Sio-Malaba-Malakisi River Basin Management Project

Sio Sango Water Resources Development Project (Bumula District, SMM Basin)

RESETTLEMENT POLICY FRAMEWORK

GOVERNMENT OF KENYA

MARCH 2014
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<th>Description</th>
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<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
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<td>BP</td>
<td>Bank Procedures</td>
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<tr>
<td>CIWA</td>
<td>Cooperation in International Waters in Africa Trust Fund</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic of Congo</td>
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<tr>
<td>EMCA</td>
<td>Environmental Management and Coordination Act</td>
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<tr>
<td>ERS</td>
<td>Economic Recovery Strategy</td>
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<tr>
<td>ESIA</td>
<td>Environmental and Impact Assessment</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
</tr>
<tr>
<td>LA</td>
<td>Land Act</td>
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<tr>
<td>M&amp;E</td>
<td>Monitoring and Evaluation</td>
</tr>
<tr>
<td>MOF</td>
<td>Ministry of Finance</td>
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<tr>
<td>MOWI</td>
<td>Ministry of Water and Irrigation</td>
</tr>
<tr>
<td>NBI</td>
<td>Nile Basin Initiative</td>
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<tr>
<td>NEL</td>
<td>Nile Equatorial Lakes</td>
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<tr>
<td>NELCOM</td>
<td>Nile Equatorial Lakes Council of Ministers</td>
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<tr>
<td>NELSAP</td>
<td>Nile Equatorial Lakes Subsidiary Action Program</td>
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<td>NEMA</td>
<td>National Environmental Management Authority,</td>
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<tr>
<td>NIB</td>
<td>National Irrigation Board</td>
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<tr>
<td>NLC</td>
<td>National Land Commission</td>
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<tr>
<td>PCDP</td>
<td>Public Consultation and Disclosure Procedures</td>
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<tr>
<td>PRSP</td>
<td>Poverty Reduction Strategy Paper</td>
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<td>RAP</td>
<td>Resettlement Action Plan</td>
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<td>RPF</td>
<td>Resettlement Policy Framework</td>
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<td>RBM</td>
<td>River Basin Management</td>
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<td>SAPs</td>
<td>Subsidiary Action Programs</td>
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<td>SMM</td>
<td>Sio-Malaba-Malakisi</td>
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<td>WB</td>
<td>World Bank</td>
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<td>WRD</td>
<td>Water Resources Development</td>
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1. INTRODUCTION AND BACKGROUND

1.1. PROJECT DESCRIPTION AND OVERALL CONTEXT

Project Background
The proposed Sio-Sango multipurpose water resource development project is part of the investment programs advanced by Kenya to the NEL SAP for project preparation and which were prioritized through the NEL MSIOA. The prefeasibility study was completed in 2010 after which it was included in the NEL SAP Strategic Plan 2012-2016 and subsequently approved by the NEL Council of Ministers in January 2012 (NELCOM, Jan 2012). The project was prioritized due to its anticipated impacts in boosting national and regional economic development through envisaged infrastructural and non-structural interventions in irrigation development, hydropower generation, potable and livestock water supply, aquaculture & fisheries development, and catchment improvement/enhancement in the project area catchment.

The proposed project falls within the NEL SAP Policy Guidelines and country priorities, is demand driven, and will contribute towards improvement in water, food and energy security and restoration of related sub-catchments. The project will contribute towards wealth and employment creation which is in line with Kenya’s 2003 Economic Recovery Strategy (ERS), Poverty Reduction Strategy Paper (PRSP) and aspirations of Vision 2030. It will also contribute towards achievement of development targets of the NEL in areas of irrigation, hydropower, watershed management, etc.

NEL SAP has acquired grant financing through the Cooperation in International Waters in Africa (CIWA) multi-donor trust fund, to prepare this potential investment project to pipeline status through a feasibility study, detailed design and independent ESIA and RAP studies (but this does not include financing for construction or implementation of the Sio-Sango multipurpose water resource development project itself). The objective of the CIWA trust fund is to strengthen cooperative management and development of international waters in Africa to facilitate sustainable climate resilient growth through investments. No decision has yet been taken by NEL SAP-CU nor by the governments to undertake construction of the Sio-Sango multipurpose water resource development project, nor has financing been secured for this

1 NEL MSIOA – is a Multi-sectoral Investment Opportunity Analysis that was undertaken for the NEL Region, which identified and prioritized growth potentials and constraints in developing and managing the region’s water resources.
2 Kenya’s 2002 Water Policy
The level of involvement, if any, of the World Bank in the proposed Sio-Sango Multipurpose WRD project beyond the financing of the Feasibility Study, Design, ESIA and RAP (through the NCORE project) is not yet known.

**Background to the NELSAP**
The Nile Equatorial Lakes sub-basin of the Nile river basin includes a great complex of lakes, wetlands and rivers/tributaries whose geographic location can be described as either “inter-country” (i.e. crossing an international border) or “in-country” (i.e. wholly within one country, but part of the wider Nile trans-boundary system). Significant water resources management and development projects on the rivers and lakes within the Nile Basin, are therefore ‘Nile projects’ since they will have some regional implications, to a greater or lesser extent. NELSAP promotes investments in power development and trade, water resources management and development, management of lakes and fisheries, agricultural development, and control of water hyacinth. The NELSAP mission is to contribute to the eradication of poverty, to promote economic growth, and to reverse environmental degradation in the NEL region. NELSAP oversees the implementation of the jointly identified subsidiary action programs and promotes cooperative inter-country and in-country investment projects related to the common use of the Nile Basin water resources. NELSAP countries include: Burundi, Democratic Republic of Congo (DRC), Egypt, Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Tanzania, and Uganda.

**Sio-Sango Project Description**
The proposed Sio-Sango project is located along River Sio and lies in Sio-Sango village, Kabula sub-location in Kabula location of Bumula district in Bungoma County in Western Kenya.
The proposed project is envisaged to include an 18m composite (earthfill-concrete) dam with storage capacity of 6.2 MCM and reservoir inundation area of 1,010 ha. The dam will store water for potential multipurpose benefits of irrigation development of 1,199 ha, small hydropower generation of 0.05 MW, potable water supply, and restoration of critically degraded ‘hotspots’ (areas experiencing high rates of degradation) in the project’s upstream catchment of 44 km².
It is envisaged that the project will trigger the WB OP 4.12 on involuntary relocation and resettlement, resulting from the created reservoir inundation, the irrigation fields and water supply areas that are planned downstream of the proposed dam as well as created by any power transmission or distribution lines; or related to any interventions towards the restoration of critical hotspots (areas of high erosion).

1.2. RATIONALE AND OBJECTIVES OF THE RESETTLEMENT FRAMEWORK

1.2.1. Rationale

Although the project will have positive social and economic impacts, it is envisaged that it would also bring about negative social impacts that will require mitigation measures.

Given the nature of the Sio-Sango WRD project, it is inevitable that its construction would require either land acquisition and/or denial of, restriction to, or loss of access to economic assets and resources. This will trigger the relevant laws and policies in Kenya and the World Bank Operational Policy on Involuntary Resettlement (OP 4.12) and as a result there is need for resettlement planning and implementation.

The development of a Resettlement Policy Framework will guide the preparation of the Resettlement Action Plan (RAP) for the project. This RPF will thus serve as the framework within which a Resettlement Action
Plan will be developed when the project is certain of the location and specific impacts of the project and other sub-projects.

### 1.2.2. Objectives

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

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

This RPF will apply to all sub projects and activities that will lead to either land acquisition and/or denial of, restriction to, or loss of access to economic assets and resources, whether permanent or temporary.

The procedures will be carried out throughout preparation and implementation, and impacts of any potential resettlement will be included in monitoring and evaluation (M&E). When a Resettlement Action Plan (RAP) is required, it will be prepared in accordance with guidance provided in this RPF, including Property Surveys, Identification (Census) of PAPs/displaced persons, and Public Consultation and Disclosure Procedures (PCDP). The RPF follows the guidance provided in the World Bank Operational Policy on Involuntary Resettlement (OP 4.12), as described in Annex 1.

This RPF seeks to ensure that any possible adverse impacts of the proposed project activities to peoples’ livelihoods are addressed through appropriate mitigation measures, in particular, against potential impoverishment risks. These risks can be minimized by:

- Avoiding displacement of people as much as possible;
- In the event that displacement is inevitable, having a well-designed compensation and relocation process in place;
- 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 and their well-being, and restore
livelihoods.

The Nile Cooperation for Results Project, which is financing the feasibility studies, designs, ESIA and RAP preparation for the Sio-Sango WRD project, does not contain financing for the implementation of the Sio-Sango WRD project. Neither NELSAP-CU nor the Government of Kenya have made a decision to proceed with the implementation of the Sio-Sango WRD project, as the further study (financed through the NCORE project) is needed in order to make an investment decision. The involvement of the World Bank in the Sio-Sango WRD project beyond the financing of the Feasibility Study, Design, ESIA and RAP (through the NCORE) project is not yet known.

1.2.3. **Scope of the RPF**

This RPF covers the following key areas.

- Project Description and Rationale
- Legal and Institutional Requirements
- World Bank Safeguards Policies
- Basic Socio-economic Information
- Estimated Population and Categories of Affected People
- Eligibility Criteria for Categories of Affected People
- Entitlement Matrix for Resettlement and Compensation
- Methods for Valuing Affected Assets
- Organizational Arrangements and Procedures for Delivery of Entitlements
- Consultation and Participation of Affected People
- Disclosure and Notification
- Grievance Redress Mechanisms
- Implementation Schedule
- Budget and Funding Arrangements
- Monitoring Arrangements

1.3. **Potential for Adverse Social Impacts**

The prefeasibility studies carried out for Sio-Malaba-Malakisi River Basin Project in 2010, showed that the Sio-Sango project is classified as a large dam (WB OP 4.37) and therefore has potential for adverse negative social impacts that will require land acquisition and resettlement.

The proposed project would likely have direct impacts on areas where the reservoir, irrigation & drainage infrastructure, hydropower plant and water supply infrastructure will be constructed. Other negative impacts will be as a result of acquiring land for rock and soil disposal, construction of permanent camp sites and access roads. The people
occupying or using the respective lands would be permanently displaced, including loss of assets and properties and access to natural resources such as land and forests. In addition, there will be loss of income and livelihoods. Vulnerable people within the project’s demarcations will be the most affected as the project is likely to deteriorate their already vulnerable situation.

Specifically, the Sio Sango WRD project could have the following impacts (to be explored further during the Feasibility study/ESIA/RAP processes):

- There are no settlements in the proposed area for the reservoir. However, there are a few settlements in the neighbourhood of the site which could be affected.
- Loss of cultivation land, as the land in the valley is fully cultivated by farmers.
- Additional land may be needed for power transmission/distribution lines and for restoration of areas with high erosion.
2. LEGAL AND INSTITUTIONAL FRAMEWORK

This RPF will apply the laws, legislation, regulations, and local rules governing the use of land and other assets in Kenya, as well as the standards of the World Bank’s operational policy OP4.12 on Involuntary Resettlement (and, in case of any discrepancy between the two sets of standards, those most advantageous to the PAPs will prevail). Kenya’s relevant legal and institutional framework is presented in four sections: (i) Laws on Property and land rights, as defined by Kenyan law and customary practice; (ii) Expropriation/acquisition of land and compensation of land and other assets, (iii) Grievance Resolution Mechanism, specifically the legal and institutional arrangements for filing grievances or complaints and how those grievances are addressed through formal and informal systems of dispute resolution; and (iv) Comparison between national legislation and World Bank OP4.12, using equivalence and acceptability standards.

2.1. LAWS ON PROPERTY AND LAND RIGHTS IN KENYA

The Constitution of Kenya, 2010 currently in force, replaced the 1969 constitution. It was approved by 67% of Kenyan voters and was promulgated on 27 August 2010.

