



ATHI WATER SERVICES BOARD

CONSULTANCY SERVICES FOR PRELIMINARY AND DETAILED DESIGN AND TENDER DOCUMENTATION FOR THE NAIROBI RIVERS SEWERAGE IMPROVEMENT PROJECT (NaRSIP) PHASE II

RESETTEMENT ACTION PLAN REPORT

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EMPLOYER



Athi Water Services Board
Chief Executive Officer
Athi Water Services Board
P. O. Box 45382, Nairobi-00200

CONSULTANT



Runji Consulting Group
Engineering & Project Management
3rd, Kindaruma Road, (off Ngong Road)
P. O Box 68053-00200, Nairobi.

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ACRONYMS AND ABBREVIATIONS

ADR	Alternative Dispute Resolution
AFDB	African Development Bank
AHs	Affected Households
AWSB	Athi Water Services Board
CBO	Community Based Organization
CSOs	Civil Society Organization
DFI	Development Finance Institutions
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
GOK	Government of Kenya
GRC	Grievance Redress Committee
Ha	Hectares
HIV/AIDS	Human immunodeficiency virus and Acquired immune deficiency syndrome
Km	Kilometers
KU	Kenyatta University
LA	Land Act
M&E	Monitoring and Evaluation
M	Meters
SDGs	Sustainable Development Goals
NARSIP	Nairobi Rivers Sewerage Improvement Project
NEMA	National Environment Management Authority
NGOs	Non-Governmental Organization
NLC	National Land Commission
NPL	National Land Policy
NCWSC	Nairobi City Water and Sewerage Company
OS	Operational Safeguards
PAPs	Project Affected Persons
PPC	Public Participation and Consultation
PMU	Project Management Unit
PIU	Project Implementation Unit
RAP	Resettlement Action Plan
RC	Resettlement Committee
ROW	Right of Way
SPAFs	Significantly Project Affected Families
WB	World Bank

EXECUTIVE SUMMARY

Introduction

The Nairobi Master Plan for Sewer, Sanitation and Drainage Study, carried out under the Third Nairobi Water Supply Project, was undertaken to provide a complete record of existing sewerage and drainage facilities and to identify and propose a phased development schedule for sewerage and drainage systems up to the year 2020. The Master Plan for sewerage expansion in Nairobi was first developed in 1973 and reviewed and updated in 1998. AWSB conducted a study geared towards determining whether the feasibility and design propositions given in the 1998 Master Plan still hold while taking into account future demand within the project area.

Following these studies, the Government of Kenya through AWSB is implementing the Nairobi Rivers Sewerage Improvement Project (NaRSIP 1) which was to be completed in June 2016. Despite implementation of NaRSIP 1, the sewerage coverage remains significantly low resulting in highly polluted rivers within Nairobi City. To scale up works under NaRSIP1 and increase sanitation coverage to about 70% it is now proposed that Nairobi Rivers Sewerage Improvement Project Phase 2 (NaRSIP 11) be undertaken.

The Government of Kenya in partnership with AfDB through AWSB intends to implement the second stage of the NaRSIP Programme, with the extension and duplication of the existing sewerage system and construction of lateral sewers within Nairobi County.

The proposed NaRSIP 11 project will actually affect people's assets and livelihood specifically the route for the main trunk sewers, site for the treatment works and reticulations. Therefore there was need to undertake a RAP for the proposed project as required by the African Development Bank Operational Safeguard 2 (OS2) on Involuntary Resettlement which entails land acquisition, population displacement and compensation.

Project Description and Justification

The project will involve the construction and maintenance (during the defects liability period) of approximately 80 Km trunk sewers and 221Km of Lateral sewers within Nairobi County. The NaRSIP 11 will also involve the construction of anaerobic, facultative and maturation ponds at Dandora Estate Sewerage Treatment Plant (DESTP) site to convert Kiu River pumping system to ponds

The overall goal of the project is to improve the health and quality of life of inhabitants of the Nairobi city and promote cleaner urban environment by providing sewerage services through collection and treatment of wastewater. Laying down new trunk sewers, reticulation system and increasing the capacity of wastewater treatment plants will reduce the high pollution levels in the Nairobi Rivers, incidences of water-borne diseases, mortality rate and ultimately improve productivity of the population. This will be achieved by;

- ✓ rehabilitating and expanding sewerage infrastructure,
- ✓ promoting community sanitation activities including tree planting which will be implemented in line with the on-going slum upgrading program, and
- ✓ Enhancing institutional capacity of Athi Water Services Board (the implementing agency) and the Nairobi Water and Sewerage Corporation (the service providers).

Scope of the Resettlement Action Plan (RAP)

The main objective of the RAP is to minimize the adverse impacts to project affected persons (PAPs) and enhance or at least restore their livelihood to that of the pre-project level. The scope of the RAP has ensured that the integrated social safeguards guidelines of the African Development Bank's Policy on Involuntary Resettlement, i.e. Involuntary Resettlement Policy (2003); have been adhered to. To ensure that this has been complied with, the preparation process has;

- i. Identified the project affected persons along the sewerage system routes and assets inventory has been carried out for all the identified project affected persons. The inventory has included affected land, structures, trees and crops, livelihoods and cultural assets
- ii. Stakeholder consultations were held with local administration including chiefs and their assistants, DO and *Nyumba Kumi* elders
- iii. Kenyan legal provisions has been compared with the AfDB policies to identify any gaps and necessary recommendations to harmonize the two has been incorporated in the resettlement plan
- iv. The compensation schedule and the resettlement plan have been prepared with the necessary budget to facilitate the implementation.

