the instruments be applied?	The frameworks clearly indicate when to commence application of the proposed instruments once a policy is triggered during the screening process. Instruments as a matter of fact are prepared after screening and used during project implementation. Instruments must be prepared before project construction activities commence and must be reviewed and approved by the Bank and other legislative institutions.
Ministry of Energy and Petroleum	Is there a definition of and scope of consultations and stakeholder engagement? Is there a threshold of adequate stakeholder consultation and disclosure?	The Constitution of Kenya has provided for public participation in all activities. Further, the Office of Attorney General has developed guidelines for

		<p>public participation in Kenya.</p> <p>The World Bank also has principles and guidelines for adequate stakeholder consultations.</p>
Egerton University	<p>Political interference in the public consultation process is a concern and derails the ESIA/RAP processes and hinders expedited project implementation. Does these frameworks give guidance on how to handle politics in stakeholder engagement and consultations?</p>	<p>The frameworks prepared for the IFPPP-AF provide for stakeholder identification and mapping including recognizing the role of politics and politicians as key stakeholders.</p> <p>The Office of Attorney General has developed guidelines for public participation in Kenya including how to engage with different stakeholder.</p> <p>The World Bank has principles and guidelines for adequate stakeholder consultations including political class.</p>
Ministry of Energy and Petroleum	<p>I would like to see the use of the new ESF in these frameworks</p>	<p>Guidance on when to use the new frameworks await directive from the Bank.</p>
National Environment Management Authority	<p>Is it possible for NEMA to be engaged in the review of ESMF, RPF and VMGFs?</p>	<p>This is possible and best practice.</p>
Ministry of Transport, Infrastructure, Housing and Urban Development	<p>The Involuntary Resettlement Policy encourages encroachers to seek for undeserved compensation and is a Pandoras box to institutions implementing projects where encroachment is common. I would prefer facilitation of this category of PAPs rather than compensation.</p>	<p>The Involuntary Resettlement Policy objective is to ensure that all displaced persons are treated with dignity and entitled to some form of compensation.</p>

Kenya Land Alliance	How do we ensure that women are assured of compensation when displacement occurs? In most cases, men get away with all the compensation funds.	There is a Marital Property Act which protects women in such cases. The RPF has also included the need to ensure that in the event that during the RAP preparation, a determination is made that men could get away with the fund, then joint accounts should be operated. The RPF also includes training and capacity building of PAPs in money management.
Pamoja Trust	Are there guidelines on Grievance Redress Mechanism? What or when is a GRM considered adequate?	The Bank has principles and characteristics of an adequate GRM.
Ministry of Energy and Petroleum	What is the scope of this RPF? There is a policy being prepared by the NLC and MOEP how will these instruments interact with one another?	This RPF is only for the IFPPP-AF it is not sector specific but project specific.
Taita Taveta County Government	How does the RPF handle historical land injustices which is a concern in our county?	The RPF has highlighted all the legal frameworks and laws in Kenya including historical land injustices. The RPF has cited the Land Act and NLC Act which has mandate to handle all historical land injustices in Kenya.
Kenya National Highways Authority	Are there specific indicators for determining during preparation of RAPs of vulnerable groups?	Yes, the RPF has highlighted indicators of PAPs who may be considered vulnerable.

ANNEX C. FORMAT OF RAP STUDY REPORT

Introduction

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

Minimizing Resettlement

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

Census and Socio-economic Surveys

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

Eligibility

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

Legal Framework

- Describes all relevant local laws and customs that apply to resettlement.
- Identifies gaps between local laws and World Bank Group policies, and describe project-specific mechanisms to address conflicts.
- Describes entitlement policies for each category of impact and specify that resettlement implementation will be based on specific provisions of agreed RAP.

- Describes method of valuation used for affected structures, land, trees, and other assets.
- Prepares entitlement matrix.

Valuation and Compensation for losses

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

Resettlement Sites

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

Integration with Host Communities;

In case there is physical resettlement of the PAPs, then the following arrangements should be detailed in the RAP

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

Income Restoration

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

Institutional Arrangements

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

Implementation Schedule

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

Participation and Consultation

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

Grievance Redress

- Describes the step-by-step process for registering and addressing grievances and provide specific details regarding a cost-free process for registering complaints, response time, and communication methods.

- Describes the mechanism for appeal.
- Describes the provisions for approaching civil courts if other options fail.