The new Kenya Constitution has a comprehensive Bill of Rights in Chapter Four and a well elaborated Chapter Five on Land and Environment. These two chapters provide constitutional basis for land ownership, expropriation and protection of rights to land. Land in Kenya is classified as public, community or private. Prior to the new Constitution, there were over 70 pieces of legislations, Acts and subsidiary law governing land and land matters. Under the new Constitution they are being consolidated and rationalised to four pieces of legislation as follows:-

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

Article 60 (1) states that that “Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance to the following principles:

a) Equitable access to land;
b) Security of land rights
c) Sustainable and productive management of land resources;
d) Transparent and cost effective administration of land;
e) Sound conservation and protection of ecological sensitive areas;
f) Elimination of gender discrimination in law, customs and practices related to land and property in land; and
g) Encouragement of communities to settle land disputes through the recognized local community initiatives consistent with this Constitution.

The State is permitted to regulate the use of any land, or any interest in or right over any land in the interest of defense, public safety, public order, public morality, public health, or land use planning.

According to Article 61 (1), all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.

Land is classified as public land, community land or private land and each category is defined in the subsequent articles. Public land is defined to include all minerals and mineral oils; government forests, government game reserves, water catchment areas, national parks, government animal sanctuaries and specially protected areas, gazetted roads and thoroughfares, all rivers, lakes and other water bodies as defined by law; the territorial sea, continental shelf, exclusive economic zone and the sea bed, all land between the high and low water marks, any land not classified as community or private land under the Constitution such public land shall vest and be held in trust by the national government in trust for the people of Kenya and shall be administered by the National Land Commission.

Community land includes land that is “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines,” and “ancestral lands and lands traditionally occupied by hunter-gatherer communities.” Rights are also held through traditional African systems, and rights that derive from the English system introduced and maintained through laws enacted by colonial and then the national parliament. The former is loosely known as customary tenure bound through traditional rules (customary law). The latter body of law is referred to as statutory tenure, secured and expressed through national law, in various Act of parliament e.g. Land Act 2012, Land Registration Act, 2012, Trust Land Act (cap 288) of the Laws of Kenya.

The right to property is protected in Article 40 (1) Subject to Article 65; “every person has the right, either individually or in association with others, to acquire and own property of any description; and in any part of Kenya”.
The following land tenure systems exist in Kenya.

**Customary Land Tenure**
This refers to unwritten land ownership practices by certain communities under customary law. Kenya being a diverse country in terms of its ethnic composition has multiple customary tenure systems, which vary mainly due to different agricultural practices, climatic conditions and cultural practices. However most customary tenure systems exhibit a number of similar characteristics as follows: First, individuals or groups by virtue of their membership in some social unit of production or political community have guaranteed rights of access to land and other natural resources. Individuals or families thus claim property rights by virtue of their affiliation to the group.

**Freehold Tenure**
This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. Freehold land is governed by the *Land Registration Act, 2012*. The Act provides that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights, privileges relating thereto. A freehold title generally has no restriction as to the use and occupation but in practice there are conditional freeholds, which restrict the use for say agricultural or ranching purposes only. Land individualization was demanded by the colonial settlers who required legal guarantee for the private ownership of land without which they were reluctant to invest.

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

**Public Tenure**
This is where land owned by the Government for its own purpose and which includes unutilized or un-alieneated 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 National Land Commission (NLC) which is governed by the National Land Commission Act, 2012 that specifies the role of NLC.

**The Land Act 2012**, Part III, Section 27 recognizes the capacity of a child as being capable of holding title to land. However this can only happen through a trustee and such a child shall be in the same position as an adult with regard to child’s liability and obligation to the land.

### 2.2. Expropriation / Acquisition of Land and Compensation of Land and Other Assets

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

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

The Constitution empowers the state to exercise the authority of compulsory acquisition. Land Act 2012 (LA) designates the National Land Commission (NLC) as the agency empowered to compulsorily acquire land. Article 40 of the Constitution provides that the state may deprive owners of property only if the deprivation is "for a public purpose or in the public interest," which includes public buildings, roads, way leaves, drainage, irrigation canals among others. The state's exercise of this power is left at the discretion of National Land Commission, 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 [Article 40 (4)]. 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 [Article 40 (6)].

**The Land Act, 2012**

The Land Act is the Kenya’s framework legislation regulating compulsory acquisition of land (i.e. land, houses, easements etc.). The Land Act was adopted on 2nd May 2012 and provides for sustainable administration and management of land and land based resources including compulsory acquisition.

Section 107 (1) provides for the power of entry to inspect land. Sub-section (1) states that whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf. Sub-section (2) requires that the Commission prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land.

Sub-section(5) stipulates that upon approval of a request under sub-section (1), the Commission shall publish a notice to that effect in the Gazette and the county Gazette, and shall deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.

Sub-section (8) states that all land to be compulsorily acquired shall be geo-referenced and authenticated by the office or authority responsible for survey at both the national and county government.

Under Section 108 (1) The Commission may authorize, in writing, any person, to enter upon any land specified in a notice published under section 107 and inspect the land and to do all things that may be reasonably necessary to ascertain whether the land is suitable for the intended purpose.

Section 109 provides payment for damage for inspection. As soon as practicable after entry has been made under section 108, the Commission shall promptly pay in full, just compensation for any damage resulting from the entry.

Section 110 (1) stipulates that land may be acquired compulsorily under this Part if the Commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for fulfillment of the stated public purpose.
Section 111 (1) states that if land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined. Under Subsection (2), The Commission shall make rules to regulate the assessment of just compensation.

Section 112 (1) requires that at least thirty days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land, and shall

(a) cause notice of the inquiry to be published in the Gazette or county Gazette at least fifteen days before the inquiry; and
(b) serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.

Section 113 (1) requires that upon the conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has determined to have an interest in the land. Every award shall be filed in the office of the Commission (Subsection 4).

Part III of the Land Act 2012, section 113 (2a) states that “the Commission shall determine the value of land with 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 owners of land have or have not appeared at the inquiry.”

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

- It is accrued by improvements made within two years before the date of the publication of the acquisition notice, unless it is proved that such improvement was made in good faith and not in contemplation of the proceedings for compulsory acquisition. It is accrued by land use contrary to the law or detrimental to the health of the occupiers of the premises or public health.
- Any damages sustained or likely to be sustained by reason of severing such land from other land owned by the claimant.
- Any damage sustained or likely to be sustained if the acquisition of
the land had negative effects on other property owned by the claimant.

- Reasonable expenses, if as a consequence of the acquisition, the claimant was compelled to change his residence or place of business (i.e., compensation for disruption to the claimant’s life).
- Any damage from loss of profits over the land occurring between the date of the publication of the acquisition notice and the date the NLC takes possession of the land.

Section 114 (2) stipulates that upon acquisition of land, and prior to taking possession of the land, the Commission may agree with the person who owned that land that instead of receiving an award, the person shall receive a grant of land, not exceeding in value the amount of compensation which the Commission considers would have been awarded, and upon the conclusion of the agreement that person shall be deemed to have conclusively been awarded and to have received all the compensation to which that person is entitled in respect of the interest in that land.

Section 115 stipulates that upon the conclusion of the inquiry, and once the NLC has determined the amount of compensation, NLC will prepare and serve a written award of compensation to each legitimate claimant. 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. Land Act, 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.

A notice of award and offer of compensation shall be served to each person by the Commission. Section 120 provides that “first offer compensation shall be paid promptly” to all persons interested in land. Section 119 provides a different condition and states that the NLC “as soon as practicable” will pay such compensation. Where such amount is not paid on or before the taking of the land, the NLC must pay interest on the awarded amount at the market rate yearly, calculated from the date the State takes possession until the date of the payment.

In cases of dispute, the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying the owner of the land 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.

Once the first offer payment has been awarded, the NLC will serve notice to landowners on 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 (Section 115 & 116).

On the other side, the Commission also has 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.

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. On the expiration of that time NLC 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.

Part IX of the Land Act provides for settlement programs. Under Section 134 (1), The Commission shall, on behalf of the national and county governments, implement settlement programmes to provide access to land for shelter and livelihood.

Subsection (2) stipulates that settlement programmes shall, include, but not be limited to provision of access to land to squatters, persons displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and
displacement.

Under **The Valuers’ Act, Chapter 532**, Compensation awards will be made by the National Land Commission based on land valuation determined by registered Valuers. Besides, the Valuers Act establishes the Valuers Registration Board, which regulates the activities and practice of registered Valuers. All Valuers must be registered with the Board to practice in Kenya. The Board shall keep and maintain the names of registered Valuers which shall include the date of entry in the register, the address of the person registered the qualification of the person and any other relevant particular that the Board may find necessary.

**Physical Planning Act**
The Physical Planning Act deals with matters relating to preparation of all land use plans, physical development plans and subdivisions. The powers of expropriation of land are vested in the Minister for Lands while the planning and surveys are vested in the Director of Lands and the Surveyor General respectively. The introduction of a devolved system of Government gives the function of county planning to the County while “General principles of land planning and the coordination of planning by counties” remains a national function.

### 2.3. Grievance Resolution Mechanism

Section 128 of the **Land Act 2012** states that any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination.

**The Kenya Constitution, 2010** 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 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.

2.4. **WORLD BANK POLICY OP 4.12 (INVOLUNTARY RESettlement)**

The World Bank policy on involuntary resettlement emphasizes that any development project should avoid or minimize involuntary resettlement and where this is not feasible, it should compensate for lost assets at full replacement cost and assist the displaced persons in improving or at least restoring their livelihoods and standards of living in real terms relative to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

The World Bank OP 4.12, Annex A (Paragraphs 17-31), describes the scope (level of detail) and the elements that a resettlement plan should include.

WB OP 4.12.(6a) demands that the resettlement plan includes measures to ensure that displaced persons are (i) informed about their options and rights, (ii) consulted on, offered choices among others and provided with technically and economically feasible resettlement alternatives, and (iii) provided prompt and effective compensation at full replacement costs.

WB OP 4.12 (8) requires that particular attention should be paid to the needs of vulnerable groups among those displaced such as those below the poverty line, landless, elderly; women and children and indigenous peoples and ethnic minorities.

WB OP4.12 (12a) states that for households depending on land for their livelihoods preference should be given to land based solutions; however, payment of cash compensation for lost assets may be appropriate where livelihoods are land-based but the land taken for the project is a small fraction (less than 20%) of the affected asset and the residual is economically viable.

WB OP4.12 Para (6 b & c) state that in case of physical relocation, displaced persons should be (i) provided with assistance (such as moving allowances) during relocation; and (ii) provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, location advantages, and other factors is at least equivalent to the advantages of the old site.

WB.OP 4.12 (13 a) stipulates that any displaced persons and their communities and any host communities receiving them should be provided with timely and relevant information, consulted on resettlement options and offered opportunities to participate in planning, implementing and monitoring resettlement.
In addition displaced persons should be offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and provided with development assistance in addition to compensation measures such as land preparation, credit facilities, training, or job opportunities.

WB OP4.12 Para 13 (a) requires that appropriate and accessible grievance mechanisms are established to sort out any issues arising.

2.5. **Comparison Between National Legislation and WB OP 4.12**

There are a number of differences between the Kenyan laws and World Bank Safeguard policies, such as:

The World Bank OP 4.12 favors avoidance or minimization of involuntary resettlement while the Kenyan laws say that, as long as a project is for public interest, involuntary resettlement is considered to be inevitable.

World OP 4.12 stipulates that Displaced persons should be assisted in improving livelihoods or at least restoring them to previous levels. Kenyan legislation (Land Act) provides for ‘just and fair compensation’. However, ‘just and fair compensation’ 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.