Legal and Regulatory Frameworks

The RAP is prepared in accordance with the Kenyan Government legislations and AfDB guidelines and safeguard policies that govern preparation of Resettlement Action Plans. The relevant national legislations and AfDB policies and guidelines considered among others are as follows:

- a) The Constitution
- b) Land Act ,2012
- c) Valuers Act
- d) Kenya Roads Act, 2007
- e) Physical Planning Act
- f) Environment and Land Court Act
- g) AfDB Involuntary Resettlement Policy, 2003
- h) AfDB's Integrated Safeguard System, 2013 and among others

Socio – Economic Survey and Census

The socio-economic study of PAPs was undertaken between the month of April and May 2018 including public consultative meetings with different categories of PAPs. The socio-economic survey was done using a semi-structured household questionnaire. The questionnaire covered the households' baseline information on incomes, challenges faced in the areas.

All locations in the proposed project areas were included in the baseline survey. In each of these locations most of the likely affected households were identified. Interviews were conducted within the proposed project areas and asset owners were identified and the assets separately recorded from the socio-economic record.

Excel was used for data entry and analysis. Data collected from the household survey was combined and validated with information from site surveys as well as observations and key informant interviews.

Public Consultations and Disclosure

An effective resettlement planning requires continuous participation and thorough consultations with a wide range of project affected persons and stakeholders in the general area of the project. These include individuals or groups who will be positively or negatively affected by the project.

Comprehensive consultations have been held with various stakeholders and the project affected persons from the reconnaissance stage through the public consultations, the project affected persons census within the project areas; a socio-economic survey and an assets inventory. The consultations held within the proposed routes were aimed at seeking views of the local communities along the project on various aspects of the design.

The main issues raised were compensation, connection to the sewer lines, possible contamination of the water supply. The issue of the project affected persons as a result of the project was highlighted and the participants appraised on the mitigation measures availed by the project.

Public consultations were held with local authorities, local leaders and resident associations.

The Deputy County Commissioner officer is central in the disclosure process and his/her office will provide support during the disclosure process. The reports will also be uploaded in AWSB, NCWSC and AfDB websites for review and comments from the general public.

Potential Impacts and Mitigation Measures

AfDB Policy outlines that both economic and social considerations should be taken into account in determining requirements for compensation and resettlement. Categories of PAPs made under the policy include;

- ✓ a displaced population having formal legal rights to land or assets;
- ✓ displaced persons who have prove of entitlement under the country's laws;
- ✓ displaced persons with no recognizable legal right or claim to the land they are occupying;

- ✓ All the adversely affected population including indigenous groups, ethnic, religious, linguistic minorities, and pastoralists who may have right to use the property or other resources taken for the project.

Under the Kenyan Regulations for survey, there should be no PAPs on the 6 meters being targeted by the project as it is supposed to be government land. Most of the PAPs under this project were therefore categorized as displaced persons with no recognizable legal right or claim to the land they are occupying; or as an adversely affected population including indigenous groups, ethnic, religious, linguistic minorities, and pastoralists who may have usufruct rights to the land or other resources taken for the project.

The project components associated with potential impacts to the PAPs are the sewer lines. Most of the affected assets identified were food crops, trees, drive ways, fences residential and nonresidential structures. Majority of the sewer lines will be laid on the riparian area and road reserves though as observed during survey and site visits there is mass encroachment on this reserved areas. Where the pipeline will be laid on peoples' land, the project affected persons will be compensated adequately for the easement.

Land for the treatment plants belongs to the county government of Nairobi hence no acquisition will be required for this component. The estimated size of the land for the treatment plants 16 Ha. The RAP report has estimated the number of PAPs to be affected within the proposed project areas to be approximately 1,743 PAPs (462 were hawkers not permanent).

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 as per the AfDB OS 2.

Monitoring and Evaluation

Both internal and external monitoring will be undertaken. The monitoring exercise will begin immediately after the sensitization of the PAPs until the end of the construction period. Towards the end of the project, a RAP expert will be procured to undertake external monitoring.

RAP Implementation Arrangements

The implementation schedule for this RAP covers the periods from the preparation of the RAP to the conclusion of the NaRSIP 11 project up-to the completion and the time that the infrastructure will be fully available to full use.

The procedure in the schedule starting from notification of the PAPs before their displacement through compensation and resettlement will be done in phases to

synchronize with the various phases of the project. The RAP Implementation schedule defines the duration and timing of the key milestones and tasks. The major component tasks for the schedule include:

- Preparation of RAP
- Consultation and Disclosure of RAP
- Audit of the PAP register and compensation package due to each PAP
- Signing of agreements on compensation packages by PAPs
- Resolving emerging grievances
- Compensation and/or Supplementary assistance
- Notification of PAPs to relocate
- Commencement of project operations
- Monitoring and evaluation, including baseline update

The compliance and completion audit will be performed about one year after completion of RAP implementation.