Monitoring and Evaluation

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

Costs and Budgets

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

Commitment to follow RPF guidelines and requirement

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

Annexes

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

ANNEX D: SAMPLE RESETTLEMENT SCREENING FORM

Record all complaints received from PAP and their representatives

Name of complainant, I.D No. and Telephone	Date received	Source/type of complain	Action taken	Date of action

ANNEX E: CENSUS AND LAND ASSET INVENTORY FORM

SAMPLE CENSUS SURVEY AND LAND ASSET INVENTORY FORM-

				Ward: _____	Respondent: _____
				Village: _____	Relationship with the Head of the household: _____
			√	GPS Coordinates: : W P T <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Eastings: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Northings: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
1.	1.	1.			
		2.			
		3.			
	2.	4.			
2.	3.	5.			
		6.			
		7.			
		8.			
		9.			
		10.			
		11.			
		12.			
				No. Photo camera: _____	Verified by: _____
				No. Photo/s: _____	Verification date: _____
					Entered electronically by: _____

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1. Head of Household

1.1 Name of the Head of household: 1.2 Gender: 1- M 2- F
 1.3 Age :

1.4 Identity Document: 1.4.1 Type of Document: 1.4.2 Number of Identity Document:

Identity Document - Type of document (1.4.2):

- 1- National Identity Card 2- Birth Certificate 3- Driving License 4- Passport 5- Other (specify)

1.5.1 Mother's Name:

1.5.2 Father's Name:

1.6 If from a different village, please indicate:

1.6.1 For how many years have you been living in your current village? :

1.6.2 Why are you living in this village?:

Reason why you are living in your current village (1.6.2) :

- 1- Marriage land 6- Fishing 2- Born in village 7- Trade activities 3- To look for employment 4- Exploit the wetlands 5- To look for
 8- Retirement 9- Other (specify)

1.7 Occupation of the Head of the household

1.7.1 Primary occupation:
occupation:

1.7.2 Secondary occupation:

1.7.3 Tertiary

Primary, secondary and tertiary occupation (1.7.1 – 1.7.2 – 1.7.3) :

- 1- Farmer 2- Fisherman or Fish farmer 3- Builder 4- Agricultural worker 5- Self-employed craftsman/woman 6- Employed
craftsman/woman 7- Non-employed home helper 8- Trader 9- Civil servant 10- Student 11- Housewife 19- Without
occupation/employment 20

Other.....

1.8 Education level of the household head:

Education (1.8):

- 1- Without education 2- Did not complete primary education 3- Completed primary
education 4- Did not complete secondary education 5- Completed secondary education 6- Completed technical training
 7- Completed vocational training 8- Other:

1.9 Can read and/or write: 1- Yes 2- No

1.10 Language spoken at home: 1- Kiswahili 2- English 3- Mother tongue 4- Other (specify)

.....

2. Other household members: Provide information on other household members specifying their relationship with the Head of the household

No.	Name of Household Member	Relationship with the Head of the household	Identity Document			Gender 1-M 2-F	Age	Occupation			Education	Can read and/or write
			Type	No.				Primary	Secondary	Tertiary		1 – Yes 2 – No

Relationship with the household head:

- 1- Spouse 2- Son/Daughter 3- Parent (Father/Mother) 4- In-laws 5- Brother/Sister 6- Brother/Sister-in-law
 7- Nephew/Niece 8- Grand-son/daughter 9- Cousin 10- Other parent 11- Other (specify)

Identity Document – Type of document:

- 1- National Identity Card 2- Birth Certificate 3- Driving License 4- Passport 5- Other (specify)

Primary occupation, Secondary and Tertiary:

- Refer to codification question 1.7

Education:

- Refer to codification question 1.8

3. Household's Living Conditions

3.1 Access to drinking water (more than one possible answer):

- 1- Traditional well at home 2- Borehole at home 3- House with a water tap 4- Access to public water taps outside the house
 5- Access to water sources or boreholes outside the house 6- Access to surface water
 7- Rainwater 8- Other (specify).....