A comparison of the Kenyan laws and WB requirements regarding compensation is given in Table I.
<table>
<thead>
<tr>
<th>Category of PAPs/ Type of Lost Assets</th>
<th>Kenyan Law</th>
<th>World Bank OP4.12</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Owners (loss of land)</td>
<td>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. Land Act 2012 provides for census through NLC inspection and valuation process. Fair and just compensation which could be in form of cash compensation or Land for Land.</td>
<td>Identification of PAPs is done through census and socio-economic surveys of the affected population. PAPs with title as well as PAPs who do not have a formal title but have customary and traditional right recognized under Kenyan law or who have a recognized claim to the land at the time the census begins – are entitled to compensation for land that they lose (besides other assistance – see below) Land-for-land exchange is the preferred option; compensation is to be based on replacement cost.</td>
<td>Although the Kenyan law provides for land for land compensation, it does not state explicitly whether preference should be given to land for land option. Preference should thus be given to land for land compensation.</td>
</tr>
<tr>
<td>Land Squatters (i.e. those who have no recognizable legal right or claim to the land that they are occupying)</td>
<td>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.</td>
<td>Must be compensated for houses and other structures whatever the legal recognition of their occupancy (see below). Entitled to compensation for loss of crops and assistance for relocation as the case may be, and assistance for restoration of livelihood (see below).</td>
<td>WB OP4.12 prevails</td>
</tr>
<tr>
<td>Land Users/ Land Sharecroppers</td>
<td>The Land Act is not clear on Land Users although in some cases they can receive some form of compensation depending on the determination by NLC.</td>
<td>No specific provisions to land compensation. Entitled to compensation for crops,</td>
<td></td>
</tr>
</tbody>
</table>

Table I: Comparison of Kenyan and World Bank Policies on Resettlement and Compensation
<table>
<thead>
<tr>
<th>Category of PAPs/Type of Lost Assets</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Owners of non-permanent buildings</td>
<td>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.</td>
<td>Entitled to relocation assistance as the case may be, and income must be restored to at least pre-project levels (see below).</td>
<td></td>
</tr>
<tr>
<td>Owners of permanent buildings</td>
<td>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.</td>
<td>Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.</td>
<td>WB OP.4.12 prevails</td>
</tr>
<tr>
<td>Perennial and annual Crops</td>
<td>Cash compensation for the loss of crops</td>
<td>Market value for lost crops. Income restoration assistance (such as land preparation, credit facilities, training etc). Land for land compensation allows people to re-establish annual crops immediately.</td>
<td></td>
</tr>
<tr>
<td>Seasonal crops</td>
<td>Cash compensation for the loss of crops</td>
<td>Market value for lost crops wherever arrangements cannot be made to harvest.</td>
<td>WB OP.4.12 prevails</td>
</tr>
<tr>
<td>Livelihood restoration and development assistance</td>
<td>Not specific on livelihood. The constitution says some pay maybe made in good faith</td>
<td>Livelihoods and living standards are to be restored in real terms to pre-displacement levels or better. Offer support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore livelihoods and standards of living (for ex. land preparation, jobs, credit facilities).</td>
<td>WB OP.4.12 prevails</td>
</tr>
<tr>
<td>Timing of compensation</td>
<td>The Land Act provides for prompt, just</td>
<td>Implement all relevant resettlement</td>
<td>Follow the</td>
</tr>
<tr>
<td>Category of PAPs/Type of Lost Assets</td>
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</tr>
<tr>
<td>payments</td>
<td>compensation before the acquisition of land.</td>
<td>plans before project completion and provide resettlement entitlements before displacement or restriction of access. For projects involving restrictions of access, impose the restrictions in accordance with the timetable in the plan of actions.</td>
<td>principles of OP.4.12</td>
</tr>
<tr>
<td>Consultation and disclosure</td>
<td>The Land Act outlines procedures for consultation with affected population by the NLC and grievance management procedures.</td>
<td>Consult project-affected persons, host communities and local NGOs, as appropriate. Provide them opportunities to participate in the planning, implementation, and monitoring of the resettlement program, especially in the process of developing and implementing the procedures for determining eligibility for compensation benefits and development assistance (as documented in a resettlement plan), and for establishing appropriate and accessible grievance mechanisms.</td>
<td>Implement consultation procedures as outlined in both Kenyan legislation and World Bank.</td>
</tr>
<tr>
<td>Relocation assistance and resettlement assistance</td>
<td>The Land Act does not out rightly stipulate assistance for relocation</td>
<td>Avoid or minimize involuntary resettlement and, where this is not feasible, assist displaced persons in improving or at least restoring their livelihoods and standards of living in real terms relative to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher Moving allowances</td>
<td>WB OP4.12 takes precedence</td>
</tr>
<tr>
<td>Grievance mechanism and dispute resolution</td>
<td>Land Act 2012 clearly outlines the steps and process for grievance redress that includes alternative dispute resolution, re-negotiation with NLC and is backed by the judicial system</td>
<td>Establish appropriate and accessible grievance mechanisms</td>
<td>No gap</td>
</tr>
<tr>
<td>Category of PAPs/Type of Lost Assets</td>
<td>Kenyan Law</td>
<td>World Bank OP4.12</td>
<td>Comment</td>
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<tr>
<td>through the Environmental and Land Court</td>
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</tr>
</tbody>
</table>

In regard to this project, land to be acquired will be subject to the Laws of Kenya and the World Bank OP4.12. In the event of divergence between the two, the policy which will be considered to be of a comparatively higher standard shall apply.
2.6. Project Organization AND Implementation Arrangements

The preparation and implementation of the resettlement strategies will require the participation of several institutions at different levels. Coordination of the participating institutions is a critical requirement to a successful resettlement program. It is always preferred to have this addressed early into the project cycle, so that all participating parties are made aware of each other’s responsibilities, lines of reporting, communication channels, expectations and authority limits.

Nile Equatorial Lakes Subsidiary Action Program (NELSAP)
NELSAP will be responsible for overall technical and fiduciary oversight for the project during project preparation (including feasibility study, design, ESIA and RAP). The Social Development Officer at NELSAP-CU will be responsible for providing technical support to the country, while other members of the NCORE project team at NELSAP-CU will provide fiduciary management and overall quality control. In implementing this project, the NELSAP CU will ensure close coordination with other on-going country and basin projects, to ensure information exchange.

Ministry of Agriculture, Livestock and Fisheries
The mandate of the Ministry of Agriculture is to promote and facilitate production of food and agricultural raw materials for food security and incomes; advance agro based industries and agricultural exports; and enhance sustainable use of land resources as a basis for agricultural enterprises. This ministry is a potential beneficiary of the project especially through crop irrigation but is also a likely victim of the project through floods that could result into crop destruction.

The project will be implemented by the Ministry of Agriculture, Livestock and Fisheries. The Ministry shall be responsible for mobilization of funds for the project from the Ministry of Finance (MOF). The ministry will also ensure that all laws, policies and Social Safeguards are adhered to (in collaboration with the national environmental authority).

Ministry of Water and Irrigation (MOWI)

The Ministry of Water and Irrigation is the lead agency for all water related projects or projects that may have an impact on water resources. Ministry of Water and Irrigation’s core functions include policy formulation, overall coordination of the water sector, supervision of department under the ministry, resources mobilization and guidance.

The Ministry of Water and Irrigation (MOWI) through its National
Irrigation Board (NIB) will play a crucial role in the implementation of the project. This is due to the fact that the major components of the project include water supply and irrigation.

**National Environment Management Authority (NEMA)**
The NEMA is established under Section 7 of the Environmental Management and Co-ordination Act No. 8 of 1999 (EMCA) as an institution with legal authority to exercise general supervision and co-ordination over all matters relating to the environment. It is the principal instrument of Government charged with the implementation of all policies relating to the environment. It is headed by the Director General appointed by the President.

The EMCA establishes several statutory committees within NEMA, namely; Standards and Enforcement Review, the National Environment Action Plan and the Environmental Impact Assessment /Technical Advisory.

NEMA will have the responsibility of assessment and monitoring of compliance of the Resettlement Action Plan to the Environmental and Social Safeguards.

**National Land Commission (NLC)**
The National Land Commission (NLC) is an independent constitutional agency that has statutory powers to undertake compulsory acquisition of private or community land for public purposes or public interest. It performs these functions on behalf of the national government and county governments. The specific powers and functions of the NLC are set out in the National Land Commission Act 2012, and the Land Act 2012.

Key roles of NLC in the implementation of this RAP will include:
- Provide approval to request made by Ministry of Agriculture, Livestock and Fisheries to acquire land for the Sio-Sango
- Notify landholders in writing of the intention to acquire land
- Assist in resolving disputes related to compensation
- Acquire land on behalf of the Ministry of Agriculture, Livestock and Fisheries
- Undertake public consultation on intended acquisition
- Undertake actual payment of entitlement awards to PAPs

**Ministry of Lands**
The Ministry of Lands will play an important role in the RAP process as land management in Kenya is vested in the Government under this Ministry. The Ministry is made up of the five departments namely the
Department of Administration and Planning, Department of Lands, Department of Land Adjudication and Settlement, Department of Survey and Department of Physical Planning.

The Ministry of Lands is charged with the enforcement and regulation of all the Acts relating to land.

**Local Governments**
Local government authorities will work with the Implementing Agency to provide support for the process of land acquisition for the project. They will also be involved in the grievance resolution process.

**Non-Governmental Organizations and Civil Society Organisations**
Independent NGOs and Civil Society Organizations will be involved in the implementation process of the Resettlement Action Plan. Activities they can be involved in may include witnessing the RAP process, overseeing of livelihood restoration programs, monitoring and evaluation of the RAP activities etc.

**Local people / Project Affected Persons**
Local communities / Project Affected will play a role of community policing to ensure that the rightful owners of the property are the ones compensated.

**National Focal Point Officer**
A National Focal Point Officer and technical experts appointed by the Government of Kenya from the relevant ministries and agencies will coordinate national level activities and ensure project coordination with relevant national institutions and development projects.

**Project Task Team**
A project task team comprising government technical staff for each project will be formed for the irrigation scheme to be developed. Members of the team will meet as needed and will be responsible for monitoring project progress and resolving implementation constraints.

As the decision to proceed with the implementation of the Sio-Sango project has not yet been taken (the studies to be conducted by NELSAP will help yield the information needed to make these investment decisions), the organizational arrangements for the implementation of the project has not yet been finalized. These will be further elaborated through the feasibility study/ESIA and RAP processes.

**Capacity Assessment and Capacity building**
The ESIA/RAP preparation process will undertake an assessment of the capacity and capability of the indicated implementing agencies in managing and implementing the social safeguards (including the future RAPs and any other related social issues). The scope of assessment is to cover human resources - numbers and skills; tools; structural arrangements and operating environments. The ESIAs/RAPs will include information on how any identified gaps could be bridged (including types of capacity building activities) and will be taken forward in advance of, and during, the RAP implementation.

In addition, the ESIA and RAP preparation process shall include an analysis of performance of implementation of past RAPs in Kenya, with lessons, challenges and recommendations (on management, implementation, monitoring and reporting, as well as practical challenges of financial commitments) on effective implementation of this RPF/RAP.

In addition, NELSAP-CU has plans for capacity building of its staff and those of the government during the early implementation of this RPF, in order that those involved will be able to more successfully implement this RPF. This will build upon past trainings on World Bank safeguards and Resettlement implemented by NELSAP-CU. More detail is provided in the budget section of this RPF.
3. SOCIO-ECONOMIC BACKGROUND

3.1 APPROACH FOR IDENTIFYING PROJECT AFFECTED PERSONS

As soon as the locations of a subproject has been determined, a land survey demarcating the required project’s land will be undertaken after which the identification of project’s affected persons will be undertaken. The PAPs shall be classified into three groups namely;

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

The following categories of PAPs will be used in identifying groups of PAPs for the purpose of determining impacts.

Project affected persons (PAPs) are individuals whose assets may be lost, including land, property, other assets, and/or access to natural and/or who may lose access to economic resources as a result of activities related to sub-project(s), whether permanently or temporarily.

Project affected households are groups of PAPs in one household and where one or more of its members are directly affected by the Sio-Sango Project. These include members like the head of household, male, and female members, dependent relatives, tenants, etc.

Vulnerable groups of people. From these households, the Sio-Sango Project will separately identify the vulnerable members, such as those who are old or ill; children; those stricken with HIV/AIDS; women; unemployed youth; etc. Households headed by women that depend on sons, brothers, and others for support will also be identified. Similarly, households with elderly or seriously ill or disabled persons will be identified. Vulnerable people and households will be eligible for additional support.

3.2 ESTIMATED POPULATION AND CATEGORIES OF AFFECTED PEOPLE

The prefeasibility report indicated that for the Sio-Sango project, the surrounding land is fully cultivated by peasant farmers. There are no settlements within the proposed reservoir area; however, there are some
settlements in the neighborhood which could be affected by the developments.

However, the exact number of persons that will be affected by the project will be determined through the process of finalizing the feasibility and engineering studies, as well as the socio-economic surveys and censuses when preparing the Resettlement Action Plan.

