
GOVERNMENT OF KENYA

MINISTRY OF FINANCE



RESETTLEMENT POLICY FRAMEWORK (RPF)

FOR

**INFRASTRUCTURE FINANCE AND PUBLIC-PRIVATE
PARTNERSHIP (PPP) PROGRAM**

EXECUTIVE SUMMARY

April, 2012

Prepared By;
MAINA GITHINJI
P o Box 58911-00200
Tel 0724 -527506
Nairobi, Kenya

Definitions of Key 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:

- 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
- Business, occupation, work, place of residence or habitat adversely affected; or
- 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;

- Standard of living adversely affected;
- 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
- in part, permanently or temporarily adversely affected; or
- 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, KPLC, 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; (v) households without security of tenure; and (vi) ethnic minorities.

Abbreviations and Acronyms

AFTFE	Finance and Private Sector Development Unit
APL	Adaptable Program Lending
BDM	Banking and Debt Management
CPS	Country Partnership Strategy
DMD	Debt Management Department
ERS	Economic Recovery Strategy
ESMF	Environment and Social Management Framework
ESMID	Efficient Securities Markets Institutional Development
FEUFS	Financial Solutions Unit
GETPPP	Global Expert Team on PPPs
GOK	Government of Kenya
IFC	International Finance Corporation
IMSWM	Integrated Metropolitan Solid Waste Management
KeNHA	Kenya National Highway Authority
KeRRA	Kenya Rural Roads Authority
KISIP	Kenya Informal Settlements Improvement Programme
KMP	Kenya Municipal Programme
KURA	Kenya Urban Roads Authority
LEGPS	Private Sector Development, Finance and Infrastructure Unit
MoF	Ministry of Finance
NRMP	Natural Resources Management Programme
NUTIP	National Urban Transport Improvement Project
OP	Operational Policies
PAPS	Project Affected Persons
PCN	Project Concept Note
PCT	Project Coordination Team
PDF	Project Development Fund
PER	Public Expenditure Report
PPIAF	Public Private Infrastructure Advisory Facility
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
WB	World Bank
WSP	Water and Sanitation Program

EXECUTIVE SUMMARY

Background

A Public Private Partnership (PPP) describes a contractual agreement between a public agency and a private sector entity. Through this agreement the skills and assets of each sector (public and private) are shared in delivering a service or facility for use of the general public. In addition to the sharing of resources, each party shares the potential risks and rewards in the delivery of the service and/or facility.

The Government of Kenya (GOK) has requested World Bank assistance to prepare the GOK Infrastructure Finance and Public-Private Partnership Program (IFPPP). This GOK IFPPP Program will support the Government of Kenya to tackle the binding infrastructure constraints that hamper firm productivity and employment generating growth. The project seeks to increase infrastructure service levels and quality through supporting private sector participation through an IFPPP financing model and has four primary components:

- (i) PPP Pipeline Preparation and Transaction Advisory Support;
- (ii) PPP Institutional Building – Legislative, Policy and Systems, Fiduciary and Financial Capacity Building for PPPs;
- (iii) Facilitating the Provision of Long Term Development Finance; and
- (iv) Project Management and Monitoring and Evaluation.

The potential projects in PPP pipeline will be in these areas:

- Transport: rehabilitation of airport/ aerodrome facilities, new/ rehabilitation of existing railway lines, rehabilitation of sea ports including container terminals, cargo villages, reclamation and dredging and new, expansion and rehabilitation of existing Roads;
- Energy: dams, Hydroelectric power plants, transmission lines, gas treatment and power plants, and Laying of gas pipelines;
- Urban Water Supply: dams/ weirs, water abstraction, pipelines laying, drilling of boreholes, new/ rehabilitation of water treatment Plants; and
- General: commercial mixed developments- offices, housing estates etc.
- Agriculture: dams, river diversions, irrigation canals, plantation development, etc;
- Health: rehabilitation/ new health care facilities, biomedical waste treatment and disposal;
- Solid Waste: landfill sites;

Rationale and Justification for RAP

The impacts due to involuntary resettlement from development projects, such as the ones under PPP Program, may give rise to economic, social and environmental risks resulting in production systems being dismantled, people facing impoverishment when their productive assets or income sources are lost, people being relocated to environments where their productive skills may be less applicable and the competition of resources increases;

community institutions and social networks being weakened; kin groups being dispersed; and cultural identity, traditional authority, and the potential for mutual help being diminished or lost. The resettlement policy may be triggered because the project activity causes land acquisition, namely: a physical piece of land is needed and people may be affected because they are cultivating on that land, they may have buildings on that land, they may use the land for water and grazing of animals or they may otherwise access the land economically, spiritually or any other way which may not be possible during and after the project is implemented. Therefore, people will appropriately be compensated for their loss (of land, property or access) either in kind or in cash, of which the former is preferred. This Resettlement Policy Framework (RPF) has been developed in line with (OP 4.12) to provide guidelines on how the projects will avoid, manage or mitigate potential risks and the process by which Resettlement Action Plans will be prepared and implemented during the project implementation period.