3.2 Sanitary facilities (more than one possible answer):

- 1- Flush toilet in the house 2- Latrine with septic tank 3- Latrine without septic tank 4- Public toilets outside the house 5- None

3.3 Energy - Type of lighting (more than one possible answer):

- 1- Electricity (public utility) 2- Electricity (power generator) 3- Kerosene lamp/lantern 4- Wood 6- Candle
 7- None 9- Other

3.4 Energies – Cooking combustible (more than one possible answer):

- 1- Electricity 2- Kerosene 3- Charcoal 4- Gas 5- Firewood 6- Other

3.5 Household equipment: (indicate number of items if applicable)

Item	Number	Item	Number	Item	Number	Item	Number
Bicycle		Motorcycle		Truck		Car	
Mobile phone		Tractor		Motor pump		Radio	

3.6 Household equipment - Mosquito nets: Yes No

3.7 Household member (s) who contracted malaria during the past year : (indicate number for each age group if applicable)

Age groups in the household	1- M	2- F
Persons aged 0 to 5		
Persons aged 6 to 15		
Persons aged 16 to 60		
Persons aged over 60		

3.7.1 Number of pregnant women who contracted malaria during the past year:

3.7.2 Number of hospitalizations and deaths attributable to malaria during the past year:

Hospitalization:

Death:

3.8 Household member (s) who suffered from chronic illness during the past year : (indicate number for each age group if applicable)

Age groups in the household	1- M	2- F
Persons aged 0 to 5		

Persons aged 6 to 15		
Persons aged 16 to 60		
Persons aged over 60		

3.9 Vulnerable individuals living in the household

Number of disabled or chronically ill persons in the household:

Number of young children (2 year old or less) in the household:

Number of individuals more than 65 year old in the household:

	Is this a child headed household: <i>Do not ask the question if the answer is obvious</i>	YES	/	NO
	Is this a female headed household: <i>Do not ask the question if the answer is obvious</i>	YES	/	NO
	Is this an elderly headed household: <i>Do not ask the question if the answer is obvious</i>	YES	/	NO
	Is there a gravesite/yard in your land: How many?	YES	/	NO

3.10 Land plot (s) occupied by the household (all household land holdings, whether plots are affected or not)

3.11 List of land plots

No.	Affected	Total Surface Area	Current use	Tenure Regime	Name of Owner and User	
Plot	No / Partial	m ² or m x m (specify)	See codes below	See codes below	Owner – IF DIFFERENT FROM HEAD OF HOUSEHOLD	User – IF DIFFERENT FROM HEAD OF HOUSEHOLD

1		N	P				
2		N	P				
3		N	P				
4		N	P				

Control Question: have all household plots been listed in the above table? YES / NO

Use: 1- Household residence 2- Business 3- Agriculture 4- Pasture 5- Burial site 6-Traditional place of worship
7-Abandoned 8- Other (s) (specify)

Tenure: 1- Titled property 2- Non titled property 3- Rental or other occupancy regime other than ownership 4- Other (specify)

4. Structures and crops on an affected land plot occupied by the household

Product Name:

- 1- Sorghum 2- Corn 3- Sweet potato 4- Potato 5- Sunflower 6- Beans 7- Peanut 8- Peas 9- Cassava
 10- Yam
 11- Tomato 12- Cabbage 13- Onion 14- Egg plant 15- Carrot 16- Pumpkin 17-
Cucumber 18- Fodder crop 19- Mango 20- Orange 21- Banana 22- Guava 23- Avocado 24- Pineapple

5. Livestock

Do you own livestock-If yes circle as appropriate:

5.1 Goats	5.2 Sheep	5.3 Cows	5.4 Fowl	5.5 Others		
-----------	-----------	----------	----------	------------	--	--

6. Livelihood

6.1 Sources of CASH income for the household

No.	Source of income	Sector	Average Distance (km)	Activity performed on affected territory If yes, please indicate location	Annual Income of the Household		
					Nb.	Member of the Household	Amount
1.	Main source :					Head of the household	
						Spouse	

Sector:

- 1- Agriculture 2- Animal husbandry 3- Fishing and/or fish-farming 4- Handicraft
 5- Construction 6- Property rental 7- Trade 8- Civil service 9- Pension
 Government or NGO 10- Economic support: Family or friends 11- Economic support:
 12- Other (specify)

7 Main expenses of the household (specify amounts based on the reference period of your choice – Week, Month OR Year- in each category)

No.	Main expenses of the household	Amount		
		Choose the reference period:		
		Week	Month	Year
1.	House rental			
2.	Rental of agricultural land			
3.	Agricultural input			
4.	Food			
5.	Drinking water			
6.	Health			
7.	Transport			
8.	Education			
9.	Other (specify):			

10.	Other (specify):			
11.	Other (specify):			

Household’s perceptions in relation to the project and to available compensation and resettlement options

7.1 Are you aware of the Project? 1- Yes 2-No

7.2 What is your main source of information about this project?

- 1- Members of your family
- 2- Neighbors
- 3- National or County Government
- 4- Local authorities
- 5- Other:

7.3 Are you aware that your community and land you are occupying could be affected by this project? 1- Yes 2-No

7.4 In the event that your place of residence would have to be displaced, what type of compensation would you prefer?

- 1- Resettlement by the project in a new place of residence in the same location/village
- 2- Resettlement by the project in a new place of residence in the same location/village
- 3- Cash compensation for loss of residence

7.5 In the event that your agricultural fields would be affected by the project, what type of compensation would you prefer?