Cost and Budget Estimates

The Estimated Budget for resettlement compensation is **Ksh 337,782,800.19** only, including disturbance allowance at 15% of each of the total assets lost, including a 10% contingency item. In addition a 20% each for administration cost for the RAP implementation, financial management training, monitoring and evaluation has been considered.

For the PAPS it is expected that they would use the money for livelihood restoration. Compensation payment agreements will involve the establishment of a bank account by the client which payment can be done; opening bank accounts by PAPs. Following this, payment can be done through the bank account of the PAP.

PAPs will be paid their resettlement and compensation entitlements prior to the project works being carried out in the affected project sites. Monitoring the RAP implementation process (part of the role of the AWSB internal Resettlement Implementation Unit (RIU)) and external evaluation of outcomes will be necessary in order to ensure the effectiveness and impact of the RAP. The source of funding for the RAP is counterpart funding from the Government of Kenya.

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND INFORMATION

The Nairobi Master Plan for Sewer, Sanitation and Drainage Study, was undertaken to provide a complete record of existing sewerage and drainage facilities, identify and propose a phased development schedule for sewerage and drainage systems up to the year 2020. This study was carried out under the Third Nairobi Water Supply Project.

The first Master Plan for sewerage expansion in Nairobi was developed in 1973 and reviewed in 1998. AWSB conducted a study geared towards determining whether the feasibility and design propositions given in the 1998 Master Plan still holds while taking into account future demand within the project area.

To validate the master plan, Athi Water Services Board (AWSB) used various reports and studies carried out in the year 2005 and 2007, on water demand, sewer flow estimates, demographics, socio-economic status and current state of infrastructure. AWSB also used a the 2007 Hydraulic Modeling report that modeled the existing trunk sewers in order to check their suitability in coping with the current sewage flows. The information gathered by AWSB was used to project sewage generation up to the year 2030 and was used to make recommends for immediate works to be implemented.

Following these studies, the Government of Kenya (GoK) through AWSB is implementing the Nairobi Rivers Sewerage Improvement Project (NARSIP 1) which was to be completed by June 2016. Despite implementation of NARSIP 1, the sewerage coverage remains significantly low resulting in highly polluted rivers within Nairobi City. To scale up works under NaRSIP1 and increase sanitation coverage to about 70% it is now proposed that Nairobi Rivers Sewerage Improvement Project Phase 2 (NaRSIP 11) be undertaken. The Government of Kenya in partnership with AfDB through AWSB intends to implement the second stage of the NaRSIP Programme, with the extension and duplication of the existing sewerage system and construction of lateral sewers within Nairobi County.

The proposed NaRSIP 11 project will actually affect people's assets and livelihood specifically the route for the main trunk sewers, site for the treatment works and reticulations. Therefore there was need to undertake a Resettlement Action Plan (RAP) for the proposed project as required by the AfDB Operational Safeguard 2 (OS2) on Involuntary Resettlement which entails land acquisition, population displacement and compensation.

The AfDB Operational Safeguard 2 (OS2) 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 people's properties and propose adequate compensation at a full resettlement cost to the affected persons.

1.2 SCOPE AND OBJECTIVES OF RESETTLEMENT ACTION PLAN

1.2.0 Scope of the Resettlement Action Plan

The scope of the RAP has ensured that the integrated social safeguards guidelines of the African Development Bank's Policy on Involuntary Resettlement, i.e. Involuntary Resettlement Policy (2003); have been adhered to. To ensure that this has been complied with, the preparation process has;

- i. Identified the project affected persons along the sewerage system routes and assets inventory has been carried out for all the identified project affected persons. The inventory has included affected land, structures, trees and crops, livelihoods and cultural assets
- ii. Stakeholder consultations were held with local administration including chiefs and their assistants, DO and *Nyumba Kumi* elders
- iii. Kenyan legal provisions has been compared with the AfDB policies to identify any gaps and necessary recommendations to harmonize the two has been incorporated in the resettlement plan
- iv. The compensation schedule and the resettlement plan have been prepared with the necessary budget to facilitate the implementation.

1.2.1 Objectives of the RAP

The objectives of this assignment were to update the existing Resettlement Action Plan (RAP) carried out in 2016 by Frame Consultants Ltd. The aim was also to prepare a RAP that complies with the safeguards policies of AfDB on involuntary resettlement. The policy requires that in the event of any project that is recipient of their funding and has the potential to displace more than 200 persons due to land acquisition, potential displacement and disruptions of livelihoods are significant then, a full Resettlement Action Plan has to be prepared. The proposed extension and duplication of the existing sewerage system and construction of lateral sewers within Nairobi County has envisaged Project Affected Persons (PAPs) to be 1,743 businesses and households. The purpose of this resettlement action plan is therefore to;

- i. Define clearly the project affected persons, their eligibility for compensation, the assets to be compensated and the cut-off date for eligibility
- ii. Provide a socio-economic basis for identification of entitlements and strategies for minimizing the impacts on the project affected persons
- iii. Establish rates for compensation on loss of assets and the methodology of determining the values
- iv. Establish land acquisition and compensation process and establish a Grievance Redress mechanism to address any grievances arising from the displacement
- v. Identify any gaps between AfDB guidelines and the Kenyan Laws on matters addressing issues of involuntary displacement and suggest how the gaps can be narrowed to meet the Banks criteria

The overall objective of the Resettlement Action Plan is to provide a plan for resettlement and rehabilitation of the PAPs so that their losses will be compensated and their standard of living will be improved or restored to at least the pre- project levels and also minimize the adverse impacts to project affected persons (PAPs).