Objectives of the Resettlement Policy Framework

The principal governing objectives of this Resettlement policy 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.

Possible types of Resettlement

Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land or resource acquisition that result in displacement. This may occur in case of (i) lawful expropriation or restrictions on land or resource use based on eminent domain and/or (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail. The 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 resettlement policy framework focuses on direct economic and social impacts that result from the projects, and are caused by:-

- a) The involuntary taking of land or other resources resulting in

- 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.

Legal, Regulatory and Institutional Frameworks

Under the new Constitution, the Land Act legislations are being consolidated and rationalised to a new Land Bill 2011 that has four pieces of legislation as follows:-

1. National Land Bill – discusses Land issues in general and establishes mechanisms for Land acquisition;
2. Land and Environmental Court – this establishes a court to deal with all land disputes;
3. Land Registration Bill;
4. The Community Land Bill.

Other Legal and Institutional frameworks to be considered in the preparation of RAP includes but not limited to the following: PPP Bill 2012 (under review), Physical Planning Act, World Bank OP 4.12, and IFC Performance Standards on Involuntary Resettlement.

Process for Screening, Preparation and Review of RAPs

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

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

Preparation and Implementation of RAP

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

This will involve:

- Consultation (a continuation of the process entered into during the site selection, screening and the RAP development process);
- Notification to affected parties;
- Agreement on compensation, including agreement and further development of rehabilitation measures; and
- Preparation of contracts, compensation payments and provision of assistance in resettlement.

Mechanism for Notifications, Consultations and Participation of Displaced Persons in the PPP Program

The Project (through the appropriate implementing authority) shall by public notice, and publicly announced in the media (Daily newspapers, National Television, National Broadcasting Radios), notify the public of its intention to acquire land earmarked for the project. To obtain cooperation, participation and feedback, the resettled persons and hosts will be systematically informed and consulted during the preparation of the resettlement plan. They will be fully informed of their rights and options to enable them to choose from a number of acceptable resettlement alternatives and to lodge grievances appropriately. Particular attention will be given to vulnerable groups such as the landless, and women to ensure that they are represented adequately in the process. Meaningful consultation and participation gives PAPs the opportunity to contribute to the design and implementation of project activities and reduce the likelihood of conflicts and displacement. PAPS should be fully informed on the process of Land acquisition and be involved in data collection.

Eligibility Criteria for various categories of PAPs

One paramount principle of World Bank safeguards is that where people are affected by an 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. Compensation principles will be as follows (i) Compensation shall be paid prior to displacement / land entry and (ii) Compensation will be at full replacement value.

The following criteria, based on OP 4.12 will be used to determine compensation eligibility:-

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

Methods of Valuing Affected Assets

At this stage of the project, it is not possible to estimate the exact number of people who may be affected by the project as the technical designs and details (including locations) of the subprojects have not yet been developed or finalized. In addition, since the subproject locations have not been identified, it will be assumed that the PPP projects may cover several types of land, including urban, peri-urban and rural segments. To the extent possible, the project will avoid land acquisition/involuntary resettlement.

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

Grievance Redress Mechanisms

A key element of the resettlement process will be the development and implementation of a grievance mechanism. Grievance procedures are required to ensure that PAPs are able to lodge complaints or concerns, without cost, and with the assurance of a timely and satisfactory resolution of the issue. The procedures ensure that the entitlements for compensation, resettlement or both are effectively delivered to the intended beneficiaries. At the time that the individual RAPs are approved and individual compensation contracts are signed, affected individuals and households will have been informed of the process for expressing dissatisfaction and how to seek redress. The grievance procedure will be simple and will be administered as far as possible, at local levels to facilitate access by PAPs. All grievances concerning non-fulfilment of contracts, levels of compensation, or seizure of assets without compensation shall be addressed to the Project Liaison Officer and resolved in coordination with the District Administration and PCT in PPP Program. Compensation and resettlement plans (contracts) will be binding under statute, and will recognize that customary law is the law that governs land administration and tenure in the rural/village areas. The grievance redress mechanisms is designed with the objective of solving disputes at the earliest possible time, which will be in the interest of all parties concerned and therefore, it implicitly discourages referring such matters to a Tribunal for resolution.