- 1- Replacement fields on new agricultural land
- 2- Monetary compensation for the value of part of your agricultural plots lost to the project

7.6 In the event that the land plots you are occupying would be affected by the project, what type of compensation would you prefer for the structures including those where you live?

- 1- Reconstruction of affected structures by the project
- 2- Monetary compensation for parts of your structures affected by the project
- 3- Other (specify):

7.7 In the event that you would be resettled, what type of assistance would you need during resettlement? (More than one possible answer)

- 1- Assistance for the transportation of the household’s goods to the resettlement site
- 2- Personalized assistance for specific transportation of one or several members of the household due to their health conditions
- 3- No assistance 4- Other (specify):

7.8 How do you think this project could affect your household?

No.	Theme	Impact	
		Type	Explanation
1.	Household incomes		
2.	Household expenses		
3.	Employment of members of the household		
4.	Household’s access to electricity services		
5.	Household’s social network		
6.	Other (specify):		
7.	Other (specify):		

How affected:

- 1- Positive 2- Negative 3- Without impact 4- Don’t know

8.0 Conclusion

8.1 Does the inventory of the household’s goods and socio-economic conditions reflect reality? 1- Yes 2-No

8.2 Did household express complaints in the inventory of assets? 1- Yes 2-No

If yes, please describe complaints made:

.....

.....
.....

8.3 Respondent: Head of household 1- Yes 2-No 8.3.1 If no, please indicate respondent's identity number :
.....

8.4 Signature of the respondent:.....

PLOT / STRUCTURES / CROPS QUESTIONNAIRE –Structures and crops/Trees on every project-affected land plot

6.1 List and description of structures of the affected land plot

6.2.1 Main structures on the land plot affected by the project (List the main structures used for housing or business activities. Indicate the other structures in the secondary structures table (6.2.2))

# Struc.	Camera Number Pictures Number	Surface area (m ²)	Affected	Number of				Nature of			General Condition	Present Use	Tenure Regime	Amount Lease	Owner of the Structure	
			Yes / No	Rooms (total)	Bed- rooms	doors	Win- dows	Floor	walls	roof					Type	Name (ID nber and address if not member of the household)

Camera and photograph (s) number (s):

Indicate corresponding numbers

Nature of the floor:

1- Clay 2- Cement 3- Tiled floor 4- Other (please specify).....

Nature of the walls:

1- Mud and wattle 2- Mud and wattle + cement 3- Laterite mud bricks 4- Cooked bricks 5- Cement/concrete blocks
 6- Stones 7- Boards 8- Plastic shifting/Cardboard 9- Other (please specify)

Nature of the roof:

1- Corrugated iron sheets 2- Locally-made tile 3- Industrial tile 4- Concrete 5- Cardboard/shifting 6- Straw 7- Other (please specify)

Current use: (more than one possible answer)

1- Residential (house) 2- Commercial 3- Agricultural 4- Place of worship 5- Other (please specify).....

Tenure regime:

- 1- Ownership
 2- Tenancy
 3- Occupied without authorization
 4- Other (please specify)

6.2.2 Secondary structures on the land plot affected by the project (Non-residential - such as granaries, sheds, workshops, stables, pigsties, etc.)

No. Struc.	Type of structure	Surface m2	Materials	Number of Units	Affected	Owner of the Structure	
					Yes / No	Type	Name (ID nber and address if not member of the household)

Type of structure:

- 1- Latrines
 2- Well
 3- Bath room
 4- Grain store
 5- Animal shed
 6- Septic tank
 11- Other (s) (please specify)

Construction materials for the structure:

- 1- Mud and wattle
 2- Mud and wattle + cement
 3- Laterite mud bricks
 4- Baked bricks
 5- Cement/concrete blocks
 6- Stones
 7- Boards
 8- Plastic shifting/Card board
 9- Other (please specify)

List and description of crops grown on project-affected land plots

6.3.1 Annual crops grown on project-affected land plots

Species:

- 1- Sorghum 2- Maize 3- Sweet potato 4- Irish Potato 5- Beans 6- Groundnut 7- Peas 8- Cassava
 9- Yam 10- Millet 11- Tomato 12- Cabbage 13- Onion 14- Egg plant 15- Carrot 16- Pumpkin 17- Cucumber
 18- Fodder crop (19- Other (s) (please specify).....