### 3.3 Creation of Baseline Information on Project Affected Persons

Before feasibility and ESIA studies of the project, NELSAP-CU and its consultants will carry out a screening to identify the areas or sites with expected resettlement impacts due to land acquisition or restriction of access to resources. At that stage, OP 4.12 calls for the preparation of separate stand-alone Resettlement Action Plans (RAPs) consistent with the guidelines provided in this RPF. The following procedural guidelines will apply when it is determined that a RAP would be developed.

1. **Screening:** NELSAP-CU and its consultants will screen each project activity to determine whether land needs to be taken. This screening process is expected to take place in July, 2014. This process would lead to the creation of a list of the number and types of infrastructure (including buildings or other structures) that sub-projects will construct that may potentially involve resettlement issues, as well as any common/public lands or parks to which access may be restricted. This list will be presented to affected communities using a sensitization and consultation process. These consultations will be documented for each site or sub-project.

2. **RAP Preparation.** As soon as the list is approved by the responsible agency implementing the project (i.e. Ministry of Agriculture, Livestock and Fisheries) and the World Bank, NELSAP-CU and its consultants will undertake a consultative and participatory process for preparing a RAP, as follows:

   (i) All potential PAPs should be identified (through a census) and informed about their options and rights pertaining to compensation for land and assets to be acquired by the sub-project(s);
   (ii) PAPs must be consulted about land acquisition and compensation and offered technical and financial options, including the most economically feasible alternatives; and
   (iii) PAPs should receive reasonable compensation at full replacement cost for losses of assets and access attributable to the sub-project.
(i) A socio-economic survey will be completed to determine scope and nature of resettlement impacts.

(ii) The socio-economic study will be carried out to collect data in the selected sub-project sites.

(iii) The socio-economic assessment will focus on the potential affected communities, including demographic data of the affected households/persons, land size owned, vulnerability, access to social services (education, health, water, and credit facility etc.), preferred options for compensation, length of residence in the area, livelihoods and income etc. The baseline information gathered on each affected person or household shall be used when monitoring and evaluating the project impacts.

Annex 2 describes the requirements for the RAP in detail. In general, the RAP contains the following information:

(i) Baseline Census;
(ii) Socio-Economic Survey;
(iii) Specific Compensation Rates and Standards;
(iv) Entitlements related to any additional impacts;
(v) Site Description;
(vi) Programs to Improve or Restore Livelihoods and Standards of Living;
(vii) Detailed cost estimates and Implementation Schedule.

3.4 SOCIO-ECONOMIC INFORMATION ON THE PROPOSED SIO-SANGO MULTIPURPOSE WRD AREA

3.4.1. Social Characterization

Sio-Sango
The proposed Sio-Sango Water Resources Development project is located along River Sio in Sio Sango village, Kabula Sub-location in Kabula Location of Bumula District in Bungoma County in Western Kenya. According to the Kenya Census (2009), Bungoma County has a population of 1,375,063, with the population of Bumula District standing at 129,011.

The economy of Bungoma County is mainly agricultural, centering on the sugarcane and maize industries. The area experiences high rainfall throughout the year, and is home to several large rivers, which are used for small-scale irrigation.

3.4.2. Land Tenure Systems
In Kenya, the tenure systems are ancestral or customary, leasehold, freehold/ and landlord/tenancy tenure. For the people in the catchment areas of the proposed site, the main land tenure is customary.
3.4.3. Gender
The population structures in Kenya reflect a bigger proportion of females as compared to males. Despite this fact, the policies, cultures and traditions have little regard for women. The SMM catchment comprises societies that cherish their cultures and closely comply with the cultural norms and traditions. There is discrimination against women in ownership and control of productive resources such as land and access to capital. Consequently, the women are poorer than the men are, and rely on public services because they have limited options.

3.4.4. Energy
Access to electricity is very low in the SMM catchment area; approximately 5 percent. Fuel wood (firewood and charcoal) are the dominant energy sources for cooking. Firewood is used for cooking by more than 90%. Paraffin is the main source of energy for lighting.

3.4.5. Water and Sanitation
The main water sources in the catchment are the rivers, small dams, lakes, ponds, boreholes, shallow wells, protected and unprotected springs, and roof catchment. Sanitation facilities mainly consist of pit latrines.

3.4.6. Diseases
Water related diseases are the most common causes of illness and death among the rural poor communities in the SMM catchment. Diarrheal diseases (Cholera and Dysentery) are among the major killer diseases of young children, accounting for about 20% of all infant deaths in the SMM catchment.

3.4.7. Social capital and Mechanisms of Social Cohesion and Social Structure
Mechanisms for social cohesions included reliance on family members as most of them stay close to each other. As expected in a group-orientated culture, the extended family is the basis of the social structure. It includes relatives on both sides of the family as well as close friends. Quite often the husband’s parents will live with the nucleus family when they get older and can no longer take care of themselves. When people marry, they join their families, thus ensuring that there is always a group to turn to in times of need.

Other mechanisms for social cohesion and social capital include religious organizations, farmers’ associations and social groups/associations to
support each other in times of need and to get credit etc.

The society in the project area is largely patrilineal in nature with the men considered to be more superior to the women. The men are the major resource owners and decision makers on several aspects including land.

### 3.4.8. Possibility of conflict

The major potential conflicts in relation to natural resources are land wrangles. These come as a result of land boundaries between neighbors and family members. The main mechanisms for resolving such conflicts include mediation by family members and village elders (in ascending order: village headman, Sub Chief and Chief). If the matter is not resolved by the Chief, it is referred to the Police for court arbitration.

At the stage of the RAP, a census of the affected populations will be undertaken and a socioeconomic economic profile of each PAP will be kept for measuring the magnitude of the impacts and for future monitoring of the PAPs.
4. ELIGIBILITY CRITERIA FOR CATEGORIES OF AFFECTED PEOPLE

4.1. INTRODUCTION

This section sets out the eligibility criteria of the different categories of PAPs that will be affected by the Sio-Sango project and other related sub projects\(^3\) for resettlement and benefits.

The involuntary taking of land, results in relocation or loss of shelter and loss of assets or access to assets or natural resources or loss of income sources or means of livelihood, whether or not the PAPs must move to another location. The WB OP 4.12 Para 15 (a, b, & c) categorizes those eligible for compensation and resettlement in three groups as shown below.

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

(b) Those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement action plan (itinerant farmers or sharecroppers) and;

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

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

All PAPs irrespective of their status or whether they have formal titles, legal rights or not, squatters or otherwise encroaching illegally on land,

\(^3\) Possible sub-projects include reservoir, irrigation, water supply, power transmission and distribution, and watershed restoration.
are eligible for some kind of assistance if they occupied the land before the cut-off date. Persons who occupy the area after the socio-economic study (census and valuation) are not eligible for compensation or any form of resettlement assistance.

The entitlement cut-off date refers to the time when the valuation assessments of the land and assets/developments on the land and a census of all the affected people are complete. The date of the census will serve as the cut-off date for eligibility and no new arrivals in the project area or assets created after the cut-off date will be eligible for compensation after this date. All stakeholders including PAPs will be informed of the cut-off date and its implications. Information about the cut-off date will be disseminated mainly through public meetings, notices in local newspapers, radio announcements and through local authorities.

4.2. Eligibility for Resettlement/Relocation

Eligibility for compensation and/or resettlement will consider the following categories of PAPs:

- All those affected households whose family lands and/or assets and buildings are located within the proposed reservoir areas or in any other sub-project area.
- Households who are occupying land that will be acquired by the project and the remaining piece is considered economically unviable.

4.3. Eligibility for Community Compensation

A Community may claim compensation as a group such as farmer’s group/association. Communities permanently losing land and/or access to assets and or resources will be eligible for compensation. The rationale for this is to ensure that the pre-project socio-economic status of communities adversely impacted is also restored.

4.4. Loss of Income and Livelihood

PAPs who will be affected by a reduction in income due to the project should be considered for livelihood restoration strategies. Where necessary, PAPs will be entitled to transitional assistance, which include moving expenses and temporary residence.

Livelihood restoration strategies will be implemented during the construction of the project. Monitoring of the strategies will commence about 3 months after their implementation and will continue after the construction phase for a period of about 2 years.
4.5. Assistance to Vulnerable Groups

The compensation principles shall entail special measures and assistance for vulnerable affected persons, such as female headed households, disabled persons and the poor. PAPs will be entitled to compensation and resettlement assistance that will help in the restoration of their livelihoods to at least, pre-project standards. An entitlement matrix is given in Table II below.

Table II: Entitlement Matrix

<table>
<thead>
<tr>
<th>Land and Assets</th>
<th>Types of Impact</th>
<th>Person(s) Affected</th>
<th>Compensation/Entitlement/Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural land</td>
<td>Less than 20% of land holding affected</td>
<td>Farmer/title holder</td>
<td>Cash compensation for affected land equivalent to replacement value or Market value</td>
</tr>
<tr>
<td></td>
<td>Land remains economically viable.</td>
<td>Tenant/lease holder</td>
<td>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.</td>
</tr>
<tr>
<td>Greater than 20% of land holding lost</td>
<td>Farmer/Title holder</td>
<td>Land for land replacement where feasible, or compensation in cash for the entire landholding according to PAP’s choice.</td>
<td>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. Relocation assistance (costs of shifting + assistance in re-establishing economic trees + allowance up to a maximum of 12 months while short-term crops mature).</td>
</tr>
<tr>
<td>Land does not become economically viable.</td>
<td>Tenant/Lease holder</td>
<td>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.</td>
<td>Relocation assistance (costs of shifting + assistance in re-establishing economic trees + allowance up to a maximum of 12 months while short-term crops mature).</td>
</tr>
<tr>
<td>Land and Assets</td>
<td>Types of Impact</td>
<td>Person(s) Affected</td>
<td>Compensation/Entitlement/Benefits</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>------------------------------------------</td>
<td>--------------------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>Commercial Land</td>
<td>Land used for business partially affected</td>
<td>Title holder/business owner</td>
<td>Cash compensation for affected land</td>
</tr>
<tr>
<td></td>
<td>Limited loss</td>
<td></td>
<td>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).</td>
</tr>
<tr>
<td></td>
<td>Business owner is lease holder</td>
<td></td>
<td>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).</td>
</tr>
<tr>
<td>Assets used for business severely affected</td>
<td>Title holder/business owner</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If partially affected, the remaining assets become insufficient for business purposes</td>
<td></td>
<td>Transfer of the land to the PAP shall be free of taxes, registration, and other costs.</td>
</tr>
<tr>
<td></td>
<td>Business person is lease holder</td>
<td></td>
<td>Relocation assistance (costs of shifting + allowance)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>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.</td>
</tr>
</tbody>
</table>