Organizational Elements and Procedures for Delivery of Entitlements

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

Institutions which will participate in the exercise and their responsibilities are described in Table below.

No	Institution	Responsibility
1.	PPP Office	<ul style="list-style-type: none"> • Overall supervision of the RPF and Resettlement/Compensation Plan • To provide funds for compensation payment.
2.	PPP Implementing Agency	<ul style="list-style-type: none"> • Trigger the process of resettlement through inventory of affected persons and assets and implement RAPs/ARPs in close consultation with Consultant(s)
3.	National Environment Management Agency (NEMA)	<ul style="list-style-type: none"> • Review and monitor Environmental and Social Impact Assessment and Resettlement Planning • Review ESMF and RPF and related documents
4.	Regional Planning Coordination Unit of Regional Coordinating Council (RCC)	<ul style="list-style-type: none"> • To liaise with district and PPP implementing Agency in ensuring peaceful implementation of the process.
5.	Regional Land Valuation Officers of the Lands Valuation Division	<ul style="list-style-type: none"> • To assist in the valuation and compensation payment process and reporting
6.	District Administration (DDC)	<ul style="list-style-type: none"> • Ensure proper implementation of subprojects within their Districts • Play a crucial role in ensuring alignment of resettlement and compensation arrangements with the District Development strategy • Assist the community and support in the inventory of affected persons
7.	Local authorities	<ul style="list-style-type: none"> • To liaise with PPP Implementing Agency and provide consent and support for the process of land acquisition towards the development of PPP projects and also contribute to and assist with grievance redress
8.	District Land Office	<ul style="list-style-type: none"> • Ensure activities undertaken comply with the land legislation. • Assess the validity of land tenure rights of affected persons and eventually provide the land use permit for the new activity proposed by the sub-project. • Will be responsible for ensuring effective grievance mechanisms are in place
9.	CSO/ NGO	<ul style="list-style-type: none"> • Assist with sensitization, monitoring, advocacy and mediation.
10.	Local financial institutions (Banks)	<ul style="list-style-type: none"> • Safe disbursement of compensation amounts.
11.	Chief Labour Officer (CLO) of Ministry of Labour	<ul style="list-style-type: none"> • Provide qualified persons to serve as mediators and arbitrators in any labour disputes, in particular redundancy and related payment of compensation.
12.	Chief Labour Officer (CLO) , COTU representative	<ul style="list-style-type: none"> • Provide avenue for being informed about a pending redundancy of a unionized staff in an organisation and to negotiating redundancy packages for unionized members.
13.	Land Adjudication Boards/Committee	<ul style="list-style-type: none"> • Will be responsible for coordinating individual land registration and ensuring appropriate compensation payment is made for individual land expropriated. • To ensure that compensation payments are included in the requests for funds, and that they are allocated accordingly.

Monitoring and Evaluation

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

Estimated Budget

At this stage of the project, it is not possible to estimate the exact number of people who may be affected by the project as the technical designs and details (including locations) of the subprojects have not yet been developed or finalized. To the extent possible, the project will avoid land acquisition/involuntary resettlement. Therefore, this RPF does not include an estimated budget for the total cost of resettlement in the project. Once the civil works and sites are finalized, including the census of project-affected households, socio-economic study, and information on specific impacts, detailed and accurate budgets for each RAP will be prepared.

Annual Reporting and Performance Review Requirements

Annual social progress reports will be prepared and the preparation will be supported by the PPP short term technical consultants. These reports will be submitted to PPP PCT before the Bank's supervision mission arrives. The annual reports will be shared with PPP PCT in each of the project area sectors, the World Bank and other relevant government agencies.

Capacity Building and Training

Effective implementation of the Resettlement Policy Framework will require that adequate capacity enhancement within institutions and other stakeholders are undertaken. There is need for capacity building through training to the various sectors that will be involved in the PPP projects to be conducted to the Project Coordinating Team. In the initial preparatory stages, the use of consultants to prepare initial RAPs working with each of the sectors to learn on the job through pairing is recommended. It is also recommended that a capacity building and training to be conducted to the local community leaders that will be involved in the Resettlement Implementation process, early enough in the project process.