1.2.2. Project Components Requiring Land Acquisition and Compensation

Components that require land acquisition and compensation include:

- The land that is affected by the sewer line way leave which is 30m wide;
- The structures that are within the affected area;
- Trees along the affected area; and
- Crops and flowers found along the affected land.

1.3 RAP STUDY METHODOLOGY

The information for formulation of the Resettlement Action Plan was based on primary and secondary data sources. The secondary data came from AWSB and other relevant documents associated with the proposed project.

The primary data was generated through field interviews, stakeholder consultations; transect walks and site visits with the community living within the proposed sewerage network system. The information collected through the different methods was analyzed to generate social and economic data of the community members. The following activities were undertaken along the proposed project area;

- i. Analyzing the secondary data information contained in official reports;
- ii. Conducting surveys on the socio-economic status of the project affected people within the sewerage network system. A structured questionnaire on socio-economic aspects of the PAPs was conducted by trained assistants (**See Annex 1**); and
- iii. Observations within the project areas for empirical evidence on characteristics of the communities to be potentially affected by the extension and duplication of the existing sewerage system
- iv. Census and inventory was conducted to get information required to identify the PAPs and the impacts on affected assets in the proposed project areas.
- v. Public consultation and participation conducted in various sites with various stakeholders and community members of the proposed project areas in order to solicit the opinions and views of the project affected persons about the project impacts and compensation.

All the above stated methods were used initially during reconnaissance of the sewerage system for socio-economic surveys. This information was used as a control during the detailed surveys with use of questionnaires.

1.3.0 Data Collection and Analysis

During field data collection, information relating to compensation was gathered. Such information included:

- ✓ Land ownership
- ✓ Business ownership
- ✓ Area of affected land and related land-use
- ✓ Area of affected buildings and other fixed-assets
- ✓ Affected community assets
- ✓ Affected Government and public assets

The field data was analyzed using Excel – Pivot tables, the results of which are presented in this report. During asset valuation, estimates of the affected asset values was carried out which provided the RAP budget.

1.3.1. Limitations

- Accessibility - due to the unplanned nature of settlements in some parts of the project area, some areas were not accessible. Therefore in some instances, interior dimensions and visual estimation were used to estimate the affected area. In the upmarket areas where there were gated communities accessibility was challenging because of the long protocol to be observed – passing through the gate keepers who did not always relay the correct information
- Insecurity – conducting interviews in some of the low income areas was challenging to the RAP team. Some areas were so insecure that the team could not use their phones to consult with each other. The team worked with the Nyumba Kumi elders to provide some kind of security. However, this approach did not work in one area where there was tension and mistrust amongst the different gangsters members who were fighting over ownership of territories.
- The RAP team drew attention especially in areas where there were prevailing land issues which was very common in the low income areas
- The census and inventory could not cover all the Affected businesses and households as required because during the exercise some of the household heads and business owners were not available for interview. Followup phone interviews were conducted as much as possible but did not yield much. In addition some affected persons were reluctant to furnish members of the RAP team with information for the socio-economic profiles. Therefore the number of entries of PAPs recorded by the Valuer may not tally the entries in the socio-economic profile data and what is currently on the ground.
- The team experienced some resistance from residents while demarcating the project boundary and carrying out the census and inventory of affected households. This is because some of the affected households felt it was a security breach especially in areas where there are gated communities.
- In some cases the PAPs declined to be included in the RAP exercise due to research fatigue as well as mistrust of the whole process
- The exercise was conducted during the heavy rainy season which made some areas impassable due to floods

- Period of fieldwork – This was conducted during school holidays therefore reaching head teachers and principals of affected schools and other institutions of learning was hard due to the fact schools/institutions were on vacation.

1.3.2. RAP Study Team

The team comprised of the following professionals:

- Team Leader/Sociologist;
- Land Valuer/Land Economist;
- Surveyors; and
- Various Enumerators from the Locations within the project area

CHAPTER 2: PROJECT DESCRIPTION

2.1 PROJECT LOCATION AND SIZE

The project location is Nairobi County, the administrative and commercial capital city of the Republic of Kenya and seat of the Government. The city is located at latitude 1°17' south and longitude 36°49' east and occupies around 696 km². It is situated about 1660 metres (5450 feet) above sea level.

Nairobi borders Thika and Kiambu to the North, Machakos to the East and Kajiado to the South. It is situated between the cities of Kampala and Mombasa. It is close to the Rift Valley. The Ngong hills are towards the west, Mount Kenya is towards the North and Mount Kilimanjaro is towards the south-east. The three major rivers traversing Nairobi include the Nairobi River, Ngong River and Mathare River. Uhuru Park, Central Park, City Park and Nairobi Arboretum are among several parks of Nairobi. The indigenous Karura forest is in northern Nairobi.