Relocation assistance (costs of shifting + assistance in re-establishing economic trees + allowance up to a maximum of 12 months while short-term crops mature.
<table>
<thead>
<tr>
<th>Land and Assets</th>
<th>Types of Impact</th>
<th>Person(s) Affected</th>
<th>Compensation/Entitlement/Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Land</td>
<td>Land used for residence partially affected, limited loss Remaining land viable for present use.</td>
<td>Title holder</td>
<td>Cash compensation for affected land</td>
</tr>
<tr>
<td></td>
<td>Rental/lease holder</td>
<td>Cash compensation equivalent to 10% of lease/rental fee for the remaining period of rental/lease agreement (written or verbal)</td>
<td></td>
</tr>
</tbody>
</table>
| Land and assets used for residence severely affected Remaining area insufficient for continued use or becomes smaller than minimally accepted under zoning laws | Title holder | Land for land replacement or compensation in cash according to PAP's choice.  
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) |
<table>
<thead>
<tr>
<th>Land and Assets</th>
<th>Types of Impact</th>
<th>Person(s) Affected</th>
<th>Compensation/Entitlement/Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buildings and structures</td>
<td>Structures are partially affected  Remaining structures viable for continued use</td>
<td>Owner</td>
<td>Cash compensation for affected building and other fixed assets.  Cash assistance to cover costs of restoration of the remaining structure</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rental/lease holder</td>
<td>Cash compensation for affected assets (verifiable improvements to the property by the tenant).  Disturbance compensation equivalent to two months rental costs</td>
</tr>
<tr>
<td>Entire structures are affected or partially affected  Remaining structures not suitable for continued use</td>
<td>Owner</td>
<td>Cash compensation for entire structure and other fixed assets without depreciation, 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)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rental/lease holder</td>
<td>Cash compensation for affected assets (verifiable improvements to the property by the tenant).  Relocation assistance (costs of shifting + allowance equivalent to four months rental costs).  Assistance to help find alternative rental arrangements  Rehabilitation assistance if required (assistance with job placement, skills training)</td>
</tr>
<tr>
<td>Squatter/informal dweller</td>
<td></td>
<td>Squatter/informal dweller</td>
<td>Cash compensation for affected structure without depreciation  Right to salvage materials without deduction from compensation  Relocation assistance (costs of shifting + assistance to find alternative secure location)</td>
</tr>
<tr>
<td>Land and Assets</td>
<td>Types of Impact</td>
<td>Person(s) Affected</td>
<td>Compensation/Entitlement/Benefits</td>
</tr>
<tr>
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</tr>
<tr>
<td></td>
<td></td>
<td>Street vendor (informal without title or lease to the stall or shop)</td>
<td>accommodation) to area where he/she can live and work legally preferably in the community of residence through involvement of the project. Alternatively, assistance to find accommodation in rental housing or in a squatter settlement scheme, if available. Rehabilitation assistance if required assistance with job placement, skills training.</td>
</tr>
<tr>
<td></td>
<td>Standing crops</td>
<td>Crops affected by land acquisition or temporary acquisition or easement</td>
<td>PAP (whether owner, tenant, or squatter)</td>
</tr>
<tr>
<td></td>
<td>Trees</td>
<td>Trees lost</td>
<td>Title holder</td>
</tr>
<tr>
<td></td>
<td>Temporary Acquisition</td>
<td>Temporary acquisition</td>
<td>PAP (whether owner, tenant, or squatter)</td>
</tr>
<tr>
<td></td>
<td>Community property</td>
<td></td>
<td>In kind replacement or compensation at replacement cost for land and structures</td>
</tr>
</tbody>
</table>
5. METHODS FOR VALUING AFFECTED ASSETS

This section describes the methods to be used in valuing assets that will be eligible for compensation consistent with either Kenyan laws or policies or World Bank policy on involuntary resettlement (OP 4.12).

5.1. METHOD FOR TAKING INVENTORY OF ASSETS AND PAPs

In order to prepare for compensation and other resettlement benefits, it is imperative that a comprehensive asset and affected persons inventory in the designated areas for the different project components is done. Such an inventory will be conducted by a multidisciplinary team composed of the following types of persons: - a Project Team Leader, Surveyor, Valuation Expert and Sociologist. In addition to this team, respective Location or Sub Location Chiefs plus village leaders, and a Representative of the Local Government will be present to witness the process.

Valuation Procedure
At each affected land/plot, the Valuer will take careful count of all crops and trees. In addition, the Valuer will count and measure all the affected buildings/structures in the presence of the affected person and a local leader. A Compensation Assessment Form will be filled to record all the properties affected. The licensees or sharecroppers crops will also be noted and recorded on a separate Compensation Form bearing the names of the licensee or sharecropper. The property of the sharecropper/licensee will be recorded in the presence of the landowner, the licensee/sharecropper and the area leader. All the participating parties will verify the contents of the Compensation Assessment Form and will thereafter append their signatures to this form. The affected persons will take a copy of the Compensation Assessment while the original will be retained by the Valuer.

Land Survey
A Land Surveyor will demarcate the boundary of the project land required for acquisition. He will then demarcate individual affected property so as to determine the different land areas/sizes acquired from each PAP. The surveyor will work hand in hand with the affected persons, other community members and the Local authorities (i.e. sub location chiefs and village leaders). This is mainly for purposes of transparency and confirming land boundaries and ownership of the affected property. In cases where the land owners will be absent, family members, caretakers or spouses will be encouraged to be present and represent the household. The land inventory will specify the different customary tenures under which the different affected plots of land fall.
Socio-economic Profile of Each PAP
Structured questionnaires will be administered by a team of trained Research Assistants in order to document each Project Affected Person’s profile. The team will be supervised by a Resettlement Expert. The questionnaires will be entered in a database and analyzed to estimate the magnitude of the impacts and for monitoring purposes.

The socio-economic survey will reveal a substantial amount of information on the economy and social organization of the affected community. The Resettlement Expert is expected to review this data so as to identify appropriate and sustainable interventions. Special attention will be paid to the needs of vulnerable people among the PAPs especially households with incomes below the national poverty line, including the landless, elderly, disabled, women, children, and other disadvantaged groups.

For these reasons, the project sponsor should bear in mind that resettlement may provide opportunities to an affected community to improve housing, public infrastructure and services and to engage in land use planning that contributes to the long term development objectives.

5.2. COMPUTATION OF COMPENSATION PACKAGES

Valuation and Calculation of the affected property will be based on the following:

Compensation Rates / Valuation Tables
A schedule of rates obtained from the Chief Valuer, Commissioner of Lands Office, Ministry of Lands and Settlement can be used to calculate the replacement cost. The compensation rates / valuation tables should be acceptable to both the Donor Agency (WB), to the Government of Kenya and other stakeholders.

Rates from other Contractors
In the absence of compensation rates, rates from other Contractors with similar types of construction in the vicinity of the project shall be applied, provided however that the compensation rates should be acceptable to both the Donor Agency (WB), to the Government of Kenya and other stakeholders.

Replacement Cost
Replacement cost refers to the amount sufficient to cover full recovery of lost assets and related transaction costs. Replacement cost will be used
when valuing all the permanent structures.

**Market Rate Approach**
Market rates shall be applied especially when valuing and calculating compensation values for land.

### 5.3. **Forms of Compensation**

Compensation shall be done in the following forms

- **Cash Compensation** will be in Kenyan local currency -- compensation will be calculated at new (i.e. un-depreciated) replacement value. Rates will be adjusted for inflation.
- **In-kind compensation** shall include items such as land, houses, building materials (of equal or better value), seedlings, agricultural input etc. If building materials are provided transport and labour cost must also be provided.
- **Additional assistance** may include, moving allowances, labour, food and rent during the transition period etc.
- **Economic rehabilitation assistance** may include training, capacity building as well as provision of assistance to facilitate re-establishment of livelihoods such as seedlings, agricultural inputs and financial credits for equipment.

### 5.4. **Consultation and Participatory Approaches**

For all stages of the RAP all the relevant stakeholders including the PAPs will be consulted and sensitized. This will be done through a series of individual and public meetings. All types of compensation and valuation principles to be followed will clearly be explained to the individuals or households involved. A participatory approach will be adopted for all meetings. Stakeholders and PAPs will be given a chance to freely participate in the meetings and to raise any queries, concerns or questions. All concerns raised will be taken into consideration when preparing the Resettlement Action Plans.

### 5.5. **Disclosure and Notification**

All eligible PAPs will be informed about the Sio-Sango Multipurpose WRD Project and the RAP process. Disclosure and notification of entitlements will be carried out by the compensation teams responsible for implementing the respective RAPs to enable the dissemination of the results of the land and property compensation assessment process. This will be done in close collaboration with representatives of the National Land Commission.
Notification about the intended disclosure will be done through media announcements and formal notification (written and verbal) and through local leaders.

5.6. **DOCUMENTATION AND VERIFICATION OF LAND AND OTHER ASSETS**

The inventory of all assets and persons shall be compiled in a Valuation Report and a strip map. A Resettlement Action Plan Report shall also be prepared and submitted to the implementing agency (Ministry of Agriculture, Livestock and Fisheries), World Bank, and donor agencies for approval. The RAP report will contain all the 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.

The verification of ownership of land and other assets shall be done with the help of local authorities, (Chiefs, Sub Chiefs) neighbours, clan members, family members and documents like land titles and land sale agreements.

A form (Consent Form) detailing the quantities of the affected properties and the total compensation shall be signed by each PAP and witnessed by a spouse, or child above 18 years or any other person as chosen by the PAP. In addition, the respective village leaders, the implementing agency’s representative and representatives of the Districts’ Land Offices will also append their signatures to the consent form.

The implementing agency will keep all copies of the documentation of the whole process. The documents will be referred to during monitoring and evaluation of the resettlement activities.

5.7. **INDIVIDUAL / HOUSEHOLD COMPENSATION**

Individual and household compensation will be made in cash, in kind, and/or through assistance. The type of compensation will be an individual choice. However, PAPs will be advised on the importance of accepting in-kind compensation especially when more than 20% of the land has been affected as stated in OP4.12. All in kind compensation will be handed over to the PAP in the presence of the local leaders, district representatives and representatives of the implementing agency.

5.8. **COMMUNITY PAYMENTS**

Although most sub-projects do not normally take land and other assets belonging to a community, such as a community center, school, or sacred site, if this occurs in a sub-project, the community (as a whole)
will be compensated. This compensation will be in the form of reconstruction of the facility (in case of damages) or replacement at least to the same standard or equivalent or better standard required by local planning regulation.

5.9. PROCEDURES FOR DELIVERY OF COMPENSATION

It is recommended that compensation be made through reputable local banks. This will ensure security of the PAPs money especially for those receiving large sums. Forms acknowledging receipt of the compensation packages shall be signed by each PAP.
6.  PUBLIC CONSULTATION AND DISCLOSURE PLAN

Public consultations in relation to the RAP occur at all stages, starting with inception and planning when the potential lands and alternative sites are being considered. A participatory approach shall be adopted as an on-going strategy throughout the entire project cycle.

Public participation and consultations take place through individual, group, or community meetings. Additionally, radio programs and other media forms may be used to further disseminate information. PAPs are consulted in the survey process; public notices where explanations of the sub-project are made; RAP implementation of activities; and during the monitoring and evaluation process. Selection of ways to consult, and expand participation by PAPs and other stakeholders, will take into consideration literacy levels prevalent in affected communities; ethnicity and cultural aspects; and practical conditions (like distance).

The role of traditional political and cultural leaders, including the community elders, in the participation strategy will be important. The RAP team should ensure that these leaders and local representatives of PAPs are fully involved in designing the public consultation procedures. A partial list of consultations on the project held to date are included in Annex 7. Future consultations related to the RAP are included in this section.

6.1. DATA COLLECTING PHASE

Consultations during preparation, in particular, the collection of background information, and the social survey or social assessment, are critical for successful data collection. The levels of consultation will vary from households to community groups, based on the particular context of the sub-projects. The RAP team will design the questionnaires but it will be the households, organizations, and institutions that will validate their effectiveness through feedback. Focus group meetings with women, farmers’ associations, individuals who own farms, etc. as well as primary and/or secondary schools, health centers, and agricultural cooperative unions are usually good sources for establishing the community baseline situation.

6.2. IMPLEMENTATION PHASE

During implementation, PAPs will be informed about their rights and
options. The grievance mechanism will continue to operate and all grievances will be recorded. The participation of local leaders and PAPs in disseminating information and resolving disputes will be important once RAP implementation starts. A dynamic participatory approach involves PAPs in decision making about livelihood and community development programs.

6.3. **MONITORING AND EVALUATION PHASE**

PAPs representatives will participate in the sub-project workshops at mid-term and at the end of RAP implementation. To the extent possible, the RAP should include social accountability tools like citizen cards to assess the quality of the RAP implementation, and in some cases, assist the RAP team in tracking expenditures. The latter would be significant in helping PAPs with money management and restoring their livelihoods. PAPs will be able to suggest corrective measures, as needed, to improve RAP implementation in the sub-project(s). Prior to closing the RAP, PAPs will participate in a feedback survey as part of the RAP’s independent impact evaluation exercise.
7. GRIEVANCE REDRESS MECHANISMS

7.1. INTRODUCTION

During the implementation of the project activities it is likely that disputes/disagreements between the project implementers and the affected persons will occur especially in terms of boundaries, ownership of crops or land or use of land/ properties, compensation values, delay in disbursement of the compensation packages. It will therefore be necessary to establish channels through which aggrieved people could file their complaints so as to ensure successful project development and implementation. The sub project RAP team to be established by the Government (and will likely be a team of Consultants to the Government) (including a RAP Specialist, Land Surveyor and Property Valuer) will establish grievance redress mechanisms in accordance to those outlined in the RPF.

