REHABILITATION AND ARGUMENTATION OF GATANGA WATER SUPPLY - MURANG’A COUNTY

ABBREVIATED RESETTLEMENT ACTION PLAN

January 2014

WATER AND SANITATION SERVICES IMPROVEMENT PROJECT - ADDITIONAL FINANCING (WASSIP-AF)
DEFINITIONS

Note: Several of the definitions below are sourced from the IFC’s “Handbook for Preparing a Resettlement Action Plan”, 2001.

- **Project**: Rehabilitation and Argumentation of Gatanga Water Supply to be financed under Water and Sanitation Services Improvement Project Additional Financing -WASSIP AF

- **Project-Affected Area**: An area, which is subject to a change in use as a result of the construction or operation of the Project.

- **Project-Affected Person (PAP)**: Any person who, as a result of the implementation of the Project, loses the right to own, use, or otherwise benefit from a built structure, land (residential, agricultural, or pasture), annual or perennial crops and trees, or any other fixed or moveable asset, either in full or in part, permanently or temporarily. PAPs may include:
  - Physically Displaced People, i.e. people subject to Physical Displacement as defined hereunder,
  - Economically Displaced People, i.e. people subject to Economic Displacement as defined hereunder.

- **Physical Displacement**: Loss of shelter and assets resulting from the acquisition of land associated with the Project that requires the affected person(s) to move to another location.

- **Economic Displacement**: Loss of income streams or means of livelihood resulting from land acquisition or obstructed access to resources (land, water or forest) caused by the construction or operation of the Project or its associated facilities. Not all economically displaced people need to relocate due to the Project.

- **Project-Affected Household (PAH)**: A PAH is a household that includes Project-Affected Persons as defined above. A PAH will usually include a head of household, his/her spouse and their children, but may also include other dependents living in the same dwelling or set of dwellings, like close relatives (e.g., parents, grandchildren).

- **Compensation**: Payment in cash or in-kind at replacement value for an asset or a resource that is acquired or affected by the Project at the time the assets need to be replaced. In this RAP, “cash compensation” means compensation paid in cash or by cheque.
**Resettlement Assistance:** Support provided to people who are physically displaced by the Project. Assistance may include transportation, and social or other services that are provided to affected people during their relocation. Assistance may also include cash allowances that compensate affected people for the inconvenience associated with resettlement and defray the expenses of a transition to a new locale, such as moving expenses and lost work days.

**Replacement Value:** The rate of compensation for lost assets must be calculated at full replacement value, that is, the market value of the assets plus transaction costs. The replacement value must reflect the cost at the time the item must be replaced. With regard to land and structures, “replacement value” is defined as follows:

- **Agricultural land:** the market value of land of equal productive use or potential located in the vicinity of the affected land, plus the cost of preparation to levels similar to or better than those of the affected land, plus the cost of any registration and transfer taxes;

- **Household and public structures:** the cost of purchasing or building a new structure, with an area and quality similar to or better than those of the affected structure, or of repairing a partially affected structure, including labor and contractors’ fees and any registration and transfer taxes.

- **Vulnerable Groups:** 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.

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

- **Resettlement Policy Framework (RPF)** is an instrument to be used throughout the Program implementation. The RPF sets out the resettlement objectives and principles, organizational arrangements and funding mechanisms for any resettlement that may be necessary during implementation. The RPF guides the preparation of Resettlement Action Plans of individual sub projects in order to meet the needs of the people who may be affected by the project. The Resettlement Action Plans (“RAPs”) for the (Water and Services Sanitation Improvement Project – Additional Financing) WASSIP AF Program will be prepared in conformity with the provisions of this RPF.
- **Census**: means a field survey carried out to identify and determine the number of Project Affected Persons (PAP) or Displaced Persons (DPs) as a result of land acquisition and related impacts. The census provides the basic information necessary for determining eligibility for compensation, resettlement and other measures emanating from consultations with affected communities and the relevant stakeholders.

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- **Census**: means a field survey carried out to identify and determine the number of Project Affected Persons (PAP) or Displaced Persons (DPs) as a result of land acquisition and related impacts. The census provides the basic information
necessary for determining eligibility for compensation, resettlement and other measures emanating from consultations with affected communities and the relevant stakeholders.

-Cut-off date: Cut-off date—Date of completion of the census and assets inventory of persons affected by the project. Persons occupying the project area after the cutoff 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.

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

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

-Land expropriation—Process whereby a public authority, usually in return for compensation, requires a person, household, or community to relinquish rights to land that it occupies or otherwise uses OD 4.30—The World Bank Group Operational Directive on Involuntary Resettlement. OD 4.30 embodies the basic principles and procedures that underlie IFC’s approach to involuntary resettlement associated with its investment projects.

-Stakeholders—Any and all individuals, groups, organizations, and institutions interested in and potentially affected by a project or having the ability to influence a project.
EXECUTIVE SUMMARY

1. Introduction
Athi Water Services Board is implementing projects financed under Water and Sanitation Services Improvement Project – Additional Financing (WASSIP-AF). Augmentation and Rehabilitation of Gatanga Water Supply is among the sub-projects expected to benefit from the funding. Gatanga Constituency is among the Peri metropolitan region within Murang’a County which is fast growing, the rapid growth has resulted into land use change from agricultural to commercial and more specifically to housing development, and this is also aggravated by its closeness to the city of Nairobi approximately 50km. This therefore, heightens the need of investing in supply of water in order to meet the raising demand.

The current water demand for Gatanga is estimated at 9,880m³/day while the current system has a capacity of 6,310 m³/day creating a deficit of 3,570m³/day, this situation is expected to increase as the population increases. The current of Gatanga Constituency now is 130,000 people according to the census report of 2009). Damages on the existing water line and unlimited connections have further constrained the water supply in the district. Presence of Coliform in the partially treated and borehole/well water together with limitations indicated earlier justifies the need to establish treatment plants and improve provision of safe water for domestic purposes. Augmentation and Rehabilitation of Gatanga Water Supply is planned to supply 4,000m³/day of water which will surpass the current water supply deficit for a period of 20years.

The region where the proposed project is to be set up is a semi urban area which is predominantly agricultural, however isolated commercial establishment have emerged to provide housing to expanding metropolitan region of Nairobi. There the affected assets are basically farmland which is anticipated to be acquired as easement. Census and valuation conducted revealed that approximately 9.3 acres will be acquired from 192 land parcels belonging to individuals.

Guided by the World Bank Operation policy (OP 4.12) on Involuntary Resettlement and Kenyan Legislations regarding resettlement and acquisitions, an abbreviated Resettlement Action Plan has to be prepared. The RAP includes a census survey of affected persons and valuation of assets; description of compensation and other resettlement assistance to be provided; consultations with affected people about acceptable alternatives; institutional responsibility for
implementation and procedures for grievance redress; arrangements for monitoring and implementation; and a timetable and budget.

2. **Project Area description**

Gatanga was formerly a division under the greater Thika district but recently elevated to district in 2007. It's located in Gatanga Division, former Gatanga District which comprise of Kirwara, Gichumbu, Rwegetha, Chomo, Mabae, Ngungungu, Gakurari, Ithangarari, Giatutu, Kigio, Mabanda, and Gatunyu locations. The administrative structure of Gatanga was formerly a division under the greater Thika district but recently elevated to district in 2007. The administrative structure of Gatanga District is as illustrated in the project description section.

**Figure 1: Map Showing Administrative Locations within Gatanga Constituency**

*Photo MapCourtesy of Albert Kenyani Inima*
3. Project Activities

**Conventional Treatment Systems**

a. Kiama 3000m³/day treatment plant at GPS coordinates S 00° 48’50.244” and E 036° 46’ 57.456’’ elevation 2266.26m

b. Kimakia 4000m³/day at GPS coordinates S 00° 48’51.870” and E 036° 46’ 57.23” elevation 2256.89m

c. Kiama and Kimakia 3000 m³/day combined system the treatment plant will be located 8km from from Kiama intake and 3 Km from Kimakia intake at GPS coordinates S 00° 55’04.986”and E 036° 55’ 48.970’’ at 1797.07m elevation at a place called Rwegetha.

**Break Pressure Tanks / Storage Tanks (Ground Masonry Tanks)**

a. Gatanga Water Tank Capacity 150m³ at Gatanga Catholic Mission Premises coordinates S 00° 56’ 17.7” and E 036° 57’ 39.9” at 1700.30m elevation.

b. Gakurari Shopping Centre Tank Capacity 150m³ to located within Gakurari Sec. School coordinates S 00° 57’ 17.202’’and E 036° 57’ 30.384’’ at 1660.11m elevation.

b. Kirwara Tank Capacity 150m³ to be located in Kirwara Primary school coordinates S 00° 55’ 46.854’’and E 036° 56’ 34.962’’ at 1728.66m elevation.

c. Gatura tank of capacity 225m³ coordinates S 00° 52’ 35.56’’and E 036° 56’ 52.26.136’’ at 1910.92m elevation.

d. Proposed Ndakaini 225m³ tank at Gitiri, 150m³ tank at Mukurwe and 150m³ at Gitemu. The proposed works will be at S 00° 47’19.080” and E 036° 47’ 35.362’’ at elevation 2283.10m

4. Project Impacts to Peoples Livelihood

The project components associated with impact to people’s properties are water pipelines and site for the treatment plant. Since the area is a rural agricultural region, most of the affected properties identified were basically be food crops, cash crops and trees, in the event that the pipeline will be laid in peoples land, then an easement will be acquired.

Land for the treatment plant will be acquired from individual persons through willing buyer willing seller arrangement, the estimated size of the land is 5acres and negotiation are ongoing with the land owner on the modalities of purchasing the land parcel at Rwegethe shopping centre.
The pipelines under the project are estimated to be 30km to be laid along the river riparian, road reserves and within individual land. The RAP report has estimated the properties to be affected along Kimakia Pipeline and Kiama Pipeline as summarized in table 1 below.

5. Compensation Budget

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6. Category of impact
The following categories of impacts in relation to PAPs have been identified namely:

- Project affected persons with land only (land owners)
- Project affected persons with land, crops and trees (land, trees and crops)
7. Minimizing resettlement and losses
Efforts have been made to align the design of water lines within the riparian land along the rivers and road reserves as much as possible. This is in effort to avoid or minimize the impact to people’s properties and therefore resettlement and disturbances arising from land acquisition in line with the World Bank OP 4.12. Additional measures taken or steps to be taken to reduce impact include:

- Water pipeline will be as much as possible designed to follow river riparian and road reserves.
- Proposed treatment Plants will be constructed on land that has an existing community water tank for Gatanga Community Water Scheme.
- The break pressure tanks will be constructed in Public Institutions (schools and health centres) and Churches where land is available.
- Roads for earth moving equipment will be constructed along the earmarked main canal and/or existing tracks to limit social disturbances and destruction of the environment.
- All those that shall be affected by the project will be fully compensated before project commencement as required by OP 4.12.

8. The Census, Cut-off date and the Socio - Economic study
The valuation census and the socio-economic survey of PAPs were undertaken between June and July 2013 including consultative meetings with different categories of PAPs.

The entitlement cut-off date was 30th July 2013 when census was concluded and the time when the assessment of persons and their property in the area was carried out for the preparation of this RAP.

The socio- economic survey was done using a semi-structured household questionnaire structures to gather the baseline data of the PAPs on;

- Incomes and Expenditures,
- Occupational and Livelihood pattern
- water and sanitation,
- Education
- Health
The census survey and socio-economic study findings revealed the following:

- The project affected persons households are approximately 192 households which are equivalent to small plots where the easement for the pipeline will be acquired. A total of 100 households were enumerated.
- The PAPs had lived in their respective areas for an average period of 30 years.
- Majority of the PAPs enumerated have undergone primary education at 90% while 60% percent have undergone through the secondary education only 10% have went through college and tertiary colleges.
- The main livelihood sources in the project area include farming (food crops: such as bananas, potatoes, Cash crops: Tea and coffee) Small scale trading.
- The average monthly income per household is Kshs.12,559.00 while average total monthly expenditure per household was slightly lower at Kshs. 10,000.00.
- From the assessment it was revealed that most of the respondents get lump sum bonus payments on quarterly basis and annually from tea and milk from cooperative societies hence they are able to meet the gap between income and expenditure.
- The main source of water used by the respondents at 60% is river which is untreated water, this is followed by piped untreated water at 27% is piped water of which the taps run dry in most days forcing the respondents to fetch water from the river sources.
- The most used sanitation facility with frequency of 113 that is 97.4% is pit latrines this is followed by frequency of 3 that is 2.6% of flash toilets which are connected to a septic tank
- Most of the diseases commonly suffered by the PAPs are water borne related diseases including typhoid, diarrhoea and amoeba at 70% which indicates that the community is affected due to lack of adequate clean water.