2.1.1 Population and Administrative Setup

The 2009 census reported that Nairobi Province had a population of 3,138,369. The Province has four districts; namely Nairobi West, Nairobi East, Nairobi North and Westlands with populations of 684,765; 1,144,416; 1,062,086; and 247,102; respectively. **Table 1** below shows proposed project areas various administrative units, their population and population densities.

Table 1: Demographic Details of Administrative Areas within the project area

Region/Unit	Population			Households	Area (km ²)	Density
	Male	Female	Total			
Nairobi West	352,227	332,538	684,765	212,295	261.8	2,616
Nairobi East	582,554	561,862	1,144,416	369,866	226.7	5,048
Nairobi North	545,701	561,385	1,062,086	327,428	109.3	9,721
Westlands	124,748	122,354	247,102	75,427	97.4	2,538
Total	1,605,230	1,533,139	3,138,369	958,016	695.1	4,515

Source: 2009 Kenya Population and Housing Census,

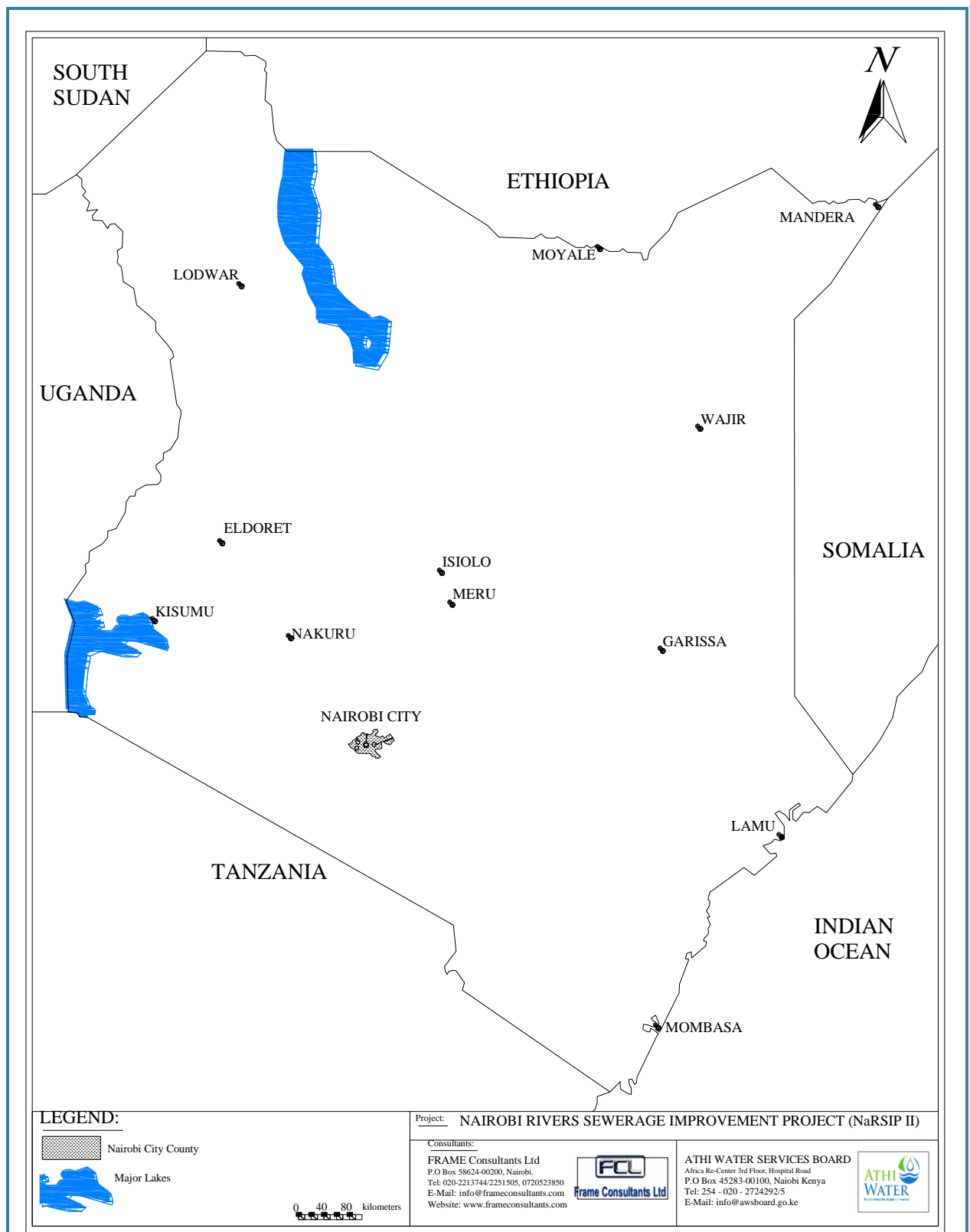


Figure 1: Map of Kenya Showing Nairobi City County

2.1.2. Project Justification

Nairobi city has a population presently estimated at 3.6 million people with a population growth rate of 2.7% p.a. Most of these people live in the formal peri urban areas which despite having good housing and yard water connections have no water borne sewer network. There is therefore need to ease or reduce pressure on the already installed sewerage network such as in Kilimani, Kileleshwa, Karen and Lavington where re-development is currently taking place.