The grievance redress procedures will have to provide opportunity for PAPs to settle their complaints and grievances amicably. The procedure to be adopted will allow PAPs not to lose time and resources from going through lengthy administrative and legal procedures. This may be set up through Local Authorities, including a Resettlement Committee and through community leaders.

The grievance mechanisms should:
- Provide an effective avenue for expressing concerns and achieving remedies for communities
- Promote a mutually constructive relationship between the project and the community or PAPs.
- Prevent and address community concerns

7.2. GRIEVANCE MECHANISMS

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 arbitrate or negotiate with PAPs or landowners that have any grievances concerning their compensation. The structures they put in place are also expected to take up this responsibility. However, it is not yet clear whether the NLC local administrative structures of NLC have been constituted.

This RPF has thus proposed the following grievance resolution mechanisms.
Grievance Resolution Committee

The grievance committee is proposed at the local level and this may constitute the following people;

- Location Chief
- Sub Location Chief
- Village leader
- Two representatives of Project Affected Persons (1 Male and 1 Female)
- A representative of the implementing agency

Complaints of PAPs on any aspect of compensation or addressed losses shall first be lodged in writing to the Committee, which will be resolved by use of customary rules and existing grievance resolution mechanisms. The Grievance Resolution Committee will try as much as possible to arrive at a compromise for the complaints raised. This may be obtained through series of conciliations, mediations and negotiations exercises conducted with the PAPs. The project implementers will also verify the claims on ground with the assistance of the grievance committee. If unresolved then the case will be forwarded to the Land and Environmental Court or High Court.

Land and Environmental Court or High Court

The constitution allows a right of access to courts of law by any person who has an interest or right over property. The aggrieved PAP not satisfied with the decision of the Committee may submit the case to courts of law as a last resort. However, this will only happen after all amicable ways to resolve the grievance have failed.

7.3. GRIEVANCE RESOLUTION PROCESS

PAPs will be consulted about the different approaches to resolving grievances during RAP preparation. Subsequently, through sensitization meetings the PAPs will be informed of the different grievance mechanisms in place for them to lodge their complaints and dissatisfactions. The grievance procedure will be simple and administered as far as possible at the local levels to facilitate access, flexibility and ensure transparency. All the grievances will be channeled via the Grievance Resolution Committees. Complaints will be filled in a
Grievance Resolution Form (Annex 3.).

After registration of the complaint, an investigation will be carried out by the committee members to verify its authenticity. Thereafter a resolution approach will be selected based on the findings. The decisions of the action to be taken or taken will be communicated to all involved parties mainly in written form. All measures will be undertaken to ensure that the grievance is solved amicably between the concerned parties and the courts will be the last resort. Efficiency in solving of the grievances will be of paramount importance.

7.4. **Monitoring Complaints**

In addition to the Grievance Resolution Form, a Grievance Log will be kept by the project implementers indicating the date the complaint was lodged, actions to be taken and personnel or team responsible for the complaint. A Project Liaison Officer or Resettlement Expert for each sub project will monitor and document the progress of all complaints through weekly or monthly grievance resolution reports.
8. IMPLEMENTATION SCHEDULE

8.1. Time Schedule for the Implementation of the RAPs

Upon review and approval of a RAP by all stakeholders, the implementing agency (Ministry of Agriculture, Livestock and Fisheries) will embark on the process of RAP implementation. This process will be conducted prior to the commencement of the construction activities. PAPs will be allowed sufficient time for relocation or handover of land. PAPs will only be required to move after receipt of their total compensation packages including replacement land and structures whenever applicable. However, the processing of registration documents for newly acquired land is sometimes lengthy and highly bureaucratic. Therefore, these may be distributed long after or deep into the construction phase but not beyond commissioning. The detailed activity schedule for the resettlement activities will be finalized during the preparation of the RAP.

8.2. Linking Resettlement Implementation to Civil Works

For each sub-project, the resettlement schedules will be coordinated with construction schedules. Before any project civil works activity is implemented, PAPs will have to be compensated in accordance with the Kenyan and World Bank resettlement laws, regulations and guidelines as set in this RPF. In other words, no individual or affected household should be displaced 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.

The land acquisition (both construction and relocation) and demolition of houses should be completed within the preparatory stage of the engineering construction and before the beginning of relevant engineering works.

The schedule is thus expected to ensure that all PAPs, prior to their physical relocation will;

- have been adequately consulted about the project, its impacts and compensation entitlements;
- have received compensation entitlements in a timely manner;
- have been provided with means to establishing livelihoods.
9. BUDGET AND FUNDING ARRANGEMENTS

9.1. ESTIMATED BUDGET

An itemized budget is required for the implementation of resettlement activities including compensation. Thus the specific RAPs prepared for the project must provide a budget as this will be crucial for planning and implementation purposes.

Since the specific locations of the sub-projects are not yet determined, the number of PAPs not yet determined and the technical designs have not been completed, it is not possible to provide an estimated budget for the total costs of resettlement that will be associated with the implementation of the Sio-Sango Water Storage Reservoir Development Project. Thus this RPF only provides the contents of the expected budget for each RAP that will be prepared.

The budgets will give itemized budgets for the different categories of compensation packages, community development activities, income restoration strategies, provisions for inflation, administrative costs, estimated implementing costs, inflation and any contingencies. Once the budgets for the respective projects are finalized, they will be subject to approval by the World Bank, if the World Bank is to finance any of the project implementation⁴. Table III shows an indicative outline of a RAP budget.

### Table III: Indicative Outline of a RAP Budget

<table>
<thead>
<tr>
<th>Asset acquisition</th>
<th>Amount or number</th>
<th>Total estimated cost</th>
<th>Agency responsible</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Structure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crops and economic tress</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community infrastructure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Land Acquisition and Preparation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Structures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crops areas and others</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

⁴ As noted earlier, neither NELSAP-CU nor the Government of Kenya had made a decision to proceed with the implementation of the Sio-Sango project, as the feasibility study (financed through the NCORE project) is needed in order to make an investment decision. As such, implementation financing for the Sio-Sango project has not yet been secured. The level of involvement, if any, of the World Bank in the Sio-Sango Multipurpose WRD project beyond the financing of the Feasibility Study, Design, ESIA and RAP (through the NCORE project) is not yet known.
<table>
<thead>
<tr>
<th>Community infrastructure</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Relocations</strong></td>
<td></td>
</tr>
<tr>
<td>Transfer of possessions</td>
<td></td>
</tr>
<tr>
<td>Installation costs</td>
<td></td>
</tr>
<tr>
<td><strong>Economic Rehabilitation</strong></td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td></td>
</tr>
<tr>
<td>Capital Investments</td>
<td></td>
</tr>
<tr>
<td>Technical Assistance</td>
<td></td>
</tr>
<tr>
<td>Monitoring</td>
<td></td>
</tr>
<tr>
<td>Contingency</td>
<td></td>
</tr>
</tbody>
</table>

Under the NCORE project, NELSAP will be conducting a social safeguards training course, including capacity building on land acquisition and resettlement procedures for targeted officials from key agencies and utilities of its member governments that are involved in design, preparation and implementation of NELSAP projects. It currently has $100,000 for this training, and is seeking additional funds to augment this budget.

### 9.2. Source of Funding

The respective resettlement budgets will be financed in-country through the administrative and financial management rules and manuals issued by the Government of Kenya.
10. MONITORING AND EVALUATION

The RAP team will be expected to develop and implement a Monitoring and Evaluation Plan (MEP). The main indicators that the MEP will measure include: (i) impacts on affected individuals, households, and communities to be maintained at their pre-project standard of living, and better; (ii) improvement of communities affected by the project; and (iii) management of disputes or conflicts. In order to measure these impacts, the RAP will identify the specific indicators to be monitored; define how they will be measured on a regular basis; and identify key monitoring milestones (e.g. at mid-point of the RAP implementation process).

10.1. ARRANGEMENTS FOR MONITORING BY IMPLEMENTING AGENCY

The WB’s safeguard policy (OP 4.12) states that the project sponsor is responsible for adequate M&E of the activities set forth in the resettlement instrument. Monitoring will provide both a warning system for the project sponsor and a channel for the affected persons to make known their needs and their reactions to resettlement execution.

The Project Implementing Unit (PIU) will establish a reporting system for the sub-project RAP that will:

(i) Provide timely information to the project about all resettlement and compensation issues arising as a result of RAP related activities;
(ii) Identify any grievances, especially those that have not yet been resolved at the local level and which may require resolution at the higher levels (e.g. by the PIU);
(iii) Document completion of project resettlement and compensation that are still pending, including for all permanent and temporary losses;
(iv) Evaluate whether all PAPs have been compensated in accordance with the requirements of this RPF and that PAPs have better living conditions and livelihoods; and
(v) Identify mitigation measures, as necessity, when there are significant changes in the indicators that may require strategic interventions (e.g. vulnerable groups are not receiving sufficient support from the sub-project).

10.2. INTERNAL AND EXTERNAL MONITORING

There will be need to carry out both internal and external monitoring to ensure complete and objective information and to avoid biasness.
Internal Monitoring
For internal monitoring, the resettlement offices of the executing agency, in partnership with the paying consultant will take full responsibility for conducting regular internal monitoring of the implementation of the project. This will be done hand in hand with some of the districts’ staff, the PAPs representatives and will be done say after every six weeks. Post resettlement monitoring will be undertaken internally like every three months.

The RAP team will maintain, together with local officials, basic information on all physical or economic displacement arising from the sub-project. This includes an update, for example on a quarterly basis, of the following:

(i) Number of sub-projects requiring preparation of a RAP;
(ii) Number of households and individuals physically or economically displaced by each sub-project;
(iii) Length of time from sub-project identification to payment of compensation to PAPs;
(iv) Timing of compensation in relation to commencement of physical works;
(v) Amount of compensation paid to each PAP household (if in cash), or the nature of compensation (if in kind);
(vi) Number of people raising grievances in relation to each sub-project;
(vii) Number of unresolved grievances.

The PIU will review these statistics to determine whether the RAP implementation arrangements, as defined in this RPF, are effective in addressing RAP related issues. Financial records will be maintained by the sub-projects and the PIU, to determine the final cost of RAP implementation.

Indicators
The following indicators (in Table IV) can be used to monitor implementation of the RAP.

Table IV: Indicators of RAP Impacts

<table>
<thead>
<tr>
<th>Monitoring (of Issues)</th>
<th>Evaluation (of Impacts)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of compensation (and valuation) not completed</td>
<td>Changes (+/-) in PAPs conditions during transition process</td>
</tr>
<tr>
<td>Number of sub-projects unable to settle compensation after two years</td>
<td>Changes (+/-) in PAPs income and livelihood conditions</td>
</tr>
<tr>
<td>Number of grievances filed</td>
<td>Nature of grievances or disputes resolved</td>
</tr>
<tr>
<td>Monitoring (of Issues)</td>
<td>Evaluation (of Impacts)</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>Number of livelihood restoration programs completed</td>
<td>Changes (+/-) in affected households income levels</td>
</tr>
<tr>
<td>Pre project production versus present production levels (crops for crops, land for land)</td>
<td>Equal or improved production per affected household/homestead</td>
</tr>
</tbody>
</table>

External Monitoring
External monitoring will be undertaken by an independent agency or Consultant. These will have extensive experience in social surveys and resettlement monitoring. External monitoring will be done at least 2 years after completion of the construction phase. Journalists and Civil Society Organizations may be involved in this exercise.

External monitoring will include an independent impact evaluation that will determine:

(i) If compensation payments have been completed in a satisfactory manner; and
(ii) If there are improvements in livelihoods and well-being of PAPs.

Indicators
Several indicators will be used to measure these impacts. These will include, among others

- A comparison of income levels before-and-after;
- Access to livelihoods and employment;
- Changes in standards of housing and living conditions;
- And improvements in level of participation in sub-project activities.