9. Resettlement Policy and Entitlements

10. Valuation and Compensation Methodology
Valuation for assets as outlined in this RAP involved field survey to collect data on the PAPs, land to be acquired/easement rights, structures, trees, community assets and crops affected, full replacement cost approach was used.

All affected persons irrespective of their status or whether they have formal titles, legal rights or not, will be eligible for some kind of assistance if they occupied the land before the entitlement cut-off date.

Grievance management forms a critical part of any resettlement and compensation program. In this project, grievance management will be handled by a redress committee which includes representatives of the community members and local administration and government institutions representatives with a total of 12 members.

The committee was constituted in November 2012, since then several meetings have been held in Gatanga Community Water and Sanitation Company to discuss the modalities of preparing an implementing the RAP.

RAP also provides for a formalized grievance redress mechanism to help reduce any complaints and grievances of the PAPs and to enhance the acceptance of rehabilitation and resettlement program through people participation and support.

In the event that disputes are un-resolvable via the committees, then PAPs will seek resolution at the high court or any other relevant courts in Kenya with jurisdiction on the same.

12. Cost estimates/Valuation of Assets
Based on the Land Act and World Bank OP.4.12, the RAP team came up with cost estimates for the RAP under Proposed Gatanga Water Project. The cost for the RAP budget was based on full replacement cost which include a 15% disturbance and restoration allowance. The relocation assistance will cater for economic and social as well as physical disturbance caused to a PAP. The costs add up to KES 16,456,870.92 which is equivalent to USD 194,000.00.
13. Responsibilities
Overall responsibility for implementation and monitoring of the RAP including the Compensation Plan rests with Athi Water Services Board which houses the Project Implementing Unit.
The team of PIU at the project level includes a Civil Engineer, Sociologists, Environmentalist, Surveyor and Land Economist. They will also be backed up by a supervision consultant who will have the same experts all who will be responsible for implementing the RAP including monitoring.

The tasks of the PIU will include among others; -

a. Civil Engineers- follow-up on the design, route alignment and construction supervision
b. Environmentalist - follow-up on implementation of EMP
c. Sociologist - follow-up on implementation of RAP as well as social issues within the project
d. Surveyors – confirm the water pipeline routes based on new alignments
e. Land economist – re-confirm and values assets along the easement route.

14. Monitoring and Reporting
PIU will:

• Track implementation of each item of the RAP, and report on progress as part of the agreed monthly reporting. Quarterly RAP implementation reports will include feedback from PAPs collected through meetings with the Community Forum.
• Provide quarterly reports to local stakeholders on implementation of the RAP as part of the Public Consultation and Disclosure Program.
• Local CBOs and NGOs active in the project area will also undertake monitoring, evaluation and reporting
• Provide a monthly update on the number of grievances encountered and measures taken to address them.
1. CHAPTER ONE

1.0 BACKGROUND INFORMATION
The Government of Kenya’s (GOK) National Water Policy (1999) envisages 100% access to safe water for the country’s population by 2010. The MDG envisages access to safe water and improved sanitation of 70% and 93% respectively by 2015. Current coverage figures are 49% and 86% respectively. During the 1980’s and 1990’s Kenya made large investments in water supply and sewerage (WSS) production and treatment capacities, but these did not result in efficient and sustainable service distribution.

Athi Water Services Board is implementing projects financed under Water and Sanitation Services Improvement Project Additional Financing (WASSIP-AF), Augmentation and Rehabilitation of Gatanga Water Supply is among the of the sub-projects expected to benefit from the funding.

The project will involve laying of approximately 30km water pipeline both raw water and clear water pipeline to supply Gatanga constituency which is basically Chomo, Rwegetha, Gatara, Gacheru Ndakaini and Gathangari.

Augmentation and Rehabilitation of Gatanga Water Supply will actually affect people’s farmland specifically the route for the raw and clear water pipeline and sites for the treatment plant. Therefore there was need to undertake an abbreviated Resettlement Action Plan for the project as required by the World Bank Operation Policy OP 4.12 on Involuntary Resettlement.

The World Bank Operation policy (OP 4.12) on Involuntary Resettlement requires that a resettlement Action plan is prepared which documents cases of livelihoods interruptions which are likely to be affected by the project, propose alternative of minimizing interruptions to peoples properties and proposed adequate compensation at a full resettlement cost to the affected persons.

1.1 Scope of Resettlement Action Plan
This Resettlement Action Plan (RAP) has been prepared for submittal within the framework of the Water and Sanitation Services Improvement Project- Additional Financing (WASSIP - AF) Resettlement Policy Framework (RPF) and
Environmental management and Social Framework (EMSF), which include the social documentation below:

- This RAP which describes the measures that will be taken to address the loss of farmland that will be result due to acquisition of easement for Kiama and Kimakia water pipelines.
- A socio-Economic Baseline, which provides a detailed description of the social-economic situation prevailing in the Project area.
- Census survey of affected persons and valuation of assets;
- Description of compensation and other resettlement assistance to be provided;
- Consultations with affected people about acceptable alternatives;
- Institutional responsibility for implementation
- Procedures for grievance redress;
- Arrangements for monitoring and implementation;
- Timetable and budget.

1.2 Objectives of the Resettlement Action Plan

Resettlement Action Plan is prepared to ensure that the livelihood of the persons impacted by the project is maintained or made better and that the project does not impoverish the persons.

Main objectives of preparing Resettlement Action Plan are:

a. To identify the Project Affected Persons and parcels of land (pipeline corridor) that will be acquired during construction of the project.

b. To develop compensation framework that will propose compensation at full replacement cost to persons whose land (pipeline corridor) will be acquired as easement to the project.

The study involved a socio economic survey of the persons affected by the project which helped to assert economic situation of the project affected persons before implementation of the project. The study also involved a comprehensive community and stakeholder participation with the affected persons to ensure that there concerns are included in the report as well as the valuation for easement.

1.3 Study Methodology

The study was organized to involve communities likely to be affected by the project as much as possible, this was in an effort to develop a report that is comprehensive and inclusive of the communities’ views, and this was achieved
through organising meetings with local leadership, government institutions and local communities as well as interviews and questionnaire administration to the project affected persons.

**1.3.1 Detailed methodology**

a. Analyzing and evaluating of potential project impacts through identification of the PAPs, estimating their number and evaluating the impacts of the project on them through the census and socioeconomic study undertaken for the preparation of the RAP.
b. Identifying all categories and number of project affected persons (PAPs) regardless of land ownership status.
c. Taking an inventory of the affected assets and livelihood activities within the Kiama and Kimakia Pipeline route.
d. Preparing the inventory list of the potential project affected persons. This list include land owners and farmers, vulnerable groups, locations on the map.
e. Conducting a socio-economic survey of the Project Affected Persons (PAPs) using a semi-structured household questionnaire. The questionnaire covered the households’ baseline information on incomes and expenditures, water and sanitation, occupational and livelihood pattern, use of resources, social organization,
f. Collecting and reviewing relevant Kenyan laws and regulations for compensations and resettlement and comparing the same with World Bank safeguard policy OP 4.12 on involuntary resettlement and proposing measures to bridge the gaps.
g. Adapting the Grievance Mechanism (GM) in the RPF to ensure affordable and accessible procedures for grievances address mechanisms for third party settlement of disputes arising from resettlement including judicial resources and, community and traditional settlement mechanism.
h. Assessing the appropriate organizational framework for implementing resettlement including identification of agencies responsible for delivery of resettlement measures and provision of services, to ensure appropriate coordination between agencies and sub county government involved in implementation of the project and the RAP.
i. Developing an implementation schedule covering all resettlement activities from preparation through implementation including target dates for the achievement of expected benefits to those who need to be resettled.
j. Costing and budgeting for all RAP related activities including among others, easement acquisition costs, livelihood restoration costs of the PAPs, assistance to vulnerable groups, etc.

k. Recommending compensation and livelihood assistance programmes for the PAPs as well as developing the entitlement matrix, livelihoods restoration options and proposed livelihood programs for vulnerable groups.

l. In accordance with the RPF, elaborating monitoring plan of resettlement activities which will be undertaken by the implementing agency, supplemented by independent monitors as considered appropriate to ensure complete and objective information collection on the RAP implementation and the outcome for resettlement activities.

1.4 Guiding Principles for The Rap
The RAP has been prepared in full compliance with the RPF prepared for the WASSIP-AF which has the following principals as outlined in the RPF.

i. Involuntary resettlement and land acquisition will be avoided where feasible, or minimized, where it cannot be eliminated.

ii. Where involuntary resettlement and land acquisition are unavoidable, resettlement and compensation activities will be conceived and executed as sustainable development programs, providing resources to give PAPs the opportunity to share project benefits.

iii. PAPs will be meaningfully consulted and will participate in planning and implementing of the project.

iv. PAPs will be assisted in their efforts to ideally improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or levels prevailing prior to the beginning of the project implementation, whichever is higher.

v. Measures to address resettlement will ensure that project affected people are informed about their options and rights pertaining to resettlement, are included in the consultation process and given the opportunity to participate in the selection of technically and economically feasible alternatives. They will also be provided prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project investments.

vi. Projected affected Persons if resettled will be supported to integrate economically and socially into host communities so that adverse impacts on host communities and vice versa are minimized. To this end, appropriate
patterns of social organization will be promoted and existing social and cultural institutions of PAPs supported to the greatest extent possible.

vii. This RAP applies to all PAPs regardless of the total number affected, the severity of the impact and whether or not they have legal title to the land. Informal or customary tenure is to be treated in the same manner as formal, legal titles.

viii. All PAPs will be (have to be) identified and recorded as early as possible, preferably at project investment identification stage, in order to protect those affected by the project and prevent an influx of illegal encroachers, squatters, and other non-residents who will wish to take advantage of such benefit.

ix. Particular attention will be paid to the needs of vulnerable groups among those displaced; especially those below the poverty line, the landless, the elderly, women and children, orphans, marginalized groups and the ethnic minorities or other displaced persons who may not be protected through the Kenyan laws. The objective is to provide whatever additional assistance may be necessary to restore pre-project living standards.

x. The compensation of the PAPs must be completed prior to the implementation of the project.
2. PROJECT ACTIVITIES

2.1 Conventional Treatment works
The proposal is to set up Conventional Treatment Plants a partial water treatment plant (water from Kiama) of 3000m3/day at the periphery of the Kiamakia forest at the point where there is an existing 150m3 at GPS coordinates S 000 48’50.244” and E 0360 46’ 57.456” elevation 2266.26m

2000m3/day of treated water will be conveyed to Ndakaini Shopping centre via an 8inch already existing GI pipe while 1000m 3/day will convey to existing 225m 3 at coordinates S 000 48’51.870” and E 0360 46’ 57.23” elevation 2256.89m
The proposal is to set up a full conventional water treatment plant (water from Kimakia) of 4000m3/day at the periphery of the Kiamakia forest at the point where there is an existing 150m3 at GPS coordinates S 000 48’51.870” and E 0360 46’ 57.23” elevation 2256.89m

Kiana and Kimakia combined system with intake at Chomo Gigoro for Kiama river and at Gatura Kiarutara road for Kimakia river, the treatment plant will be located 8km from from Kiama intake and 3 Km from Kimakia intake at GPS coordinates S 000 55’04.986” and E 0360 55’ 48.970” at 1797.07m elevation at a place called Rwegetha.

2.2 Break Pressure Tanks / Storage Tanks (Ground Masonry Tanks)
Gatanga Water Tank Capacity 150m3 at Gatanga Catholic Mission Premises coordinates S 000 56’ 17.7” and E 0360 57’ 39.9” at 1700.30m elevation.
Gakurari Shopping Centre Tank Capacity 150m3 to located within Gakurari Sec. School coordinates S 000 57’ 17.202” and E 0360 57’ 30.384” at 1660.11m elevation.
Kirwara Tank Capacity 150m3 to be located in Kirwara Primary school coordinates S 000 55’ 46.854” and E 0360 56’ 34.962” at 1728.66m elevation.
Gatura tank of capacity 225m3 coordinates S 000 52’ 35.56” and E 0360 56’ 52.26.136” at 1910.92m elevation.
Proposed Ndakaini 225m3 tank at Gitiri, 150m3 tank at Mukurwe and 150m3 at Gitemu. The proposed works will be at S 000 47’19.080” and E 0360 47’ 35.362” at elevation 2283.10m
2.3 Existing Water Intake Weirs - Partial Treatment 6000m³/day
The intake works for 6000 m³/ day already exists on Thika River built in 1974 through the support of German Government and Kenya Government, the site is located at Partial treatment plant for 6000m³/day of already existing system on Thika Wanyaga at GPS coordinates S 000 46’21.102’’ and E 0360 46’ 32.586’’ at 2298.81m elevation. Within the Gatere forest (Aberdare forest) the inlet works have been approved by both the WRMA and KFS. The design of the weir allows for adequate downstream compensation as per the attached flow measurement report prepared by the WRMA. The proposal is to retain the intake works and set up a bigger storage tank of 225m³ at Ndakaini Shopping centre to serve the areas of Kahunyu, Gatunguru, kiriane and Mureke within Gatanga District. Chlorine will be dozed at the tank to treat the water of coli forms and other bacteria.