Only 29.3% of the household population in Kenya rely on an improved, non-shared sanitation facility as the main facility. The project will enhance progress towards achieving the Sustainable Development Goals (SDGs) on water and sanitation. The Project is also important because of the following reasons:

- Despite the implementation of NARSIP I further reduction of pollution from domestic waste effluent to Athi river basin water system is required.
- Exploit the synergy that exists between water, sanitation and health aspects in socio-economic development.
- There is existing un-utilized waste water treatment capacity of 50,000m³/day that needs to be optimized.
- Nairobi soils are not suitable for onsite sanitation facilities leading to flows of raw sewage to rivers and open drains.
- With sewerage projects being requiring huge initial capital outlays, and with the historical perspective of sanitation being considered as a secondary priority to water issues, sewerage infrastructure development for Nairobi have greatly lagged behind development of water infrastructure.
- Development of an effective sewerage system for Nairobi city will reduce pollution and ensure that the vital Athi river basin remains sustainable as a water source to communities' downstream and urban centers up to the Indian Ocean.
- An effective sewerage system for Nairobi will assure the city place as an international social, administrative, cultural and economic center amongst other great cities of the world.

2.1.3. Project Beneficiaries

The project beneficiaries include selected population of Nairobi County and its environs. It will also serve new areas which were not covered in the NaRSIP 1 project.

2.2. PROPOSED PROJECT ACTIVITIES FOR NARSIP

Nairobi city is the administrative and regional commercial center for East and Central Africa with a population presently estimated at 3.2 million people. The existing sewerage infrastructure covers only 40% of the city. With the rapid growth of the city, the existing facilities have been fully stretched to capacity and in other unsewered areas, especially the low cost areas like Riruta, Kawangware and Kangemi, where most of the people do not invest in septic tanks; sewage is left to openly flow into the river.

The existing Nairobi sewer network was built in 1961 was meant to serve a population of less than one million and had a total length of about 163 Km and covered an area of about 208 square kilometres. The sewer line is less than 30 per cent of the city's total 696 square kilometers and only 20 per cent of the population is connected to the sewerage system. A sewer system for the city was built in the late colonial period and the first waste water treatment plant was completed at Kariobangi in 1961,

The informal settlements within Nairobi are inhabited by over 50% of the city's population. The informal settlements are characterized by inadequate services among others such as poor housing facilities, poor sanitation conditions, inadequate drainage and waste disposal systems. The poor sanitation conditions have led to continued production and discharge of waste openly which often overflows into the river water courses. The discharge of untreated wastewater continues coupled with inadequate garbage collection and poor maintenance of sewer lines has caused clogging and overflowing. The informal settlements have developed to be major sources of pollution of rivers in Nairobi.

Within the informal settlements, encroachment on sewer way leaves is prevalent with houses being constructed over sewer trunk mains making access for operation and maintenance purposes difficult. Solid waste disposal is mainly done through the manholes leading to blockages and sewer overflows ultimately ending in rivers.

Further, the breaking down of the Kariobangi Sewage Treatment plant, which operates at 40% efficiency, has meant that most of the load on the Nairobi River Trunk sewer is carried onward to the Dandora Estate Sewage Treatment Plant (DESTP) which was completed in 1994 and is the second largest stabilization pond plant in Africa.

To eliminate the pollution levels, it's necessary to provide adequate sanitation infrastructure comprising of construction of trunk and lateral sewers to cover some critical unsewered areas and rehabilitation and extension of the sewerage treatment plants to increase efficiency and capacity.

The Government of Kenya in partnership with AfDB through AWSB implemented the Nairobi Rivers Sewerage Improvement Project (NaRSIP I) who's scope included the following as shown on **Table 2** below;

Table 2: Scope of Nairobi Rivers Sewerage Improvement Project Phase 1 Target Areas.

River Basins	Target Areas
Waste Water treatment	Expand the Dandora Estate waste water treatment plant to achieve its design capacity of 160,000m ³ /day from present of 120,000m ³ /day
Nairobi River Basin	Kawangware, Riruta satellite, Kangemi, Uthiru, Waithaka, Dagoretti, Kariakor, Kamkunji, Majengo, Gikomba, Shauri Moyo, Muthurwa,
Ngong River Basin	Upper hill, Kenyatta area, Nairobi west, Madaraka Estate, Langata, and Nairobi Dam Area.

River Basins	Target Areas
Mathare River Basin	City Park area, Muthaiga, National Youth service area, Mathare 4A, Utalii, Mathare North, Mathare Mabatini, Mlango Kubwa.
Kiu River Basin	Githurai 44, Githurai 45, Githurai Kimbo, Kahawa west, Kahawa Wendani, Mukia.

AWSB now intends to implement the Second Stage of the NaRSIP Programme, with extension and duplication of the existing sewerage system and construction of lateral sewers within Nairobi County. The priority areas of implementation based on the level of development is as follows:

- a) Construction of 221 Km lateral and reticulation sewers in:

Table 3: Scope of Nairobi Rivers Sewerage Improvement Project Phase 2 Target Areas.