Specific indicators may include the following:

- Yield / produce quantity/quality from farming
- Access/ distance/ quality of agricultural plots
- Quality of, and access to, water
- Source of income
- Number of households engaged in fish farming
- Number of households with access to electricity
- Number of tourists
- Number of children in-school
- Changes in health standards;
- Changes in access to markets or roads – all of which may reflect overall improvements in standards of living.
- Number of ‘vulnerable’ people
• Yield/ produce quantity/quality from livestock
• Number of PAPs employed by the project
• Number of people with agricultural plots
• General relations between the project and local communities

Methods for Measuring Impacts
The following methods will be used for measuring impacts:

(i) Questionnaires with data stored in a database for comparative analysis (before-after and with-without);
(ii) Documentation and recording of PAPs situation, including subsequent uses of assets/improvements;
(iii) Relocation/resettlement and Compensation Reports.
(iv) Consultations

It is important to note that monitoring is continuous throughout the project while evaluation is at a given point.

The PIU will review these statistics to determine whether the RAP implementation arrangements, as defined in this RPF, are effective in addressing RAP related issues. Financial records will be maintained by the sub-projects and the PIU, to determine the final cost of RAP implementation. The indicators (in Table IV) can be used to monitor implementation of the RAP.

10.3. Annual Audit
The annual audit of RPF implementation, and as applicable RAP implementation in sub-project(s), includes: (i) a summary of RAP performance of each sub-project; (ii) a compliance review of RAP implementation process; and (iii) a progress report on the quality of RAP implementation in terms of application of guidelines as provided in this RPF.

The audit will verify results of monitoring of RAP implementation indicators, and assess whether the project achieved the resettlement objectives. A specific measure of whether livelihood and living standards have been restored or enhanced will be completed. The audit will also assess the efficiency, effectiveness, impact, and sustainability of RAP sub-project activities. The aim is to learn lessons for application to future sub-projects or other projects in the sector and in the country.

Finally, the audit will ascertain whether the resettlement entitlements were appropriate as defined in the RPF guidelines. If the implementation (construction) of the Sio-Sango project is eventually funded by the World Bank, annual audit reports will be submitted for scrutiny to the World
Bank. If the project is financed by a body other than the World Bank, an adequate review mechanism should be established by the project.

To be effective, the completion audit will take place after all RAP activities have been completed including development initiatives, but before the completion of financial commitments to the programme. This will allow for flexibility to undertake any corrective action that the auditors may recommend before the project is completed.

10.4. **Socio-Economic Assessment**

The purpose of socio-economic assessment, which is part of the evaluation process, is to ensure that PAPs livelihood and wellbeing have improved, and have not worsened as a result of the sub-project. An assessment will be undertaken on payment of compensation, restoration of income and livelihoods, and provision of sufficient community development activities. Monitoring of living standards will continue after resettlement. Additionally a reasonable period (usually two years) must be established for monitoring post-resettlement impacts. A number of indicators (discussed above) will be used for measuring status of affected people.

The socio-economic assessments will use surveys, focus group meetings, and participatory appraisal tools for measuring impacts. A separate assessment will be made for each sub-project. Additionally, since a baseline household survey will have been completed during RAP preparation, the end-RAP assessment will measure changes from this baseline.
LIST OF ANNEXES:

Annex 1: World Bank Resettlement Policy Framework
Annex 2: Annotated Outline for Preparing a Resettlement Action Plan (RAP)
Annex 3: Sample Grievance and Resolution Form
Annex 4: Sample Table of Contents for Consultation Reports
Annex 5: Glossary of Terms
Annex 6: Relevant Laws
Annex 7: Summary of Project Consultations to Date
ANNEX 1: WORLD BANK RESETTLEMENT POLICY FRAMEWORK


These policies were prepared for use by World Bank staff and are not necessarily a complete treatment of the subject. OP 4.12 (Revised April 2004) applies only to projects that are governed by OP / BP 6.00, Bank Financing - that is, those in countries with approved country financing parameters. Other operational policy statements governing Bank financing that have been amended to reflect OP/BP 6.00 also applies to this project.

Projects in countries without approved country financing parameters continue to be subject to other operational policy statements governing Bank financing.

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

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

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

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

For projects described in paragraphs 26-28 above, the Bank may agree, in writing, that sub-project resettlement plans may be approved by the project implementing agency or a responsible government agency or financial intermediary without prior Bank review, if that agency has demonstrated adequate institutional capacity to review resettlement plans and ensure their consistency with this policy. Any such delegation, and appropriate remedies for the entity’s approval of resettlement plans found not to comply with Bank policy, is provided for in the legal agreements for the project. In all such cases, implementation of the resettlement plans is subject to ex post review by the Bank.
ANNEX 2: ANNOTATED OUTLINE FOR PREPARING A RESETTLEMENT ACTION PLAN (RAP)

This template is extracted from OP 4.12 Annex A. Its full description can be found in the World Bank external website [web.worldbank.org].

The scope and level of detail of the RAP will vary depending on the magnitude and complexity of resettlement or displacement. The RAP is prepared based on the most recent and accurate information on the: (i) proposed resettlement and its impacts on displaced persons and other adversely affected groups; and (ii) legal issues affecting resettlement. The RAP covers elements that are specific to the project context.

A broad outline of the RAP, as applied to sub-projects covered under a RPF includes, but is not limited to, the following:

Description of the sub-project: General description of the sub-project and identification of sub-project area or areas.

Potential Impacts: Identification of the: (i) the sub-project components or activities that require resettlement or restriction of access; (ii) zone of impact of components or activities; (iii) alternatives considered to avoid or minimize resettlement or restricted access; and (iv) mechanisms established to minimize resettlement, displacement, and restricted access, to the extent possible, during project implementation.

Objectives: The main objectives of the resettlement program as these apply to the sub-projects.

Socio-economic studies: The findings of socio-economic studies to be conducted in the early stages of project preparation, and with the involvement of potentially affected people will be needed. These generally include the results of a census of the affected populations covering:

(i) Current occupants of the affected area as a basis for design of the RAP and to clearly set a cut-off date, the purpose of which is to exclude subsequent inflows of people from eligibility for compensation and resettlement assistance;
(ii) Standard characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (including, as relevant, production levels and income derived from both formal and informal economic activities) and standards of living (including health status) of the displaced population;
(iii) Magnitude of the expected loss, total or partial, of assets, and the extent of displacement, physical or economic;
(iv) Information on vulnerable groups or persons, for whom special provisions may have to be made; and
(v) Provisions to update information on the displaced people’s livelihoods and standards of living at regular intervals so that the latest information is available.
at the time of their displacement, and to measure impacts (or changes) in their livelihood and living conditions.

There may be other studies that the RAP can draw upon, such as those describing the following:

(i) Land tenure, property, and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the sub-project area;

(ii) Patterns of social interaction in the affected communities, including social support systems, and how they will be affected by the sub-project;

(iii) Public infrastructure and social services that will be affected; and

(iv) Social and cultural characteristics of displaced communities, and their host communities, including a description of formal and informal institutions. These may cover, for example, community organizations; cultural, social or ritual groups; and non-governmental organizations (NGOs) that may be relevant to the consultation strategy and to designing and implementing the resettlement activities.

Legal Framework: The analysis of the legal and institutional framework should cover the following:

(i) Scope of existing land and property laws governing resources, including state-owned lands under eminent domain and the nature of compensation associated with valuation methodologies; land market; mode and timing of payments, etc;

(ii) Applicable legal and administrative procedures, including a description of the grievance procedures and remedies available to PAPs in the judicial process and the execution of these procedures, including any available alternative dispute resolution mechanisms that may be relevant to implementation of the RAP for the sub-project;

(iii) Relevant laws (including customary and traditional law) governing land tenure, valuation of assets and losses, compensation, and natural resource usage rights, customary personal law; communal laws, etc related to displacement and resettlement, and environmental laws and social welfare legislation;

(iv) Laws and regulations relating to the agencies responsible for implementing resettlement activities in the sub-projects;

(v) Gaps, if any, between local laws covering resettlement and the Bank’s resettlement policy, and the mechanisms for addressing such gaps; and

(vi) Legal steps necessary to ensure the effective implementation of RAP activities in the sub-projects, including, as appropriate, a process for recognizing claims to legal rights to land, including claims that derive from customary and traditional usage, etc and which are specific to the sub-projects.

The institutional framework governing RAP implementation generally covers:

(i) Agencies and offices responsible for resettlement activities and civil society groups like NGOs that may have a role in RAP implementation;
(ii) Institutional capacities of these agencies, offices, and civil society groups in carrying out RAP implementation, monitoring, and evaluation; and
(iii) Activities for enhancing the institutional capacities of agencies, offices, and civil society groups, especially in the consultation and monitoring processes.

**Eligibility:** Definition of displaced persons or PAPS and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates.

**Valuation of and compensation for losses:** The methodology to be used for valuing losses, or damages, for the purpose of determining their replacement costs; and a description of the proposed types and levels of compensation consistent with national and local laws and measures, as necessary, to ensure that these are based on acceptable values (e.g. market rates).

**Resettlement Measures:** A description of the compensation and other resettlement measures that will assist each category of eligible PAPs to achieve the objectives of OP 4.12. Aside from compensation, these measures should include programs for livelihood restoration, grievance mechanisms, consultations, and disclosure of information.

**Site selection, site preparation, and relocation:** Alternative relocation sites should be described and cover the following:

(i) Institutional and technical arrangements for identifying and preparing relocation sites, whether rural or urban, for which a combination of productive potential, location advantages, and other factors is at least comparable to the advantages of the old sites, with an estimate of the time needed to acquire and transfer land and ancillary resources;
(ii) Any measures necessary to prevent land speculation or influx of eligible persons at the selected sites;
(iii) Procedures for physical relocation under the project, including timetables for site preparation and transfer; and
(iv) Legal arrangements for recognizing (or regularizing) tenure and transferring titles to those being resettled.

**Housing, infrastructure, and social services:** Plans to provide (or to finance provision of) housing, infrastructure (e.g. water supply, feeder roads), and social services to host populations; and any other necessary site development, engineering, and architectural designs for these facilities should be described.

**Environmental protection and management.** A description of the boundaries of the relocation area is needed. This description includes an assessment of the environmental impacts of the proposed resettlement and measures to mitigate and manage these impacts (coordinated as appropriate with the environmental assessment of the main investment requiring the resettlement).
Community Participation: Consistent with the World Bank’s policy on consultation and disclosure, a strategy for consultation with, and participation of, PAPs and host communities, should include:

(i) Description of the strategy for consultation with and participation of PAPs and hosts in the design and implementation of resettlement activities;
(ii) Summary of the consultations and how PAPs’ views were taken into account in preparing the resettlement plan; and
(iii) Review of resettlement alternatives presented and the choices made by PAPs regarding options available to them, including choices related to forms of compensation and resettlement assistance, to relocating as individual families or as parts of pre-existing communities or kinship groups, to sustaining existing patterns of group organization, and to retaining access to cultural property (e.g. places of worship, pilgrimage centers, cemeteries); and
(iv) Arrangements on how PAPs can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that vulnerable groups (including indigenous peoples, ethnic minorities, landless, children and youth, and women) are adequately represented.

The consultations should cover measures to mitigate the impact of resettlement on any host communities, including:

(i) Consultations with host communities and local governments;
(ii) Arrangements for prompt tendering of any payment due the hosts for land or other assets provided to PAPs;
(iii) Conflict resolution involving PAPs and host communities; and
(iv) Additional services (e.g. education, water, health, and production services) in host communities to make them at least comparable to services available to PAPs.

Grievance procedures: The RAP should provide mechanisms for ensuring that an affordable and accessible procedure is in place for third-party settlement of disputes arising from resettlement. These mechanisms should take into account the availability of judicial and legal services, as well as community and traditional dispute settlement mechanisms.

RAP implementation responsibilities: The RAP should be clear about the implementation responsibilities of various agencies, offices, and local representatives. These responsibilities should cover (i) delivery of RAP compensation and rehabilitation measures and provision of services; (ii) appropriate coordination between agencies and jurisdictions involved in RAP implementation; and (iii) measures (including technical assistance) needed to strengthen the implementing agencies’ capacities of responsibility for managing facilities and services provided under the project and for transferring to PAPs some responsibilities related to RAP components (e.g. community-based livelihood restoration; participatory monitoring; etc).