2.4 Kiama 3000 m³/day
The inlet works exist within the Kiamakia forest and was approved to be constructed by WRMA in 2010 as well as KFS, the capacity of the weir is 3000 m³/day. Distribution line for the water already exists therefore no new distribution line will be constructed under this project. The design of the weir allows for adequate downstream compensation as per the attached flow measurement report prepared by the WRMA. The intake is planned to serve the proposed partial treatment for Kiama 3000m³.

2.5 Kimakia 3000 m³/day
The intake weir exists withing the kimakia forest (constituent of Aberdare forest) The intake weir is designed for 3200m³/day with an existing 12inch raw water main to the distribution network. The intake wier is planned to serve Kimakia 4000m³/day.

2.6 Project Cost
From the detailed design of the project, the proposed intervention for Augmentation of Gatanga Water Supply is envisaged to cost KES 246,846,329.42 equivalent to USD 2,904,074.46.
3 SOCIO-ECONOMIC BASELINE CONDITIONS

The following sections provide a summary of methodology and results used to characterize socio-economic baseline conditions in the project area including the persons likely to be affected by the project prior to the project investment. The project activities will not in any way displace people from their homes; only portions of their farmland will be acquired to provide the required easement for water pipeline. The socio economic status of the people is likely to be slightly disrupted during the construction period however proper compensation at full replacement cost has been proposed in this report. Eventually the persons will directly benefit from the project due to availability of reliable safe water supply.

3.1 Summary of Survey Methodology.

Data used to establish socio-economic baseline conditions were derived from field surveys conducted in the project area during the preparation of the ESIA and RAP. There were two broad data objectives for the socio-economic baseline assessment.

Establish a robust characterization of general pre-project socio-economic conditions against which future changes can be measured, socio economic characteristics that was considered education, water and sanitation, health, sources of livelihood and housing.

The survey team employed the following methods:
- Quantitative household survey
- Focus Group Discussions
- Key-Informant Interviews

3.2 Review of the Socio-Economic Study Area

3.2.1 Gender of Respondents

Out of the total respondent of 116, more women were interviewed than men at a frequency of 59 to male at a frequency of 57. But the difference was minor leaving a heterogeneous respondent in terms of gender, this indicates that the affected population is evenly distributed in terms of gender.
Table 3-1: gender of respondent

<table>
<thead>
<tr>
<th>Gender for the PAPS</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>male</td>
<td>57</td>
<td>49.1</td>
<td>49.1</td>
<td>49.1</td>
</tr>
<tr>
<td>female</td>
<td>59</td>
<td>50.9</td>
<td>50.9</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>116</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

Table 3-2: age of respondent

<table>
<thead>
<tr>
<th>Age of Respondents</th>
<th>Frequency</th>
<th>Count</th>
<th>Cumulative count</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rwegetha</td>
<td>Chomo</td>
<td>Gathangari</td>
</tr>
<tr>
<td>1 0 – 10yrs</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2 11yrs – 20yrs</td>
<td>1</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>3 21yrs – 30yrs</td>
<td>13</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>4 31yrs – 40yrs</td>
<td>14</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td>5 41yrs – 50yrs</td>
<td>2</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>6 51yrs – 60yrs</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>7 70yrs and above</td>
<td>2</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>2</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

Majority of the persons affected are in the age bracket of between 21yrs to 50yrs, this is the productive age and most of them when asked if they support the project respondent by saying that they support the project provided they are adequately compensated for the damage and easement acquired for the pipelines through their land.
3.2.2 **Sources of water in the project site**
The main source of water used by the respondents at 60% is river which is untreated water, this is followed by piped untreated water at 27% is piped water of which the taps run dry in most days forcing the respondents to fetch water from the river sources. Rainwater is harvested by 10% of the respondents which is also seasonal forcing them to fetch water from the river as well and only 3% of the respondents have boreholes which are basically hand dug wells. Therefore there is need for the Gatanga Water Supply project that will provide access to clean water supply.

**Pie Chart 3-1: Current Sources of Water**

![Pie Chart](image)

3.2.3 **Sources of Livelihood for the affected person**
The main source of income for the respondents at 75% is farming; this is followed by a 20% of self-employment this includes small scale trading of food crops and farm produce. The least source of income by the respondents is casual work at 1% who basically work in the tea farms and domestic homes as casual labourers. The water project will therefore improve and enhance the farming activities of the people by providing adequate water needed for farming especially livestock chicken rearing horticultural farming can be enhanced by encouraging the people to harvest rain water by guttering homes and construction of surface small earth dams.
3.2.4 Sources of Energy for lighting and cooking

The main source of energy for lighting at a percentage of 62% used by most of the respondent is kerosene which is bought from local venders, this followed by electricity at a 34% used basically for lighting. The least used source of energy for lighting by the respondents at a 4% is solar energy. Most respondents when asked why cited unsustainability issues and the fact that Rural Electrification Program supplied electricity extensively within the homesteads however the percentage of electricity remains at 34% to kerosene at 62%.

The main source of Energy for cooking available is firewood with a percentage of 94% which is locally available, 4% for Kerosene which is bought and electricity at 2% which is the least source of energy used by the Respondents.

From the analysis, its evident that the PAPs use electricity, kerosene and firewood as the most popular sources of energy for lighting and cooking respectively, this implies that more money is spent as the energy alternative above are expensive, this leaves the PAPs with limited resources to use for water and other family needs, the project will the economic burden currently facing the PAPs by assuring them adequate and safe and clean water.
Pie Chart 3-2: showing percentage of Energy for cooking

Pie Chart 3-3 – Percentage of Sources of Energy for lighting
3.2.5 **Average Monthly Income**

The average monthly income for most of the respondents is approximately Ksh 12,569.00. Most male respondents with a count of 36 get a monthly income of (0-10,000Ksh) monthly income bracket, followed by a count of 7 male respondents who get a monthly income of (11,000-20,000Ksh) monthly income bracket.

Whereas most female with a count of 47 get a monthly income of (0-10,000 Ksh) monthly income bracket, this is followed by a count of 2 with a count of 2 who get a monthly income of (11,000-20,000Ksh) monthly income bracket.

With guaranteed reliable safe and adequate water supply, the PAPs will spent less on water than they are currently spending hence increase in the per capita income

**Table 3-3: Distribution table showing monthly income of the respondents based on Gender**

<table>
<thead>
<tr>
<th>Monthly Income</th>
<th>Male respondent</th>
<th>Female respondent</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-10000 Ksh</td>
<td>36</td>
<td>47</td>
<td>83</td>
</tr>
<tr>
<td>11000-20000</td>
<td>7</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>21000 - 30000</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>31000 - 40000</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>41000 - 50000</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>51000 - 60000</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>61000 - 70000</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>71000 - 80000</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>81000 - 990000</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>over 100000</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>No response</td>
<td>9</td>
<td>6</td>
<td>15</td>
</tr>
</tbody>
</table>
3.2.6 Monthly Expenditure
From the assessment, a lot of income is spent on food at 67% followed by energy for cooking at 23% followed by health at 7% and rent at 1%, average monthly expenditure of the persons interviewed stand at KES 10,000.00 which is slightly less than the average monthly income at KES. 12,569.00. from the assessment it was revealed that most of the respondents get lump sum bonus on quarterly basis and annually from tea and milk from cooperative societies hence they are able to meet the gap between income and expenditure.

3.2.7 Sanitation Facilities in the Area.
The most used sanitation facility with frequency of 113 that is 97.4% is pit latrines this is followed by frequency of 3 that is 2.6% of flash toilets which are connected to a septic tank as shown in the table above. 0728 787959

Table 3-4: Sanitation facilities Used by the Respondents

<table>
<thead>
<tr>
<th>Sanitation Facility Used</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flash toilet(connected to a septic tank)</td>
<td>3</td>
<td>2.6</td>
<td>2.6</td>
<td>2.6</td>
</tr>
<tr>
<td>Pit Latrine</td>
<td>113</td>
<td>97.4</td>
<td>97.4</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>116</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

3.2.8 Infrastructure and social amenities affected by the project
The project will affect highly cash crops which is basically tea bushes at 59.5% this is followed by trees at 28.4%, food crops at 11.2% while infrastructure at 0.9% respectively. The infrastructure here was basically irrigation pipelines for small subsistence farming and local roads which will be traversed by the pipelines. The works contract has a bill item specifically for reinstatement of the site to a better condition. This shows that the project will moderately affect the PAPS source of income therefore need for adequate compensation prior to implementation of the project at full replacement cost.
### 3.2.9 Community Perception of the Project

All the households agreed to have the construction of Gatanga water supply. They view the construction as an opportunity for job creation, provision of clean water supply, infrastructure; improve the living standards of the community and better living conditions, and easy access to clean water supply. However, the main concern of the persons affected is that they should be adequately compensated before the project commences.
Table 3-5: Main Physical and Socio-Economic Characteristics of households in the project area

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Languages</td>
<td>English, Kiswahili, Kikuyu</td>
</tr>
<tr>
<td>Religion</td>
<td>(1) Catholics (2) Protestants churches</td>
</tr>
<tr>
<td>Housing</td>
<td>Walls: brick, Roofs: aluminum or iron sheets. Cement floor</td>
</tr>
<tr>
<td>Water</td>
<td>Surface water from the nearby Kimakia and Kiama River/Tap water/ and rain harvesting</td>
</tr>
<tr>
<td>Electricity</td>
<td>Rural electrification program of Kenya Rural Electrification Agency has adequately supplied the area with electricity</td>
</tr>
<tr>
<td>Television</td>
<td>Majority of persons interviewed own television</td>
</tr>
<tr>
<td>Cell phone</td>
<td>Safaricom, Airtel, Orange and Yu Mobile</td>
</tr>
<tr>
<td>Education</td>
<td>Several schools (primary and secondary)</td>
</tr>
<tr>
<td>Health</td>
<td>Several clinics and health centres</td>
</tr>
<tr>
<td>Commerce</td>
<td>Several market centres</td>
</tr>
<tr>
<td>Transport</td>
<td>Motorbikes used to get people to the main road</td>
</tr>
<tr>
<td>Cultural sites</td>
<td>No cultural site within project site</td>
</tr>
<tr>
<td>Cemeteries</td>
<td>No communal cemetery, people are buried within their homesteads</td>
</tr>
</tbody>
</table>
4 LEGAL AND REGULATORY FRAMEWORKS

The chapter sets out the legal operating environment for acquisition of land as anticipated in the implementation of the Gatanga Water Supply Project. The chapter highlights major issues related to Kenyan land legislation with regards to involuntary resettlement in this RAP. It provides a brief overview of the Kenya land policy, and the Kenya’s constitutional provisions related to land use, planning, acquisition, management and tenure, and more specifically the legislations related with land expropriation or acquisition, land valuation and land replacement.

The chapter also compares the Kenyan legislation with the World Bank provisions on resettlement, highlighting gaps and making recommendations to fill up gaps.

Table 4.1. Summary of relevant resettlement legal statutes applicable to Gatanga Water Supply.

<table>
<thead>
<tr>
<th>Legal Framework</th>
<th>Functional Relationship to Resettlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution of Kenya 2010</td>
<td>Constitution of Kenya 2010 recognizes individuals’ right to acquire and own property provided they are citizens of the country in article 40. However, Article 66 of the same Constitution provides for the State to regulate the manner in which these rights may be curtailed for the benefit of the general public. Article 47 of the Constitution provides for administrative action to override the individual rights but the victim has to be given written reason for the action taken that undermines the right.</td>
</tr>
<tr>
<td>The Land Act 2012 Laws of Kenya</td>
<td>It is the substantive law governing land in Kenya and provides legal regime over administration of public and private lands. It also provides for the acquisition of land for public benefit. The government has the powers under this Act to acquire land for projects, which are intended to benefit the general public. The projects requiring resettlement are under the provision of this</td>
</tr>
</tbody>
</table>
Land Registration Act, 2012

The law provides for the registration of absolute proprietorship interests over land (exclusive rights) that has been adjudicated or any other leasehold ownership interest on the land. Such land can be acquired by the state under the Land Act 2012 in the project area.

National Land Commission Act 2012

The act establishes the National Land Commission with the purpose of managing public land and carrying out compulsory acquisition of land for specified public purposes.

The Land Adjudication Act Chapter 95 Laws of Kenya

Provides for ascertainment of interests prior to land registrations under the Land Registration Act 2012 through an adjudication committee that works in liaison with adjudication officers.