	AREA	KM
1	Karen	18
2	Westlands, Mountain View, Uthiru	15
3	Kilimani	10
4	Kieleshwa	10
5	Kahawa Sukari, Kahawa West	72
6	Eastleigh	10
7	Mathare North, Huruma	10
8	Githurai 44/45	72
9	Mwiki, Clay works	66
	TOTAL	221

- b) Construction of anaerobic, facultative and maturation ponds at Dandora Estate Sewerage Treatment Plant (DESTP) site to convert Kiu River pumping system to Ponds
- c) Commencement of a social connection revolving fund to be managed by NCWSC in order to maximize on the number of people connecting to the sewer

2.3 WATER AND SEWERAGE SERVICES IN NAIROBI CITY

2.3.0 Water Services

Nairobi City Water & Sewerage Company (NCWSC) – a company wholly owned by the Nairobi City County, is the water and sanitation provider for Nairobi city. Nairobi which has been in existence for about 100 years has grown from a settlement of 25 Km² to the current 684 km²

Water currently supplied by NCWSC is from four sources namely Sasumua Dam, Thika Dam (Ndakaini), Ruiru Dam and Kikuyu Springs. Water from Sasumua Dam is treated at source while that from Thika Dam is treated at Ngethu Treatment Works. Water from Ruiru Dam and Kikuyu Springs is treated at the Kabete Treatment Plant. The Thika Dam-Ngethu system contributes the bulk of water to the system at 84%, followed by the Sasumua System 11%, while Ruiru Dam and Kikuyu Springs contribute 3% and 2% respectively.

The total installed water production capacity from these sources is about 520,000 cubic meters per day. Steady degradation of catchment areas is a threat to Nairobi's surface water sources. Groundwater sources located in the Nairobi area are often used by individuals as a substitute for public piped water supplied by NCWSC.

There are currently about 180,000 legal consumer connections, of which 164,000 are domestic connections. In total, 71% of Nairobi households have access to piped water supplied mainly by NCWSC. Although the production capacity is large and theoretically sufficient to meet current demand, total water available for actual sale and use is significantly lower - unaccounted-for water (UFW) in the system is estimated to be about 42 percent. Even though data from metering (both at consumer and bulk supply levels) is not fully reliable, it is currently estimated that the gross available water for Nairobi is 335,000 m³/day, while the net available water for consumption is 248, 0 00 m³/day. The water needs estimates is 366,418 m³/day and therefore the estimated current deficit is 118,418 m³/day (32%).

This situation has translated to inadequate service to the population, especially in the informal settlements in Nairobi, where the vast majority of the urban poor reside. It is estimated that by year 2015, gross water demand in the city will rise to 474,199 m³/day. Thus, it is clear that the demand for water will soon far outstrip that available from the piped network. In the absence of capital investments, users of all categories will continue to have fairly low consumption levels from the piped networks

2.3.1 Sewer Services

The existing sewer network on the other hand comprises a trunk sewer system that has a total length of about 162.7 km and covers an area of about 208 km² which essentially

covers only 40% of the city area served with water. The main problems identified in the system are non-functional sewers due to washed away sections, accidental breakages or deliberate vandalism of manhole covers, blockages due to deliberate dumping of solid waste or accidental entry of stones and boulders into open manholes and also blockage of sewer lines by urban farmers to catch sewage for irrigation and overflowing of sewers due to insufficient capacity.

There are 24 Sewage Treatment Plants in Nairobi, the main ones being the Dandora and Kariobangi Sewage Treatment Plants. The Dandora Plant has design capacity of 120,000m³/day and handles an average flow of 76,000m³/day while the Kariobangi plant has design capacity of 32,000m³/day and handles an average flow of 11,000m³/day.

Recent surveys indicate that most of the sewage treatment plants are operating at very low efficiency despite the fact that they receive flows below their design capacity. It has been suggested that this may be attributed to poor maintenance, high organic loading and influence of industrial discharges.

A survey was carried out to determine the nature and extent of pollution of the major rivers in Nairobi thus Nairobi, Mathare and Ngong rivers. The surveys indicate that the rivers are highly polluted and concrete mitigation measures need to be taken.

2.4 EXISTING AND PLANNED SEWERAGE SYSTEM

The public and private sewage treatment capacity is reported to be 143,290 m³/day, serving a total population of 898,575 and generating about 66 tons of sludge/day; 9 tons of sludge/ day in Kariobangi and 57 tons in Dandora sewerage treatment plant.

However, the two main sewage treatment plants had been operating well below their capacity (56%). This could be attributed to several reasons, the main ones being inadequate operation and maintenance programme and insufficient capacity of the main trunk sewers. However, the NaRSIP I programme rehabilitated and expanded these treatment plants and were restored to their design capacities.