Implementation Schedule: An implementation schedule covering all RAP activities from preparation, implementation, and monitoring and evaluation should be included. These should identify the target dates for delivery of benefits to the resettled population and the hosts, as well as clearly defining a closing date. The schedule
should indicate how the RAP activities are linked to the implementation of the overall project.

Costs and budget: The RAP for the specific sub-projects should provide detailed (itemized) cost estimates for all RAP activities, including allowances for inflation, population growth, and other contingencies; timetable for expenditures; sources of funds; and arrangements for timely flow of funds. These should include other fiduciary arrangements consistent with the rest of the project governing financial management and procurement.

Monitoring and evaluation: Arrangements for monitoring of RAP activities by the implementing agency, and the independent monitoring of these activities, should be included in the RAP section on monitoring and evaluation. The final evaluation should be done by an independent monitor or agency to measure RAP outcomes and impacts on PAPs’ livelihood and living conditions. The World Bank has examples of performance monitoring indicators to measure inputs, outputs, and outcomes for RAP activities; involvement of PAPS in the monitoring process; evaluation of the impact of RAP activities over a reasonable period after resettlement and compensation, and using the results of RAP impact monitoring to guide subsequent implementation.
ANNEX 3: SAMPLE GRIEVANCE AND RESOLUTION FORM

Name (Filer of Complaint): ________________________________
ID Number: ____________________________________________ (PAPs ID number)
Contact Information: ___________________________________ (Village; mobile phone)
Nature of Grievance or Complaint: ____________________________

<table>
<thead>
<tr>
<th>Date</th>
<th>Individuals Contacted</th>
<th>Summary of Discussion</th>
</tr>
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<tbody>
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</tbody>
</table>
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: ________________________________
Independent Observer

Date: ________________________________
ANNEX 4: SAMPLE TABLE OF CONTENTS FOR FUTURE CONSULTATION REPORTS

1.0 Introduction.
   1.1 Project Description
   1.2 Applicable Laws, Regulations, and Policies to Public Engagement
   1.3 Project Lenders

2.0 Stakeholder Analysis
   2.1 Areas of Influence/Stakeholders
   2.2 Description of Stakeholders

3.0 Stakeholder Engagement
   3.1 Previous Consultation Activities
   3.2 Implemented Community Engagement Activities
   3.3 Project Sponsor’s Community Engagement Plan
      3.3.1 Phase 1 – Initial Stakeholder Consultation
      3.3.2 Phase 2 – Release of the SEA Terms of Reference and Draft PCDP
      3.3.3 Phase 3 – Release of SEA Consultation Summary Report

4.0 Summary of Key Issues

5.0 Future Consultation Events
   5.1 Phase 4 – Release of the SEA Report and Action Plans
   5.2 Phase 5 – RCDAP Planning Consultation
   5.3 Phase 6 - Ongoing Project Communication

6.0 Disclosure Plan

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Table 3.1: Initial Government Agency Consultations
Table 3.2: Summary of NGO Meetings
Table 3.3: Sub-County Committee Composition
Table 3.4: Summary of Community Discussions
Table 3.5: Local Community Comments
Table 4.1: Summary of Key Issues and Responses
Table 5.1: Summary of Future Consultation Activities per Stakeholder Group

TEMPLATE Table on Consultation Activity Summary

<table>
<thead>
<tr>
<th>Location and Communities Represented</th>
<th>Meeting Dates</th>
<th>Attendees</th>
<th>Discussion Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Example:</td>
<td></td>
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</tbody>
</table>
### ANNEX 5: GLOSSARY OF TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>Census</strong></td>
<td>A field survey carried out to identify and determine the number of Project Affected Persons (PAPs) or Displaced Persons (DPs) as a result of land acquisition and related impacts. The census provides the basic information necessary for determining eligibility for compensation, resettlement, and other measures emanating from consultations with affected communities and the local government institutions.</td>
</tr>
<tr>
<td><strong>Compensation</strong></td>
<td>The payment in kind, cash or other assets given in exchange for the acquisition of land including fixed assets. These include other impacts resulting from activities to rehabilitate or cushion the impacts from displacement.</td>
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<tr>
<td><strong>Cut-off Date</strong></td>
<td>Date of completion of the census and assets inventory of persons affected by the project. Persons occupying the project area after the cut-off date are not eligible for compensation and/or resettlement assistance. Similarly, fixed assets (such as built structures, crops, fruit trees, and woodlots) established after the date of completion of the assets inventory, or an alternative mutually agreed on date, will not be compensated.</td>
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<tr>
<td><strong>Directly Affected Persons</strong></td>
<td>All those who reside or derive their living from areas where the project will have a direct impact, often referred to as the Direct Impact Zone (DIZ), consisting of all the project components.</td>
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<tr>
<td><strong>Involuntary Resettlement</strong></td>
<td>The unavoidable displacement of people arising from development projects that creates the need for rebuilding their livelihood, income and asset bases in another location. It includes impacts on people whose livelihood and assets may be affected without displacement.</td>
</tr>
<tr>
<td><strong>Land Acquisition</strong></td>
<td>The possession of or alienation of land, buildings, or other assets thereon for purposes of the project.</td>
</tr>
<tr>
<td><strong>Project Affected Persons (PAPs) or Displaced Persons (DPs)</strong></td>
<td>Persons affected by land and other assets loss as a result of project activities. These persons are affected because they may lose, be denied, or be restricted access to economic assets; lose shelter, income sources, or means of livelihood. These persons are affected whether or not they will move to another location. Most often, the term DPs applies to those who are physically relocated. These people may have their standard of living adversely affected, whether or not the Displaced Person will move to another location; lose right, title, interest in any houses, land (including premises, agricultural and grazing land) or any other fixed or movable assets acquired or possessed, lose access to productive assets or any means of livelihood.</td>
</tr>
<tr>
<td><strong>Project Impacts</strong></td>
<td>Impacts on the people living and working in the affected areas of the project, including the surrounding and host communities, assessed as part of the overall evaluation of the project.</td>
</tr>
<tr>
<td><strong>Physical displacement</strong></td>
<td>Loss of shelter and assets resulting from the acquisition of land associated with a project that requires the affected person(s) to move to another location.</td>
</tr>
<tr>
<td><strong>Rehabilitation Assistance</strong></td>
<td>Provision of development assistance in addition to compensation such as livelihood support, credit facilities, training, or job opportunities, to assist PAPs or DPs to restore their livelihoods.</td>
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<tr>
<td><strong>Replacement</strong></td>
<td>The amount sufficient to cover full recovery of lost assets and related...</td>
</tr>
<tr>
<td>Cost</td>
<td>transaction costs.</td>
</tr>
<tr>
<td>-----------------------</td>
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<tr>
<td>Resettlement Action Plan (RAP)</td>
<td>The document in which a project sponsor or other responsible entity specifies the procedures that it will follow and the actions that it will take to mitigate adverse effects, compensate losses, and provide development benefits to persons and communities affected by an investment project.</td>
</tr>
<tr>
<td>Stakeholders</td>
<td>Any individuals, groups, organizations and institutions interested in and potentially affected by a project or having the ability to influence the project.</td>
</tr>
<tr>
<td>Vulnerable groups</td>
<td>People who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by resettlement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits.</td>
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# ANNEX 6: RELEVANT LAWS

## Property Rights and Land Rights

| All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals. | Kenya Constitution (2010) Article 61 (1),
| The State is permitted to regulate the use of any land, or any interest in or right over any land in the interest of defense, public safety, public order, public morality, public health, or land use planning. | Kenya Constitution (2010), Article 61 (1),
| “Every person has the right, either individually or in association with others, to acquire and own property of any description; and in any part of Kenya”. | Kenya Constitution (2010), Article 40 (1) Subject to Article 65,
| “Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance to the following principles: | Kenya Constitution (2010), Article 60 (1),
| Land is classified as public land, community land or private land | Kenya Constitution (2010), Article 65,
| There are four land systems in Kenya as recognized by the Kenyan Law; Customary Land Tenure, Freehold Tenure, Public Tenure, Leasehold Tenure | Kenya Constitution (2010), Article 65,
| 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. | Kenya Constitution (2010), Article 65,

## Land Acquisition

| No property can be compulsorily acquired by the Government except in accordance with law. | The Constitution of Kenya, 2010 Article 40(3),
| National Land Commission (NLC) is the agency empowered to compulsorily acquire land. | Land Act 2012,
| The state may deprive owners of property only if the deprivation is “for a public purpose” | The Constitution of Kenya,
or in the public interest," which includes public buildings, roads, wayleaves, drainage, irrigation canals among others. The state's exercise of this power is left at the discretion of National Land Commission, and requires the state to make full and prompt payment of "just compensation" and an opportunity for appeal to court.

If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.  

Market value of the property, which is determined at the date of the publication of the acquisition notice must be taken into account when determining compensation.

| Compensation |  |
|--------------|  |
| Upon the conclusion of the inquiry, and once the NLC has determined the amount of compensation, NLC will prepare and serve a written award of compensation to each legitimate claimant. | Land Act 2012, Section 115 (1) |
| Once the first offer payment has been awarded, the NLC will serve notice to landowners on the property indicating the date the Government will take possession. | Land Act 2012 |
| Upon taking possession of land, the commission shall ensure payment of just compensation in full. | Land Act 2012 |

| Dispute Resolution and Grievance Mechanisms |  |
|--------------------------------------------|  |
| Any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination | Land Act 2012, Section 128 |
| Specialized courts to handle all matters on land and the environment should be created. Such a court will have the status and powers of a High Court in every respect. The Courts will endeavor to encourage application of alternative dispute resolution mechanisms, including traditional ones, so long as they are consistent with the constitution. | The Kenya Constitution, 2010 Environment and Land Court Act, 2011 |
# ANNEX 7: SUMMARY OF PROJECT CONSULTATIONS TO DATE

<table>
<thead>
<tr>
<th>SIO-SANGO (KENYA) (AND OTHER SMM) IRRIGATION PROJECTS</th>
<th>CONSULTATIONS MEETING CONDUCTED/PLANNED</th>
<th>DATE</th>
<th>STAKEHOLDERS</th>
<th>Decisions/discussion points</th>
</tr>
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<tbody>
<tr>
<td>1. Consultations in undertaking the Pre-feasibility Study for potential MSR within SMM Basin</td>
<td>March 20- April 11, 2010</td>
<td>Communities within SMM basin, district administration and technical officers (Tororo, Busia, Bungoma, Teso North/South, Butaleja, MW E–Entebbe, MWI-Nairobi, Ministry of Energy, MOA,</td>
<td>Stakeholders highlighted the need for involvement of all stakeholders, need for resettlement and compensation before commencement of project implementation</td>
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<tr>
<td>2. Review meeting of Pre-feasibility study report for potential projects within SMM Basin</td>
<td>May 23-24, 2010 Prime Hotel, Tororo, Uganda</td>
<td>RPSC members, Ministry of Water &amp; Environment Staff, District Officials, NEMA, Water for Production Staff, Ministry of Agriculture, Ministry of Energy</td>
<td>The meeting discussed the report and recommended for ranking the 27 identified potential dam sites in consideration to use of reservoirs, environmental/social, technical and economic/financial aspects. Need for consideration of conservation of watersheds upstream of the identified potential sites for Reservoirs.</td>
<td></td>
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<tr>
<td>3. Pre-feasibility study report for potential MSR within SMM Basin review meeting</td>
<td>August 25-26, 2010 Rock Classic Hotel, Tororo, Uganda</td>
<td>RPSC members, Ministry of Water &amp; Environment Staff, District Officials, NEMA, Water for Production Staff, Ministry of Agriculture, Ministry of Energy</td>
<td>The meeting discussed the report and recommended for further investigation to be undertaken during feasibility level for priority multipurpose projects, and to consider the potential environmental and social impacts</td>
<td></td>
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<tr>
<td>4. Meeting on prioritization of irrigation and watershed management projects for the Sio-Sango Project</td>
<td>September 3, 2013 NIB Headquarters, Nairobi, Kenya</td>
<td>MOA/National irrigation board, MEW&amp; NR, SMM staff</td>
<td>The meeting discussed several projects including Kwangamur, Lerekwe, Sio Sango, Sikoma, including consideration of use, environment and social aspects. Sio Sango was prioritized to be taken to feasibility level with National irrigation board taking lead role in implementation of the project</td>
<td></td>
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