The Valuers Act 532

The act establishes valuers registration board, which has the responsibility of regulating the activities and conduct of registered valuers in accordance with the provision of the act.

4.1 The National Land Policy

The National Land Policy (“NLP” or “Policy”)\(^1\) was adopted in August 2009 with the aim of providing an overall framework for new legislation and defining key measures required to address critical issues such as land administration, access to land, land use, and restitution related to historical injustices and an outdated legal framework. The NLP addresses constitutional issues such as compulsory acquisition and development control.\(^2\) Section 45 of the NLP defines compulsory

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\(^2\) Development control is the power of the State to regulate the property rights in urban and rural areas and is derived from the State’s responsibility to ensure that the use of land promotes the public interest.
acquisition as “the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation.”

Under the current Constitution, the Land Act 2012 empowers the National Land Commission (under the guidance of Minister for Lands) to exercise the power of compulsory acquisition on behalf of the State. Similarly, the NLP empowers the National Land Commission to compulsorily acquire land.

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

- To review the law on compulsory acquisition to align it with the new categories of land ownership (public, private and community land);
- To harmonize the framework for compulsory acquisition to avoid overlapping mandates;
- To establish compulsory acquisition criteria, processes and procedures that are efficient, transparent and accountable;
- To institute legal and administrative mechanisms for the exercise of the power of compulsory acquisition by the State through the National Land Commission; and
- To confer pre-emptive rights on the original owners or their successor in title where the public purpose or interest justifying the compulsory acquisition fails or ceases.

4.2 The Constitution of Kenya

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:

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3 Sessional Paper No. 3 of 2009 on National Land Policy, § 45.
4 The Constitution of Kenya, 1963, was replaced in 2010.
7 Id. at Chapter 3.2.1.1, article. 46.
8 Id. at Chapter 3.2.1.1, article. 47(a).
9 Id. at Chapter 3.2.1.1, article. 46 and 47(b). Under the previous Constitution, Chapter IX (Trust Land), Art. 18, the President and local authorities had the power to set apart Trust Land for the purposes of the Government of Kenya or any corporate body established by an Act of Parliament, or companies which shares are held on behalf of the GoK and for extraction of minerals and oils. This power does not exist under the new Constitution. Under the Government Lands Act, the President has special powers with regards to government land, and he may exercise these powers through the Commissioner of Lands. (Government Lands Act, Chapter 280, §3.)
10 Sessional Paper No. 3 of 2009 on National Land Policy, Chapter 3.2.1.1, § 47(c).
11 Id. at Chapter 3.2.1.1, p. 47(d).
12 Id. at Chapter 3.2.1.1, §47(e).
14 Constitution of Kenya, art. 40.
“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.\footnote{Id.}

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.\footnote{The Land Act, 2012 The Government of Kenya, Section 8.} 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 NLC, and requires the state to make full and prompt payment of "just compensation" and an opportunity for appeal to court.

Article 40(3) (a) refers to acquisition and conversion of all kinds of land in Kenya (private, public, community land and foreign interests in land). The Constitution further provides that payment of compensation shall be made to “occupants in good faith” of land acquired by the state who do not hold title for such land.\footnote{Constitution of Kenya. Id. at art. 40(5).} 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.\footnote{Constitution of Kenya. Id. at art. 40(3).}

In addition to Article 40, Chapter Five of the Constitution is relevant to compulsory acquisition. This chapter, entitled "Land and Environment," is divided into two parts. Part 1 deals with land, and Part 2 deals with environment and natural resources. Part 1 of Chapter 5, articles 60 – 68, describes the principles of land policy. Land should be held, used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with security of land rights, sound conservation and protection of ecologically sensitive areas.\footnote{Id. at art. 60.} These principles must be implemented through a national land policy reviewed regularly by the national government and through legislation.\footnote{Id. at art. 60(2).}
4.3 Land Tenure System in Kenya

Land tenure in Kenya is classified as public, community or private.\textsuperscript{21} Public land consists of government forests (other than those “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines”\textsuperscript{22}), government game reserves, water catchment areas, national parks, government animal sanctuaries and specially protected areas.\textsuperscript{23} The National Land Commission will manage public land.\textsuperscript{24} 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.”\textsuperscript{25} Rights are also held through traditional African systems, and rights that derive from the English system introduced and maintained through laws enacted by colonial and then the national parliament. The former is loosely known as customary tenure bound through traditional rules (customary law). The latter body of law is referred to as statutory tenure, secured and expressed through national law, in various Act of parliament e.g. Land Act 2012, Land Registration Act, 2012, Trust Land Act (cap 288) of the Laws of Kenya.

4.3.1 Customary Land Tenure

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

4.3.2 Freehold Tenure

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. The Land Registration Act, 2012, governs freehold land. 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

\textsuperscript{21} Id. at art. 61.
\textsuperscript{22} Id. at art. 63(d)(i).
\textsuperscript{23} Id. at art. 62(g).
\textsuperscript{24} Id. at arts. 62(3), 67(2)s (a).
\textsuperscript{25} Id. at art. 63(d)(i) and (ii).
settlers who required legal guarantee for the private ownership of land without which they were reluctant to invest.

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

4.3.4 Public Tenure
This is where land owned by the Government for her own purpose and which includes unutilized or un-alienated government land reserved for future use by the Government itself or may be available to the general public for various uses. The land is administered under the Land Act 2012 (LA). 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 as:

- To identify public land, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey;
- Evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning; and
- Acquire land for public purposes
- Solve land disputes and deal with historical land injustices
- Share data with the public and relevant institutions in order to discharge their respective functions and powers under this Act; or
- May require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument26.

Categories of government land include forest reserves, other government reserves, alienated and un-alienated government land, national parks, townships and other

26 National Land Commission Act, 2012, Section II, article 5(1)
urban centers and open water bodies. The Lands Act does not contain any notion of trusteeship by government of the land to her people.

4.3.5 Public Resources on Public Land
Notwithstanding the foregoing, it is a common law doctrine to the effect that common property resources such as rivers, forests and parks are held by the state in trust for the general public. Consequently, the state cannot alienate these resources or use them in a way detrimental to public interest. This is the doctrine that would ensure that public land cannot be alienated or committed to waste to the detriment of public interest. It is the case that the statutory frameworks for land ownership in Kenya is heavily influenced by common law jurisprudence on land ownership—the owner’s rights includes the rights of use and abuse. In Kenya however, the development of physical planning legislation has vested in the state the cumulative rights of other landowners. The regulatory power is referred to as police power.

4.4 Land Act, 2012
The Land Act 27 (“LA”) is the Kenya’s framework legislation regulating compulsory acquisition of land (i.e. land, houses, easements etc.). The LA was adopted on 2nd May 2012 and provides for sustainable administration and management of land and land based resources including compulsory acquisition.

4.4.1. LAND ACQUISITION PROCESS

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

Respective Government agency or cabinet must seek approval of NLC
The respective Cabinet Secretary or Government agency or the County Executive Committee Member must submit a request for acquisition of private land to the NLC to acquire the land on its behalf. The Commission will prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of

land. It is important to note that if the NLC is constituted prior to conclusion of land acquisition, it could prescribe criteria and guidelines necessitating variations or revisions to the current RAP. Similar, the Commission has powers to reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed.

**Inspection of Land to be acquired**

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

**Publication of notice of intention to acquire**

Upon approval, NLC shall publish a notice of intention to acquire the land in the *Kenya Gazette* and *County Gazette*. It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar. The courts have strictly interpreted this provision, requiring that the notice include the description of the land, indicate the public purpose for which the land is being acquired and state the name of the acquiring public body. NLC shall ensure that the provisions are included in her notice.

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

**Serve the notice of inquiry**

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

**Holding of a public hearing**
NLC then convenes a public hearing not earlier than 30 days after publication of the Notice of Intention to Acquire. On the date of the hearing, NLC must conduct a full inquiry to determine the number of individuals who have legitimate claims on the land, the land value and the amount of compensation payable to each legitimate claimant.\textsuperscript{32} Besides, at the hearing, the Commission shall— make full inquiry into and determine who are the persons interested in the land; and receive written claims of compensation from those interested in the land. For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Commission (NLC) of documents of title to the land.

The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry. It will also provide opportunity to land owners to hear the justification of the public authority in laying claims to acquire the land.

\textbf{Valuation of the land}

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.” This can be interpreted that NLC must determine the value of the land accordingly and pay appropriate just compensation in accordance with the principles and formulae that it will develop. Nonetheless, just compensation\textsuperscript{33} could also be interpreted as market rate. The final award on the value of the land shall be determined by NLC and shall not be invalidated by reason of discrepancy, which may be found to exist in the area.

\textbf{Matters to be considered in determining compensation:}

The market value of the property, which is determined at the date of the publication of the acquisition notice must be considered.\textsuperscript{34} 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:

\begin{itemize}
  \item 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
\end{itemize}

\textsuperscript{32} \textit{Id.} at article 112.

\textsuperscript{33} Schedule explaining \textit{just compensation} has not been assessed and released by NLC. The Land Act 2012 say NLC should develop the schedule.

\textsuperscript{34} \textit{Id.} at article 112 and article 111.
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.\(^{35}\)

**Matters not to be considered in determining compensation:**

- The degree of urgency, which has led to the acquisition.
- Any disinclination of the person’s interest to part with the land.
- Damages sustained by the claimant, which will not represent a good cause of action.
- Damages, which are likely to be caused to the land after the publication of the acquisition notice or as a consequence of the future, land use.
- Increased land value accrued by its future use.
- Any development at the time of acquisition notice, unless these improvements were necessary for maintaining the land.\(^{36}\)

**Award of compensation**

The Land Act does not stipulate that compensation must be in the form of money only. Under the Land Act 2012 section 117, the State can award a grant of land in lieu of money compensation (“land for land”), provided the value of the land awarded does not exceed the value of the money compensation that would have been allowable.\(^{37}\) The law could be interpreted that any dispossessed person shall be awarded the market value of the land.\(^{38}\) The new law is silent on relocation support or disturbance allowance support.

Upon the conclusion of the inquiry, and once the NLC has determined the amount of compensation, NLC will prepare and serves a written award of compensation to each legitimate claimant.\(^{39}\) NLC will publish these awards, which will be

\(^{35}\) Schedule 2 governing compensation 2000.  
\(^{36}\) Schedule 3 governing compensation for compulsory acquisition.  
\(^{37}\) *Land Act*, 117.  
\(^{38}\) *Land Act*, Schedule  
\(^{39}\) *Land Act*, 115
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.

**Payment of Compensation**

A notice of award and offer of compensation shall be served to each person by the Commission. Section 120 provides that “first offer compensation shall be paid promptly” to all persons interested in land. 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 owner of 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.

**Transfer of Possession and Ownership to the State**

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

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

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40 Land Act, 115  
41 Land Act, This language reflects the language of the Kenya Constitution, 1963.  
42 Land Act, 119  
43 Constitution of Kenya, article 162  
44 Land Act, 115 and 116
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.

Opportunity for Appeal
The Kenya Constitution establishes Environment and Land Court\textsuperscript{45}. Article 162 of the constitution provides for the creation of specialized courts to handle all matters on land and the environment. Such a court will have the status and powers of a High Court in every respect. Article 159 on the principles of judicial authority, indicates that courts will endeavor to encourage application of alternative dispute resolution mechanisms, including traditional ones, so long as they are consistent with the constitution. Section 20, of the Environment and Land Court Act, 2011 empowers the Environment and Land Court, on its own motion, or on application of the parties to a dispute, to direct the application of alternative dispute resolution (ADR), including traditional dispute resolution mechanisms.

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

- The determination of such person’s right over the land;
- The amount offered in compensation; and
- The amount offered in compensation for damages for temporary dispossession in the case of the Government’s withdrawal of its acquisition of the land.\textsuperscript{46}

\textsuperscript{45} Land Act 2012, Section128

\textsuperscript{46} Land Acquisition Act. at article 29(7).
Parties will pay fees as determined by Environment and Land Court or the court may choose to waive them completely or in part on grounds of financial hardship.\textsuperscript{47}

\subsection*{4.5 The Valuers Act}
Valuation of land is a critical aspect of compulsory acquisition practice and compensation. The National Land Commission based on land valuation determined by registered valuers will make compensation awards. Besides, the Valuers Act\textsuperscript{48} establishes the Valuers Registration Board, which regulates the activities and practice of registered valuers. All valuers must be registered with the Board to practice in Kenya. The Board shall keep and maintain the names of registered valuers, which shall include the date of entry in the register; the address of the person registered the qualification of the person and any other relevant particular that the Board may find necessary.

As of March 2011, there were 285 registered valuers in Kenya.\textsuperscript{49} The Valuers Act does not provide for a description of the valuation procedures and methods. RAP team has made use of the services of registered valuers who are approved by Valuers Registration Board.