6.3.2 Perennial crops/Trees grown on project-affected land plots

Crop	Age	Number		Average Anticipated Production per year		Use (%)		Crops Owner		
15.1.1.1.1.1	15.1.1.1	15.1.1.1	15.1.1.1.1.1	15.1.1.1.1.5	C u a n t i t y	15.1.1.1.1.6	V a l u e	15.1.1.1.1.7	15.1.1.1	15.1.1.1.1.10 Name (ID nber and address if not member of the household)

Species:

- 1- Mango 2- Orange 3- Bananas 4- Guava 5- Citrus 6- Avocado 7- Pineapple 8- Other (s) (please specify)

.....

Age:

- 1- Young - non-productive 2- Young - productive 3- Mature - productive 4- Old – non-productive

List and description of community assets in project-affected land plots

Is there a grave or communal grave in project site? _____ Yes-If Yes How Many? No

Is there a community well in project site? _____ Yes-If Yes How Many? No

Is there a community church in project site? _____ Yes-If Yes How Many? No

ANNEX F: SAMPLE GRIEVANCE REDRESS FORM

Resettlement Action Plan Public Grievance Form

RAP Reference No.	
Contact Information Please mark how you wish to be contacted (mail, telephone, e-mail)	Address: Telephone:- Email:-
Preferred Language for Communication(Please mark how you wish to be contacted)	English Kiswahili
National Identity Number	
Description of Incident or Grievance: What happened? Where did it happen? Who did it happen to? What is the result of the problem	
Date of Incident/ Grievance	
	One time incident/ grievance (date-----) Happened more than once (How many times-----) Ongoing (Currently experiencing problem.....)
What would you like see happen to resolve the problem?	

[Empty rectangular box for signature or stamp]

Signature: Date:

Please return this form to: RAP COMMITTEE

ANNEX G: Sample Grievance and Resolution Form

Name (Filer of Complaint): _____

ID Number: _____ (PAPs ID number)

Contact Information: _____ (Village; mobile phone)

Nature of Grievance or Complaint:

Date

Individuals Contacted

Summary of Discussion

Signature _____ Date: _____

Signed (Filer of Complaint): _____

Name of Person Filing Complaint : _____ (if different from Filer)

Position or Relationship to Filer: _____

Review/Resolution

Date of Conciliation Session: _____

Was Filer Present? : _____ Yes _____ No _____

Was field verification of complaint conducted? _____ Yes _____ No _____

Findings of field investigation:

Summary of Conciliation Session

Discussion: _____

Issues _____

Was agreement reached on the issues? Yes No

If agreement was reached, detail the agreement below:

If agreement was not reached, specify the points of disagreement below:

Signed (Conciliator): _____ Signed (Filer): _____

Signed: _____ Date: _____

Independent Observer

Annex H. Proposed National Pipeline Projects To Be Supported Under IFPPP-AF

S/NO	Project	Project preparation phase to be supported	Estimated Cost (US\$ '000)
National Government			
1	Energy Auction projects	FS + Procurement	3,500
2	300 Bed Private Hospital	Procurement	1,500
3	Nairobi Commuter Rail	FS + Procurement	2,500
4	JKIA Greenfield Terminal	FS + Procurement	3,000
5	Tourism Information Center	FS + Procurement	2,100
	TA for 2 nd Wave Tollroads:		
6	Thika -Nanyuki - Lewa	FS + Procurement	7,500@1,500ea
7	Mau Summit - Eldoret - Malaba		
8	Mau Summit - Kisumu		
9	Mombasa - Malindi		
10	Ring Roads -Nairobi		
11	2 nd Umbrella Student Hostels Program		4,000
	Sub-total		24,100
County Government			
1	Nairobi Bulk Water Supply	Procurement	1,500
2	Murangá Water Supply	Procurement	1,500
3	Nakuru Solid Waste Management	Procurement	2,000
4	Potential Affordable Housing projects within the counties- Other counties to be considered other than Nakuru	FS + Procurement	2,400
5	SWM, Health Services, Water Supply, County Roads, Agriculture, County markets	FS + Procurement	3,000
	Sub-total		10,400
	Contingency		4,500
	Total		39,000