Under the Valuers Act, professional misconduct of registered valuer will include:
\begin{itemize}
  \item False or incorrect entry in the register;
  \item False or misleading statement caused by omission or suppression of a material fact;\textsuperscript{50} and
  \item The acceptance of “any professional valuation work which involves the giving or receiving of discounts or commissions.”\textsuperscript{51}
\end{itemize}

In case of professional misconduct, the registered valuer is guilty of an offense punishable with a fine (not exceeding Ksh.10, 000) and/or imprisonment for three years. Fees for land valuation in case of compulsory acquisition are established based on the value of the property as “the first Kshs 400,000 at 1 per cent. Residue at 0.5 per cent”\textsuperscript{52} and are paid by those who requested the valuation.

\textsuperscript{47} Land Acquisition Act at article 43.
\textsuperscript{48} The Valuers Act, Chapter 532, \url{http://www.kenyalaw.org/kenyalaw/klr_app/frames.php}, accessed May 25, 2011.
\textsuperscript{50} The Valuers Act, § 24 and Legal Notice no. 32.
\textsuperscript{51} Land Act 2012, article 128.
\textsuperscript{52} Legal Notice 32.
4.6 Comparative Analysis of World Bank Op 4.12 & Kenyan Resettlement Laws

Table 4.2: Comparative Analysis of World Bank OP 4.12 and Government of Kenya requirements including measures to address gaps

<table>
<thead>
<tr>
<th>OP 4.12</th>
<th>Kenyan Legislation</th>
<th>Comparison</th>
<th>Recommendation to Address Gap</th>
</tr>
</thead>
<tbody>
<tr>
<td>GENERAL REQUIREMENTS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>World Bank OP4.12 has overall policy objectives, requiring that:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Involuntary resettlement should be avoided wherever possible, or minimized, exploring all alternatives.</td>
<td>1. According to Kenyan Legislation, involuntary resettlement may occur as a result of projects implemented in public interest.</td>
<td>1. The Land Act does not stipulate that resettlement should be avoided wherever possible; on the contrary, as long as a project is for public interest, involuntary resettlement is considered to be inevitable.</td>
<td>1. RAP, ensure that resettlement issues are considered at the design stage of the project in order to avoid/minimize resettlement.</td>
</tr>
<tr>
<td>2. Resettlement programs should be sustainable, include meaningful consultation with affected parties, and provide benefits to the affected parties.</td>
<td>2. The Land Act, 2012 Act outlines procedures for sensitizing the affected population to the project and for consultation on implications and grievance procedures.</td>
<td>2. Same as the World Bank</td>
<td></td>
</tr>
</tbody>
</table>
### Process Requirements

#### Consultation:
Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.

<table>
<thead>
<tr>
<th>OP 4.12</th>
<th>Kenyan Legislation</th>
<th>Recommendation to Address Gap</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>3. The Land Act 2012 guarantees the right to fair and just compensation in case of relocation.</strong></td>
<td>The Land Act outlines procedures for consultation with affected population by the NLC and grievance management procedures.</td>
<td>Implement World Bank OP 4.12 policy - displaced should be assisted in improving their livelihood to pre-project status.</td>
</tr>
<tr>
<td>3. Just and fair compensation as outlined in the Land Act 2012 is not clear and can only be determined by NLC, which can be subjective. It is does not talk about improving livelihood or restoring them to pre-project status.</td>
<td>Same as World Bank</td>
<td></td>
</tr>
<tr>
<td><strong>3. Displaced persons should be assisted in improving livelihoods etc., or at least restoring them to previous levels.</strong></td>
<td><strong>3. Displaced persons should be assisted in improving livelihoods etc., or at least restoring them to previous levels.</strong></td>
<td></td>
</tr>
<tr>
<td>OP 4.12</td>
<td>Kenyan Legislation</td>
<td>Comparison</td>
</tr>
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<tr>
<td><strong>Grievance:</strong> For physical resettlement, appropriate and accessible grievance mechanism will be established.</td>
<td>Land Act 2012 clearly outline the steps and process for grievance redress that includes alternative dispute resolution, re-negotiation with NLC and is backed by the judicial system through Environmental and Land Court</td>
<td>Kenyan legislation meets OP4.12 requirements.</td>
</tr>
<tr>
<td><strong>Eligibility Criteria</strong>&lt;br&gt; Defined as:</td>
<td>The Land Act 2012 provides that written and unwritten official or customary land rights are recognized as valid land right. The Law provides that people eligible for compensation are those holding land tenure rights. Land Act also recognizes those who have interest or some claim in the land such pastoralist or who use the land for their livelihood. The constitution recognizes</td>
<td>Kenya’s Land Law defines eligibility as both formal (legal) and informal (customary) owners of expropriated land. However, it does not specifically recognize all users of the land to be compensated. The constitution of Kenya on the other hand recognizes ‘occupants of land’ who do not have title and who the state</td>
</tr>
<tr>
<td>OP 4.12</td>
<td>Kenyan Legislation</td>
<td>Comparison</td>
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<tr>
<td>claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan (see Annex 10 A, para. 7(f)); and19 (c) those who have no recognizable legal right or claim to the land they are occupying&lt;br&gt;&lt;br&gt;<strong>To determine eligibility:</strong>&lt;br&gt;CARRY OUT RESSETLEMENT CENSUS. CUT OFF DATE FOR ELIGIBILITY IS THE DAY WHEN THE CENSUS BEGINS.‘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 illegaly acquired land&lt;br&gt;&lt;br&gt;Land Act 2012 provides for census through NLC inspection and valuation process has an obligation to pay in good faith when compulsory acquisition is made. Same as World Bank</td>
<td>Implement cut-off procedures as outlined in the RPF and Kenyan Law</td>
<td></td>
</tr>
<tr>
<td>OP 4.12</td>
<td>Kenyan Legislation</td>
<td>Comparison</td>
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<tr>
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</tr>
<tr>
<td><strong>Measures:</strong> Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land-based. Cash based compensation should only be made where (a) land taken for the project is a small fraction of the affected asset and the residual is economically viable; (b) active markets for lost assets exist and there is sufficient supply of land and housing; or (c) livelihoods are not land-based.</td>
<td>Legislation provides for land for land compensation but the Land Act 2012 does not state whether preference should granted to land to land compensation. Land Act 2012 appears to prefer mode of compensation by the Government to the affected population. Land Act talks of prompt, just compensation before the acquisition of land. However, interpretation of just compensation is yet to be clearly outlined through a specific schedule defining just compensation have not</td>
<td>Land for Land provided for in the Land Act based on agreement by the PAP. Cash based compensation seems to be the preferred mode of awarding compensation to the affected population by Government of Kenya ‘Just compensation’ as stipulated in the Land Act not yet specifically defined.</td>
</tr>
<tr>
<td>OP 4.12</td>
<td>Kenyan Legislation</td>
<td>Comparison</td>
</tr>
<tr>
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<tr>
<td>provided with prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project. If physical relocation is an impact, displaced persons must be provided with assistance during relocation and residential housing, housing sites and/or agricultural sites to at least equivalent standards as the previous site. Replacement cost does not take depreciation into account. In terms of valuing assets, if the residual of the asset being taken is not economically viable, compensation and been put in place. Attorney’s fees, cost of obtaining advice or cost incurred in preparing and making written claim not in the Land Act other than ‘just compensation’</td>
<td>OP 4.12 provides related land transaction fees. Land Act not clear on this.</td>
<td>Implement World Bank policy.</td>
</tr>
<tr>
<td>The Act is does not out rightly stipulate assistance for relocation but we can interpret that relocation cost will be included in just compensation.</td>
<td>OP4.12 requires that displacement must not occur before all necessary measures for resettlement are in place, i.e., measures over and above simple compensation</td>
<td>Ensure that ALL resettlement options are agreed on with PAPs and put in place BEFORE displacement of affected persons.</td>
</tr>
<tr>
<td>OP 4.12</td>
<td>Kenyan Legislation</td>
<td>Comparison</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------</td>
<td>------------</td>
</tr>
<tr>
<td>assistance must be provided as if the entire asset had been taken. Compensation and other assistance required for relocation should be determined prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Valuation:</strong> With regard to land and structures, “replacement cost” is defined as follows: For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of</td>
<td>Valuation is covered by the Land Act 2012 and stipulates, as already mentioned, that the affected person receive just compensation from NLC, as determined by National Land Commission. Valuers Act stipulates that a residual amount of 0.5% of the total valuation of an asset is expected to pay the valuer.</td>
<td>Though one could argue that there is some form of consistency between the Kenyan Law and World Bank OP.4.12, interpretation of ‘just compensation’ has not been defined.</td>
</tr>
<tr>
<td>OP 4.12</td>
<td>Kenyan Legislation</td>
<td>Comparison</td>
</tr>
<tr>
<td>---------</td>
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<td>------------</td>
</tr>
<tr>
<td>Land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes. For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus</td>
<td>Land Act 2012 talks of just compensation for the lost assets but it is not specific of the exact amount or procedures on the same. The Land Act 2012 stipulates just compensation.</td>
<td>interpretation of just compensation not clear.</td>
</tr>
<tr>
<td>OP 4.12</td>
<td>Kenyan Legislation</td>
<td>Comparison</td>
</tr>
<tr>
<td>------------------</td>
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<td>------------</td>
</tr>
<tr>
<td>the cost of any labor and contractors’ fees, plus the cost of any registration and transfer taxes.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Monitor</strong></td>
<td>According to Land Act can be undertaken County Land Boards.</td>
<td>Both Kenyan Law and World Bank policy advocates for Monitoring and Evaluation</td>
</tr>
</tbody>
</table>
### Table: 4.3 Comparative Analysis of World Bank OP 4.12 and Kenya’s requirements Relevant to the Process

<table>
<thead>
<tr>
<th>Category of PAPs and Type of Lost Assets</th>
<th>Kenyan Law</th>
<th>World Bank OP4.12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Owners</td>
<td>Fair and just compensation which could be in form of cash compensation or Land for Land</td>
<td>Recommends land-for-land compensation. Other compensation is at replacement cost</td>
</tr>
<tr>
<td>Land Tenants</td>
<td>Constitution says that ‘occupants of land’ entitled to some level of pay in good faith. Land Act stipulates that they are entitled to some compensation based on the amount of rights they hold upon land under relevant laws. However, those who acquired land illegally not entitled to any.</td>
<td>PAPs are entitled to some form of compensation whatever the legal/illegal recognition of their occupancy.</td>
</tr>
<tr>
<td>Land Users</td>
<td>Land Act not clear on Land Users although in some cases they can receive some form of compensation depending on the determination by NLC</td>
<td>Entitled to compensation for crops and investments made on the land; livelihood must be restored to at least pre-project levels.</td>
</tr>
<tr>
<td>Owners of Temporary Buildings</td>
<td>The constitution of Kenyan respects the right to private property and in case of</td>
<td>Entitled to in-kind compensation or cash compensation at full replacement cost</td>
</tr>
<tr>
<td>Category</td>
<td>Description</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</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>
</tr>
<tr>
<td>Perennial Crops</td>
<td>Compensation for the loss of crops</td>
<td>As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop,</td>
</tr>
<tr>
<td>Casual Labourers</td>
<td>Not specific on livelihood. The constitution says some pay maybe made in good faith.</td>
<td>Compensation and Livelihood restoration to pre-displacement level.</td>
</tr>
</tbody>
</table>
5.3 Impacts on People and Livelihoods

Census
A comprehensive census of Project-Affected People has been carried during the preparation of this RAP. This census has included:

- The inventory of all fields cultivated in the Project-Affected area, including their measurement, description of standing crops if any, identification of stakeholders (owners, tenants, sharecroppers, as appropriate),
- The census of Project-Affected People, including the administration of a socio-economic questionnaire,

Overview of the Results of the Census
The total number of 192 small plots will be affected, the study revealed that no Person will be relocated as the pipeline is designed to follow the river and some instances roads, so persons will only loose fraction of the their parcels to water pipeline easement.

5.3 Impact on Public and Community Infrastructure

Roads
The project will not adversely impact on the road network instead improved access will be realized in the project sites that have limited and or poor infrastructure since the construction process will entail construction of access to enable the construction equipment access site

Other Networks
There is no piped water source, electricity or telephone network in along the proposed water pipeline routes.

Water Supply
The intake works for 6000 m³/ day already exists on Thika River built in 1974 through the support of German Government and Kenya Government, the site is located at Partial treatment plant for 6000m³/day of already existing system on Thika Wanyaga at GPS coordinates S 000 46°21.102’and E 0360 46’ 32.586’ at 2298.81m elevation. Within the Gatere forest (Aberdare forest) the inlet works have been approved by both the WRMA and KFS.
The proposed project will not affect the existing network unless for temporally irrigation systems of the people which will be reinstated under the works contract.

**Public and Community Buildings**

*Graveyard*
There is no public graveyard within the project site that could be adversely affected; there are no graves either in the other project sites.

*Churches*
There are no churches in the Project-Affected Area;

*School*
There are several schools (primary, secondary and colleges) around the project site but are not going to be directly affected by the project in anyway.

**5.4 Impact on Businesses**

The proposed route for the water pipeline will not affect any business as the area is predominantly agricultural, only farmland will be affected

**5.5 Impact on Cultural Sites**

There are no cultural sites like shrines etc. in the project sites
6 RESETTLEMENT COMPENSATION STRATEGIES

6.1 Key Principles
The key principles committed upon by WASSIP AF in this RAP are the following:

- Resettlement and compensation of Project-Affected People will be carried out in compliance with Kenya’s legislation and World Bank’s Policies and Procedures on involuntary resettlement OP 4.12
- Both Physically-Displaced People and Economically-Displaced People will be compensated for their losses of livelihood,
- WASSIP AF will assist PAPs’ in restoring their affected livelihoods, and will provide transitional assistance as necessary as long as livelihoods are not restored to their previous level,
- The RAP implementation and outcomes will be monitored and evaluated as part of a transparent process,
- PAPs and host communities will be informed and consulted during the whole course of RAP development, implementation and evaluation.

6.2 Conditions of Eligibility for Compensation

**Cut-Off Date**
The practical Cut-off Date for implementation of the RAP will be deemed to be the date at which the census of affected people and affected assets was completed 30th July 2013.

No structure or field established in the Project-Affected Area after 30th July 2013 shall be eligible for compensation.

**Eligibility**
Assets, which basically include farmland for easement acquisition, crops and trees that were surveyed in the Project-Affected Area by the Cut-off date, are eligible for compensation

6.3 Entitlements
The Entitlement Matrix describes compensation and related assistance for each category of affected PAP. It is presented in Table 6-1 hereunder.
<table>
<thead>
<tr>
<th>Affected Asset</th>
<th>Affected Right or Interest</th>
<th>Eligible Entity (Individual or Household)</th>
<th>Eligibility Conditions</th>
<th>Entitlements</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGRICULTURAL LAND</td>
<td>TITLED LAND: Land held under a registered title deed</td>
<td>Registered land (usually a physical person – one case in the Project-Affected Area) – INDIVIDUAL</td>
<td>Hold a registered land that was registered with relevant Authorities prior to the Cut-Off Date</td>
<td>Replacement of lost land by agricultural land of similar potential under similar tenure arrangements with formal registration in replacement land with the relevant land authorities – Cash compensation for land or non-cash compensation of land (land for land) Cash compensation of all immoveable developments on the affected land, such as structures, etc… - See below “Structures” Cash compensation of standing crops – See below “Crops”</td>
</tr>
<tr>
<td></td>
<td>UNTITLED LAND: Land held under customary ownership, and not registered</td>
<td>Customary land owner (legally an unregistered), whether resident or non-resident – INDIVIDUAL</td>
<td>Hold, prior to the Cut-Off Date, an unregistered, customary land and be recognized as such</td>
<td>Replacement of lost land by agricultural land of similar potential under similar customary tenure arrangements – Cash compensation for land or non-cash compensation of land (land for land) Cash compensation of all immoveable developments on the affected land, etc…. - See below “Structures” Cash compensation of standing crops – See below “Crops”</td>
</tr>
<tr>
<td>Affected Asset</td>
<td>Affected Right or Interest</td>
<td>Eligible Entity (Individual or Household)</td>
<td>Eligibility Conditions</td>
<td>Entitlements</td>
</tr>
<tr>
<td>----------------</td>
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<td>-------------</td>
</tr>
<tr>
<td><strong>RENTED LAND</strong>: Land rights obtained temporarily as per a customary rental agreement</td>
<td>Tenant as recognized by the customary landowner and customary authorities whether resident or non-resident - INDIVIDUAL</td>
<td>Occupy land prior to the Cut-Off date as per a rental agreement recognized by the land owner and customary authorities</td>
<td>No compensation for the land itself Cash compensation to the owner of immovable developments established by the owner and to the tenant of immovable developments that were established by the tenant, such as structures, canals, soil improvement, etc… - See below “Structures” Cash compensation of standing crops – See below “Crops”</td>
<td></td>
</tr>
<tr>
<td><strong>UNTITLED LAND</strong>: Land held under customary ownership and not registered</td>
<td>Customary land owner (legally an unregistered owner) - INDIVIDUAL</td>
<td>Hold, prior to the Cut-Off Date, an unregistered, customary land and be recognized as such by local customary authorities</td>
<td>Replacement of lost residential land by resettlement residential land of similar size with formal recognition of ownership of the resettlement plot by the relevant administrative authorities – Cash compensation for land or non-cash compensation of land (land for land) Cash compensation of all immovable developments on the affected land, such as structures, wells, etc… - See below “Structures”</td>
<td></td>
</tr>
<tr>
<td><strong>RESIDENTIAL HOUSES</strong>: Inhabitable houses used as a permanent residence</td>
<td>Owner HOUSEHOLD</td>
<td>Be the locally recognized owner of an inhabitable house permanently used as a residence</td>
<td>Resettlement house of similar or better quality on a resettlement plot and Cash compensation of the lost house per Kenyan law at full replacement value</td>
<td></td>
</tr>
<tr>
<td>Affected Asset</td>
<td>Affected Right or Interest</td>
<td>Eligible Entity (Individual or Household)</td>
<td>Eligibility Conditions</td>
<td>Entitlements</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
<td>------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>NON RESIDENTIAL STRUCTURES: Non</td>
<td>Non inhabitable house or other structure of any design</td>
<td>Owner INDIVIDUAL</td>
<td>Be the locally recognized owner of a non residential structure</td>
<td>Cash compensation at full replacement value</td>
</tr>
<tr>
<td>CROPS</td>
<td>STANDING NON PERENNIAL CROPS</td>
<td>Owner of the crop INDIVIDUAL</td>
<td>Be the recognized owner of a standing crop and be unable to harvest it prior to land occupation by project</td>
<td>Cash compensation at full replacement value</td>
</tr>
<tr>
<td>STANDING PERENNIAL CROPS</td>
<td>Owner of the crop INDIVIDUAL</td>
<td>Be the recognized owner of a standing perennial crop</td>
<td></td>
<td>Cash compensation at full replacement value</td>
</tr>
</tbody>
</table>
### 6.4 Overview of Compensation Packages for the Main Categories of Project-Affected People

Based on the eligibility matrix, table 6-2 hereunder presents an overview of eligibility criteria and compensation packages for each of the five main categories of Project-Affected People identified.

**Table 6-2: Eligibility and Compensation Packages for the Main Categories of Project-Affected People**

<table>
<thead>
<tr>
<th>Category of PAP</th>
<th>Eligibility Criteria</th>
<th>Compensation Package</th>
</tr>
</thead>
</table>
| A: Permanent residents, also customary holders of agricultural land | Be recognized by local traditional authorities and the relevant resettlement committee as a permanent resident and a customary holders of agricultural land located in the Project-Affected Area at the cut-off date | - Resettlement house of similar or better quality on a resettlement plot (best practice) AND cash compensation of the lost house at full replacement value  
- Replacement of lost land by agricultural land of similar potential under similar tenure arrangements near the resettlement site – No cash compensation of land if the household does not choose resettlement  
- Cash compensation of all immoveable developments on the affected agricultural land, such as structures, canals, soil improvement, etc…  
- Cash compensation of standing perennial crops at replacement value and of non perennial crops at market value  
- Moving allowance if the household vacates the Project-Affected Area at a given date |
<table>
<thead>
<tr>
<th>Category of PAP</th>
<th>Eligibility Criteria</th>
<th>Compensation Package</th>
</tr>
</thead>
<tbody>
<tr>
<td>B: Permanent residents and tenants or sharecroppers of agricultural land</td>
<td>Be recognized by local traditional authorities as a non-permanent resident in the Project-Affected Area and as a customary land holder of agricultural land located in the Project-Affected Area for more than one year</td>
<td>- Livelihood restoration package</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Cash compensation of the lost non-permanent house at full replacement value</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Replacement of lost land by agricultural land of similar potential under similar customary tenure arrangements anywhere in the Area</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Cash compensation of all immoveable developments on the affected agricultural land, such as structures, canals, soil improvement, etc…</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Cash compensation of standing perennial crops at replacement value and of non perennial crops at market value</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Moving allowance if the household vacates the Project-Affected Area at a given date</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Livelihood restoration package as per section 6.7</td>
</tr>
</tbody>
</table>
6.5 Cash Compensation

General

The term ‘cash’ is used in this RAP to denote payments in currency. Experience in sub-Saharan Africa indicates a high risk potential with large, lump-sum cash payments to parties who have little experience with money management. While the project shall provide compensation in cash consistent with the local law requirements, the project will also include a number of additional benefits that are not represented in the cash compensation package. These additional, non-monetary benefits are intended to mitigate resettlement risks recognized under the involuntary resettlement procedures for the bank, but not Kenyan law.

Though not legally required, the incremental costs of these benefits will be borne by the project so as to assure compliance with the project’s stated commitment to follow the guidelines and recommendations of the World Bank, while complying with the local law requirement to provide cash compensation valued at real replacement value.

Crops

Compensation for crops will be done on the basis of the requirements of Kenyan laws. Under this law, landowners and leaseholders are entitled to be compensated at market value for land; tenants for crops and property on the land that they rented; property owners for the value of any property on expropriated land.

Non-Perennial Crops

In situations where the farmer cannot be given sufficient notice to harvest his/her crop, compensation will be paid based on the market value of the non-perennial crop.

These rates are based on the following data collected during the 2013 socio-economic baseline study when preparing this RAP:

- Average yields and prices for typical crops grown in the project area:

  - The individual crop yields used in this calculation represent “good harvests” as reported to the socioeconomic team in meetings in the villages,

  - Crop prices used in calculations were taken from results of the visits to the central market in Gatanga Town
**Perennial Crops**

The calculation of the value of perennial crops for compensation is also based on the market rates and includes the type of crops, the age and size or area under which the crops are grown. These factors have been used as the basis for the calculation of perennial crop loss.

Compensation rates are factored for the following stages of tree development:
- Seedling,
- Young, not productive,
- Young productive,
- Mature.

The calculation of the full replacement value considers not only of the product of the crop over one year, but also the cost of re-establishing the crop (seedlings, soil preparation, fertilizers, others), as well as the lost income during the period needed to re-establish the crop. Compensation rates will be calculated in compliance with the full replacement value principle, based on the following: If:

\[ V \times D + C_P + C_L \]

**Specificities of Tenants and Sharecroppers**

Tenants will be paid the whole compensation value for the crop they have grown.
7. GRIEVANCE MANAGEMENT & REDRESS

7.1 Likely Types of Grievances and Disputes
In practice, grievances and disputes that are most likely during the implementation of a resettlement program are the following:

- Misidentification of assets or mistakes in valuing them;
- Disputes over plot limits, either between the affected person and the Project, or between two neighbors;
- Dispute over the ownership of a given asset (two individuals claim to be the owner of this asset);
- Disagreement over the valuation of a plot or other asset;
- Successions, divorces, and other family issues, resulting in disputes between heirs and other family members, over ownership or ownership shares for a given asset;
- Disagreement over resettlement measures, for instance on the location of the resettlement site, on the type or standing of the proposed housing, or over the characteristics of the resettlement plot; and
- Disputed ownership of a business (for instance where the owner and the operator are different persons), which gives rise to conflicts over the compensation sharing arrangements.

7.2 Management Mechanism

Overview
It often appears that many grievances derive from misunderstandings of the Project policy, or result from neighbor conflicts, which can usually be solved through adequate mediation using customary rules. Most grievances can be settled with additional explanation efforts and some mediation using customary disputes settlement mechanisms:

- Through explanations (for instance explain in detail how the Project calculated the complainant’s compensation and that the same rules apply to all); or

- Through arbitration, resorting to elders or individuals well regarded by the community and external to it.

In contrast, resorting to the judicial system often results in long delays before a case is processed, may result in significant expenses to the complainant, and requires a complex mechanism, involving experts and lawyers, which can fall well beyond the complainant’s control, and be counter productive to him/her.
7.3 National Land Commission Grievance Mechanism
The Land Act 2012 and National Land Commission Act 2012 oblige 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 cascading structures they put in place are also expected to take up this responsibility. However, even though NLC has been constituted it is not yet actively engaged in resettlement issues because it has not received the desired staffing levels and work force and it is overwhelmed by the magnitude of land related issues and would not be in a position to execute its duties as required by law expeditiously for the moment.

7.4 Structures for Grievance Management
In the absence of a grievance mechanism that must be instituted and overseen by NLC according to the Land Act, this RAP proposes that the SCRCC and LRCCs provide this function on a transitional basis until NLC is fully operational and clear structures defined.

SCRCC/LRCCs structures will act as mechanism of grievance management. DRCC will be based at the district level while LRCCs will be based in each location. The LRCCs will be the first points of contact in grievance management system.

These committees will seek to resolve PAPs issues quickly in order to expedite the receipt of entitlements, without resorting to expensive and time-consuming legal process in the Environment and Land Court\textsuperscript{53} or high court that may delay the implementation of the project. Appeals to the court will only be occasioned if the grievance procedure fails to provide a result.

7.5 Process Procedures of Lodging Complaints
- SCRCC /LRCCs will inform PAPs of their loses and entitlement.
- If satisfied, the PAP claims resettlement payment directly from NLC\textsuperscript{54}. If dissatisfied or the PAP does not clearly understand the entitlement/any aspect of the resettlement plan, s/he approaches the LRCC for clarification.
- The LRCC makes a note and explains the unclear issues to the PAP in accordance with the RAP. If the issue(s) are resolved, the PAP collects the payment from the paying authority, NLC\textsuperscript{55}. If not resolved, PAP moves to the next step.

\textsuperscript{53} This is court that is proposed by the Constitution of Kenya 2010 to deal with resettlement and land disputes
\textsuperscript{54} NLC is official mandated organization that makes compensation award under the Kenyan laws
\textsuperscript{55} Same comment as footnote 71
• PAP will fill a specifically pre-designed complaint form and append his or her signature and formally submit it to LRCC office; or LRCC documents the complaint on behalf of the PAP. The LRCC members will assist those who cannot fill up the forms.
• A copy is maintained by LRCC and another copy passed to SCRCC.
• LRCC attempts to find a solution through arbitration, explaining, settling, or facilitating consensus dialogue.
• If not successful LRCC assists PAP to fill a complaints form appended with his/her signature and formally submits to the SCRCC.
• The DRCC holds a session with the aggrieved PAP and minutes recorded.
• SCRCC attempts to find a solution through arbitration, explaining, settling, or facilitating consensus dialogue. If resolved, SCRCC approves and the PAP collects his/her entitlements from NLC.
• If deemed necessary by the SCRCC, the case will be re-investigated and necessary corrective measure undertaken. Figure 9 below show schematically how the grievances will be addressed.
• If not resolved, the complainant can seek redress in Environment and Land Court or register his/her case in any High Court in Kenya. The Land and Environment court deals specifically with land and environment related disputes of which resettlement and valuation are part. The legal option will only act as avenue of last resort and will be sought after all other redress mediums have been exploited and exhausted.

The Project thus will put in place an extra-judicial mechanism for managing grievances and disputes arising from the resettlement process based on explanation and mediation by third parties. Each of the affected persons will be able to trigger this mechanism, while still being able to resort to the judicial system. Procedures relevant to this amicable mechanism are detailed below. It will include three different levels (see also Figure 9):

• Registration by PIU of the complaint, grievance or dispute;
• Processing by PIU of the grievance or dispute until closure is established based on evidence that acceptable action was taken; and
• In the event where the complainant is not satisfied with action taken by PIU as a result of the complaint PIU, an amicable mediation can be triggered involving a mediation committee independent from the Project.

**Grievance Registration and Monitoring**
PIU will establish a register of grievances, which will be available at the following locations:
• Community Liaison Officer in Project Office in Gatanga,
• Construction Site.
Figure 9: Grievance / Dispute Management Mechanism

1. Registration of the grievance or dispute
2. Treatment of the grievance or dispute
3. Closure of the grievance or dispute
4. Complainant Satisfied With Outcome

   YES
   - Final closure

   NO
   - Resort to Mediation Committee
   - Grievance processing by Mediation Committee
   - Response of the Mediation Committee
   - Complainant Satisfied With Outcome

   NO
   - One or the other party resort to Justice

   YES
The existence of this register, as well as procedures to lodge a complaint (where, when, etc.), will also be broadly advertised by PIU. The register will be established as of the commencement of resettlement and compensation activities. For each grievance, a grievance file will be opened, including the following elements:

- Initial grievance sheet (including the description of the grievance), with an acknowledgement of receipt handed back to the complainant when the complaint is registered;
- Grievance monitoring sheet, mentioning actions taken (investigation, corrective measures); and
- Closure sheet, one copy of which will be handed to the complainant after he/she has agreed to the resolution and signed-off.

Complaint closure does not necessarily mean that the complainant is happy with action take PIU may decide that the complaint is not founded, and that the RAP principles have been complied with). Closure means that the complainant agrees that action has been taken without necessarily being happy with the outcome.

**Mediation Committee – Amicable Resolution Mechanism**

**Mediation Committee**

Complaints that cannot be closed to the complainant’s satisfaction will be handed over to a mediation committee that will include the following individuals:

- One representative of the local Administration;
- One PIU representative acting as an observer;
- Three representatives of the affected people, including at least one woman, chosen from the Resettlement Committees and/or amongst community based organizations, elders, customary authorities,
- One representative of an NGO or of a religious organization present in the field in the concerned area and well regarded by the population.

The mediation committee will meet as needed, depending on registered complaints and disputes.

**Processing**

After a complaint or dispute has been registered, PIU will prepare the technical background to the complaint (for instance, the proposed compensation amount,
the list of meetings and interviews with the complainant, a description of the exact reason of the dispute, etc.) for consideration by the mediation committee.

The complainant(s) will be invited before the mediation committee, which will mediate and attempt to propose a solution acceptable to both parties (PIU and complainant). If need be, other meetings will be held and the committee may resort to one of its members to arbitrate in a less formal framework than meetings, if appropriate.

If reached, the agreement will be sanctioned by a settlement agreement signed by the parties, and the chair of the mediation committee will be responsible for monitoring the implementation of this agreement, which will include all references to the applicable local law provisions.

Grievances resolution are encouraged to be resolved at the village level, as they are aware of and involved in the whole process. If not resolved the high court (land and environment court) remain an avenue for voicing and resolving these complaints as is provided for by the Constitution of Kenya (CoK).
8 MONITORING AND COMPLETION AUDIT

8.1 General Objectives of Monitoring
Monitoring is a key component of the Resettlement Action Plan and is an integral part of PIU responsibility and obligations. It has the following general objectives:

- Monitoring of resettlement and compensation progress, of specific situations of economic or social difficulties arising from the implementation of the compensation and resettlement process, and of the compliance of the actual implementation with objectives and methods as defined by World Bank Principles and this RAP;

- Audit of the completion of the resettlement program, through and assessment of the short- mid- and long-term impacts of the compensation and resettlement program on affected households, their incomes and standards of living, the environment, local capacities, housing, etc.

Monitoring allows to correct implementation methods “in real time” during Project implementation, and also to check whether general objectives have been met and whether the resettlement and compensation program can be deemed complete. Monitoring and auditing include an internal tier and an external tier.

8.2 Internal Monitoring

Objectives
Monitoring will address the following aspects:

- Social and economic monitoring: follow-up of the status of PAPs, cost of housing in the displacement area, potential land speculation, environmental and health situation, livelihood restoration including agriculture, small businesses, employment and other activities;
- Monitoring of vulnerable people;
- Technical monitoring: supervision of infrastructure and housing construction where relevant, commissioning and testing of the technical components of the resettlement housing; and
- Grievances and grievance management system.

Indicators and Frequency of Monitoring
During the active phase of resettlement and compensation, the following key progress indicators will be measured internally by PIU on a quarterly basis:
The process of compensation for easement acquired for Kiama and Kimakia pipelines
Amounts of compensation paid per category (land, crops, others).
Grievances (open, closed); and

A brief quarterly internal monitoring report will be prepared on this basis

8.3 External Monitoring

PIU will hire a suitably qualified external social auditor with significant experience in resettlement to carry out two reviews annually with reviews focusing on the assessment of compliance with social commitments contained in Kenyan legislation, in the World Bank Principles, in this Resettlement Action Plan(s), in the ESIA and its attached action plans, and in the Social Management Plan.

Objectives of these six-monthly reviews are as follows:

- To assess overall compliance with the RAP and other social commitments made in the Environmental and Social documentation,
- To verify that measures to restore or enhance Project-Affected Peoples’ quality of life and livelihood are being implemented and to assess their effectiveness,
- To assess the extent to which the quality of life and livelihoods of affected communities are being restored in an appropriate manner.

Beyond commitments identified in this Resettlement Action Plan, this review will also assess overall compliance with other mitigation measures to address non resettlement-related social impacts described in the ESIA, the SMP and the Contractor Plans. The types of commitments that will be verified by the external monitoring expert include the following:

- Pollution prevention - dust and noise management in communities,
- Community safety - awareness raising programs in communities on communicable diseases; community awareness of project traffic routes and traffic safety briefing,
- Infrastructure and services - reinstatement of damaged infrastructure and compensation process; and roads shared with the public are maintained in reasonable condition
- Community liaison - community awareness of project activities; complaints procedures; camp rules; recruitment process; project traffic speed limits; pre-warning of blasting, noisy activities and other planned disruptions; procurement process and regular community meetings and access to community liaison officers,
• Grievance management – follow up of grievances reported; accessibility of Community Liaison Officers; community awareness of complaints procedures and complaints close out.

External monitoring reports will be prepared independently by the reviewer and released to the lenders and to the public depending) after review by PIU for factual accuracy.
Public consultations were held primarily during the following periods;

1. During the development of the Environmental and Social Impact Assessment (ESIA)-2012
2. During the preparation of Feasibility Study report in 2012
3. During the preparation of the RAP-2013 May- August

4 meetings including site visits have then been held with the communities to present the main features and the overall schedule of the resettlement process. Records of these meetings are presented in Appendix 1 and 2. The main issues raised in these meetings were the following:

- Livelihood restoration,
- Compensation
- Employment

9.2 Village Resettlement Committees
A formal consultation mechanism has been put in place to allow for continuous interaction between the communities and PIU. Resettlement Committees have been nominated in the Project Affected villages.

9.3 Consultation Concept
Resettlement Planning Stage
Any sensitive decision will be made by the affected communities in consultation with PIU which will organize meaningful information and consultation so that this process can take place between the project and fully informed community members.

Although initial consultations described above have been key in defining preliminary options outlined in this RAP, consultation with communities will be critical in refining options identified in this RAP.

Wherever decisions have to be made by communities, consultation at planning stage will generally be organized in the three following stages:

- Disclosure of preliminary options, as described in the RAP, to the resettlement committees,
- Discussion of these options with resettlement committees, and tentative selection of the preferred option,
- Disclosure of the preferred options in public meetings with the resettlement committees and the general population, and validation of this option in public.
**Resettlement Implementation Stage**

The resettlement committees will remain active during the implementation stage, and will remain the choice channel to convey communities’ concerns and questions to PIU. It is likely that a number of issues will need consultation and discuss, such as, for instance, the following:

- Management of transitional assistance,
- Management of assistance for vulnerable people,
- Disputes of various kinds.

**9.4 Disclosure**

Athi Water is obligated to disclose documentation locally, and will make the following available:

- Full RAP in English (one copy available at all times in Project information offices, one copy given to the resettlement committees),
- Update notes when needed, given to each of the resettlement committees and publicly available at Project information offices.

In addition, this RAP will be publicly disclosed in English on the AWSB’s and website of the ministry.
10 IMPLEMENTATION OF THE RAP

Compliance with social commitments contained in this document will be under the responsibility of the Environmental and Social Officer in AWSB/PIU, who reports to the Project Coordinator. The Environmental and Social Officer is responsible for securing and maintaining the project’s social license to operate, which during the project’s construction phase will entail the following areas of oversight and responsibility:

Oversee and provide quality assurance on the following

- Resettlement action planning and execution
- Community relations
- Socio-economic impact assessment
- Implementation of social aspects of recruitment and procurement policies
- Development and execution of additional needed policies for all operational areas of responsibility

As mentioned, the Environmental and Social Manager will be supported by a field based team leader in the primary functional areas of resettlement planning, community relations and community development, each of whom will have the requisite staff and material support to achieve their mission.

A supervising consultant (firm) will be recruited to supervise the construction activities and the supervising consultant will also recruit an environmental and social specialist including engineers to oversee the construction activities.

The PIU Coordinator will serve as the primary point of contact between communities of the project affected area and the project, and will have the following primary areas of responsibility inter alia:

- Liaise with County and Sub County government with regard to local community liaison and issues and in consultation with appropriate personnel
- Log and respond to grievances lodged by members of the community
- Organize and facilitate compensation payment actions
- Obtain prior written permission from community leaders / affected members for any intended damage to any infrastructure, crops or land as a result of construction and compensation to be paid.
10.1 Liaison with the Government of Kenya

The overall coordination of the implementation of the RAP will be provided by AWSB through the establishment of a PIU, which will oversee all resettlement planning and coordinate all issues relating to the compensation. Given the importance of the activities under the various sub-components, PIU will collaborate with the County and Government falling within the project area in coordination and implementation.

The PIU It is the project-implementing agency for Gatanga Water Project and one of the key roles of the PIU will be to ensure completion and implementation of the RAP. The PIU will be also responsible for implementation of the RAP. Other roles for the PIU will include;

- Constitute the SCRCC and LRCCs and provide their operational budget;
- Collect all the needed documentation for compensation;
- Make funding request from Athi Water to undertake compensation of the PAPs;
- Compile all the grievances and document for future reference
- Send copies of all the documents to the AWSB;

(a) Public Participation with the PAPs
This will initiate the compensation process as part of an ongoing process that would have started at the planning stages when the technical designs are being developed and at the land selection/screening stage. The process therefore seeks the involvement of PAPs in a participatory approach from the beginning.

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

(c) Agreement on Compensation and Preparation of Contracts
All types of compensation will be clearly explained to the individual and households involved. NLC jointly with the client will draw contracts listing all property and land being surrendered, and the types of compensation selected. The compensation contract and the grievance redress mechanisms will be read aloud in the presence of the affected party and the Local Community Elder prior to signing.
(e) Compensation Payments
All handing over of property such as land and buildings and compensation payments will be made in the presence of the affected party, PIU staff, County Government representatives and local administration, representative of the PAPs and the community local leaders.

10.2 Budget
Table 29 below presents the estimated budget that commits to make available for the implementation of this RAP.

Table 10-1: RAP Budget (Ksh)

<table>
<thead>
<tr>
<th>No</th>
<th>Item</th>
<th>Unit</th>
<th>Unit Cost</th>
<th>Quantity</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Compensation for Loss of Income</td>
<td>Ksh</td>
<td>Variable</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CASH COMPENSATION</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Structures</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Residential /Commercial structures</td>
<td>Unit</td>
<td>Variable</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td></td>
<td>Land</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Easement</td>
<td>Acres</td>
<td>9.3037</td>
<td></td>
<td>13,194,096.00</td>
</tr>
<tr>
<td></td>
<td>Sub-Total 1</td>
<td></td>
<td></td>
<td></td>
<td>13,194,096.00</td>
</tr>
<tr>
<td></td>
<td>LIVELIHOOD RESTORATION/DISTURBANCE</td>
<td>15% of total compensation</td>
<td></td>
<td>1,979,114.40</td>
<td></td>
</tr>
<tr>
<td></td>
<td>IMPLEMENTATION</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Consultants</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Lawyer</td>
<td>Day</td>
<td>55,000</td>
<td>30</td>
<td>250,000.00</td>
</tr>
<tr>
<td></td>
<td>Surveyor</td>
<td>Month</td>
<td>30,000</td>
<td>30</td>
<td>250,000.00</td>
</tr>
<tr>
<td></td>
<td>Sub-Total 2</td>
<td></td>
<td></td>
<td></td>
<td>15,673,210.40</td>
</tr>
<tr>
<td></td>
<td>CONTINGENCIES 5%</td>
<td></td>
<td></td>
<td></td>
<td>783,660.52</td>
</tr>
<tr>
<td></td>
<td>GRAND TOTAL</td>
<td></td>
<td></td>
<td></td>
<td>16,456,870.92</td>
</tr>
</tbody>
</table>

11.4 Implementation Schedule
Tables 10-2 and 10-3 present the RAP implementation schedule from the 1st stage of planning (currently on-going) to the 2nd stage of implementation.
Table 10-2: RAP Implementation Schedule – 1st Part – Planning and RAP Finalization

<table>
<thead>
<tr>
<th>No.</th>
<th>TASK NAME</th>
<th>MONTH 1</th>
<th>MONTH 2</th>
<th>MONTH 3</th>
<th>MONTH 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>RAP FINALIZATION</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Census Finalization</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Census Residences</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Census Fields</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Checks on Census</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Release of Census results to</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>communities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Information Management System</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Consultant Mission</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Inputing Data into new data</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>management system</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>RESETTLEMENT DOCUMENTATION</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Submission of RAP to World</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Review by World Bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>Update of RAP to include</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>preparation and consultation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>progress</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>Submission and release of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>updated RAP</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 10-3: RAP Implementation Schedule – 2nd Part – RAP Implementation

<table>
<thead>
<tr>
<th>No.</th>
<th>TASK NAME</th>
<th>DURATION IN WEEKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.</td>
<td>RAP IMPLEMENTATION</td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>Cash Compensation</td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>Payment of compensation for crops and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Easement</td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>Resolution of disputes</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX 1 – MINUTES OF MEETINGS
GATANGA COMMUNITY WATER TRUST AND STAKEHOLDERS
CONSULTATIVE MEETING

DATE: 12/10/2012

VENUE; MABANDA CDF HALL

AGENDA: AUGMENTATION OF WATER SUPPLY IN GATANGA DISTRICT THROUGH CONSTRUCTION OF INTAKES, TREATMENT WORKS AND PIPELINES.

IN ATTENDANCE:

1. The land owners who are affected by the proposed project (invited both verbally and through letters) all attended.
2. Relevant government departmental representatives.

Min 1/12 – The meeting started at 10.45 am with a word of prayer from one of the members.

Min 2/12 – The District Officer from Kihumbuini Division opened the meeting by welcoming all the members and requested each one of the members to make self introduction. The DO started by giving District Commissioner’s apology who had gone to attended another meeting on performance contract.

Min 3/12 – Touching on the purpose of that day meeting the DO told members to prepare to witness the funding of a new project in Gatanga District by the Word Bank through the GoK. Commenting on the issue Athi Water Services Board representative explained to members on layout of AWSB jurisdiction, mentioning Gatanga Community water Scheme being part of it.

The work will involve constructing of two intakes at Kiama & Kimakia River; new various treatment works at Karangi and Rwegetha centers and finally rehabilitation of the water trunk mains.

Min 4/12 – While clarifying on the same issue, Gatanga Community Water Scheme MD informed members that, Water currently has not been sufficient to meet Gatanga community demand since most of the pipelines direct water to Kandara especially during the rationing periods. The MD went ahead to clarify that initiation of the two intakes works at Kiama and Kimakia respectively will minimize the water shortages at the lower zones of the area distribution network.

Min 5/12 – It was clearly indicated in the meeting that as the whole project commences, most sensitive issue will be dealing with Land and crop compensation to the project beneficiaries whose properties will be under threat of being destroyed. The MD said that there will be a great concern about the compensation issue and told members that there was need for the whole group of the affected lands to have representatives who will be highlighting such touching issues to the relevant authorities during each and every meetings. It was then agreed that members had to elect their representatives as per their zonal and locational centers where they come from. On this note The MD informed members that, those who will not involve themselves in this exercise are those whose land will not be touched by the pipeline corridor eg. Kihumbuini
DEPARTMENTAL REPRESENTATIVES

Ministry of Lands
Ministry of Agriculture
Ministry Water and Irrigation
National Environment Management Authority (NEEMA)
Water Resources Management Authority (WARMA)
Kenya Rural Roads Authority (KeRRA)
Ministry of Public Works
Athi Water Services Board.
Gatanga Community Water Trust
Kenya Forest Services
Office of the President

Min 8/12 – AWSB representative concluded his speech by saying that acquisition plan for the project is now in place and all what is remaining is to know where the pipeline will pass and since there will be other subcommittee meetings, all the relevant Govt departments will also be represented. By this he meant that during the next meetings, only the elected representatives will attend and not the whole group.

Min 9/12 – The DO also concluded that as a matter of concern, for the environmental impact assessment during and after the commencement of the project, the following departments must be represented during the next meeting

- District Land Valuer
- NEEMA
- WARMA
- District Surveyor
- District Agricultural Officer
- Kenya Forest Service Representative

Min 10/12 - Gatanga Community Water Scheme Chairman informed members, about the history of how they started the whole water project dating from 1973 up to date while struggling for the success of the initial larger Kandara Water project with the GoK representation, in order for each and everyone to have clear update of the current status. The Chairman further encouraged members
- Valuation exercise whose attention would go to: (i) Land officer (II) Agriculture officer (iii) and finally Forester.
- Determining the point of Water extraction whether a lot of bush or forest clearing would be needed.
- Making follow ups on water source extraction permits.
- Establishment of easements for pipeline corridor where the project line passes.

On this note AWSB clarified that, when determining of ground easement there will be an open forum for each and every member to air their grievances. Along the process as he had said, there was needs to know the various responsibilities of each of the two sides of the representative group as the committee recommended here below:

**Responsibilities for the Stake holders Representatives**

- Stakeholders will assist the technical committee to identify the real owners deserving for Land/ Crop compensation.
- They will assist in cases of land ownership especially where issue of succession land transfer arises.
- Stakeholders to assist in establishing the family members already with the POWER OF ATTONEY in case there is no title deed.
- They will assist the committee in verifying the correct family relevant documents such as:
  - Identification of the land ownership
  - Land official search document.
  - M.O.U written by families through the local chief finally
  - Attaching POWER OF ATTONEY document.

Meanwhile along the same process responsibilities for Govt departments were mentioned as below.

**Responsibilities of the Government Departments Representatives**

- Departments to give a surveyor for the identification and pegging works.
- Gok valuation officers to accompany the technical committee while taking the details of areas to be compensated
- NEMA officials to obtain comprehensive records on environmental impact along the whole water project area.
- It will be also the responsibility of the Gok officials to give advice to community not to interfere with the pegs planted after day’s work.
- The departmental representatives was also to assist in making follow ups of the regal documents e.g water extraction permits, Nema, Forest etc.

**MIN: 5 TECH:12/1 : Work Plan**

AWSB representative also informed the committee that it was now the time to prepare a work plan for the whole process since there will finally be a major committee meeting for disclosing out the items to be compensated. This will then be followed by allowing any grievances from members, then the signing of agreements which will be later forwarded to C.E.O AWSB through the MD Gatanga Water Community Water Trust for signing. He then clarified that afterwards there will be processing of cheques payments.
He further advised members on the importance of making a simple work plan which will comprise the following process:

- Familiarization visit to the two projects sites.
- Pegging.
- Land Valuation.
- Disclosure &.
- Finally signing of the Agreement.

After a thorough discussion of the above work plan members recommended the following schedule of the events:

<table>
<thead>
<tr>
<th>EVENTS</th>
<th>TIMEFRAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Familiarization:-This was scheduled to take place for two days.</td>
<td>Tue 30th OCT 2012 &amp; Thurs 1st NOV 2012</td>
</tr>
<tr>
<td>2. Pegging works :- This one to take one week</td>
<td>From Mon 5th NOV 2012 to Friday 10th NOV 2012</td>
</tr>
<tr>
<td>3. Assessment/Valuation :- Will go for two weeks</td>
<td>{12th Nov - 16th Nov 2012} &amp; {19th Nov - 23rd Nov 2012}</td>
</tr>
<tr>
<td>4. Disclosure (official)</td>
<td>27th NOV - 6th DEC</td>
</tr>
<tr>
<td>5. Main Meeting</td>
<td>Thurs 6th DEC 2012</td>
</tr>
<tr>
<td>7. Finally full report of payment to be ready by 4th JAN 2013</td>
<td></td>
</tr>
<tr>
<td>8. Then from there AWSB to start writing the Cheques.</td>
<td></td>
</tr>
</tbody>
</table>

MIN: 6 TECH:12/1 : A O B

Answering a question from a member, AWSB representative told the meeting that the affected families should have Memorandum of Understanding Document (MoU) through the area chief in case there is no Title deed available during compensation. This as he said will assist in true identification of the true land ownership when attaching the official land search document. The Gatanga Water Company MD informed the meeting that Kenya Forestry Service had already given the Water company a go ahead in most of the projects done before, therefore hoping that the process ahead would take short time. He also said that NEMA department by then was having a comprehensive report in place as far as the project was concerned. What remained was a matter of forwarding it to H/quarters Nairobi.

On the matters concerning county jurisdiction, AWSB representative promised that he will write a letter to National Chief Land Valuation officer Nairobi requesting for the Land valuation officer from Thika which is near to be authorized to carry out the area land valuation duties since Gatanga district lies within Murang’a County.
MIN: 7: TECH:12/1 : MEETING ATTENDANTS FACILITATION

AWSB representative told the meeting that, since it was to be the first technical committee meeting, each and every member will be facilitated as per the days attended. He said government officials will be paid as per the current rates contained in the civil servant circular. On payment rate for the other members, AWSB representative said he will liaise with the Kiambu team, to know the mode of facilitating local communities in attendance. He also said he would look for charges on various services done by various Government departments for any community project implementation.

Members agreed the next main meeting to be on 6th Dec 2012 immediately after the period of disclosure.

There being no any other business the meeting ended at 12.30 pm with a word of player from one of the members.