Using the water demands from the areas that are along the identified trunk sewers, the sewage generations were computed using 80% as wastewater into the proposed trunk sewers from these areas. The computed waste water flows per proposed trunk sewer are as shown on **Erreur ! Source du renvoi introuvable.4** below;

Table 4: Computed Waste Water Flows Per Proposed Trunk Sewer

Trunk Sewers	Length in km	2010	2015	2020	2025	2030
Kiu River Trunk Sewer Extension	5.5	4,565	5,501	7,610	8,822	11,106
Riara River Trunk Sewer extension	2.4	2,003	2,412	3,336	3,868	4,871
Kiu River Outfall Trunk Sewer extension	5.8	18,006	21,698	27,556	31,946	38,298
Nairobi River TS extension	8.5	18,492	22,282	27,405	31,771	37,327
Mathare River TS extension	3.5	6,919	8,337	11,533	13,371	16,831
Getathuru TS duplication	5.4	14,837	17,877	24,728	28,669	36,040

Trunk Sewers	Length in km	2010	2015	2020	2025	2030
Upper Hill TS duplication	2.8	15,723	18,945	22,829	26,464	30,680
Riruta North TS extension	1.7	8,684	10,466	14,478	16,783	21,129
Nairobi River TS duplication	4.3	5,456	6,573	8,324	9,651	11,549
South Nairobi Dam TS extension	2.6	2,959	3,565	4,296	4,981	5,774
Getathuru TS extension	4.0	10,575	12,743	15,355	17,802	20,637
Gatharaini trunk sewer extension	23	10,542	10,542	17,237	17,237	17,237

2.5 PROPOSED PROJECT COMPONENTS

Below is summary of the sewerage components making up the Nairobi Rivers sewerage Improvement Project Phase II (NaRSIP II) .The basis of this plan are the previous studies carried out in Nairobi region as outlined in the Nairobi Sewerage Master Plan 1998 and later validated by AWSB. The proposed NaRSIP 11 is envisaged to cover 80.9 Km of Trunk sewers and 221km lateral and reticulation sewers as shown on **Table and**

Table below and construction of anaerobic, facultative and maturation ponds at the DESTP site to convert Kiu River pumping system to Ponds.

Table 5: Proposed Project Components for NaRSIP 11 Trunk Sewer Lines

No.	Trunk Sewer	Length In KM
1.	Duplication of Dandora box culvert from Gatharaini Junction to Njiru Junction	3.23
2.	Reconstruction/Upgrading of Uhuru Highway Trunk Sewer to Mater Hospital	2.6
3.	Duplication of Mombasa Road Enterprise Trunk Sewer	3.5
4.	Extension of Mombasa Road Enterprise Trunk Sewer	2
5.	Reconstruction Of Kirichwa Kubwa Trunk Sewer	4
6.	Duplication of Nairobi River/ Eastleigh Trunk Sewer from Eastleigh to Kariobangi	11
7.	Duplication of Parklands Trunk Sewers	4.5
8.	Extension of Parklands Trunk Sewers	2
9.	Extension of Karen Trunk Sewer	11.3
10.	Gitathuru TS Extension/Duplication To Kitsuru	4.3
11.	Ruiruaka River TS Extension To Ruaka	3.5
12.	Old Airport Road (Utawala Area) Trunk Sewer Extension	5.5
13.	Upgrading Milimani Chiromo Trunk Sewers	10
14.	Extension of Umoja TS from Umoja to Saika	5
15.	Riruta South Trunk Sewer Extension	3.2
16.	Mathare River Trunk Sewer Extension	3.5
17.	Extension of South Nairobi Dam Trunk Sewer	2.8
TOTAL LENGTH		80

Table 6: Proposed Project Components for NaRSIP 11 Reticulation Sewer Lines

Proposed Reticulation Sewers		
No.	Reticulation Sewer	Length In KM
1.	Karen	18
2.	Westlands, Mountain View, Uthiru	15
3.	Kilimani	10
4.	Kieleshwa	10
5.	Kahawa Sukari, Kahawa West	72
6.	Eastleigh	10
7.	Mathare North, Huruma	10
8.	Githurai 44/45	72
9.	Mwiki, Clay works	66
10.	TOTAL	221

CHAPTER 3: LEGAL AND REGULATORY FRAMEWORK

3.1 OVERVIEW

One of the principles of the Resettlement Action Plan (RAP) is that resettlement planning should adhere to national policies and legislation, and international best practices. 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 AfDB Guidelines on Involuntary Resettlement, highlighting gaps and making recommendations to fill up gaps.

Kenya has several regulations that provide guidelines for acquisition of land for public interest among them the way leave for transmission lines. The major ones include:

- Constitution of Kenya 2010
- National Land Policy
- Land Act 2012
- Kenya Roads Act 2007 (No. 201 of 2007)
- Physical Planning Act (CAP 286)
- Environment and Land Court Act 2011

3.2 3.9 CONSTITUTION OF KENYA (2010)

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

"The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that;

- (i) Requires prompt payment in full, of just compensation to the person; and*
- (ii) Allows any person who has an interest in or right over, that property a right of access to a court of law.*

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

of 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. 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.

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. These principles must be implemented through a national land policy reviewed regularly by the national government and through legislation.

THE NATIONAL LAND POLICY

The National Land Policy ("NLP" or "Policy") as 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. Section 45 of the NLP defines compulsory acquisition as "the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation. "Under the current Constitution, the Land Act 2012 empowers the National Land Commission (under the guidance of Cabinet Secretary 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;

3.3 LAND TENURE SYSTEM IN KENYA

Land tenure in Kenya is classified as public, community or private. Public land consists of government forests (other than those "lawfully held, managed or used by specific

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

3.3.0 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.

3.3.1 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 settlers who required legal guarantee for the private ownership of land without which they were reluctant to invest.

3.3.2 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.

3.3.3 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 instrument.*

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

3.3.4 Public Resources on Public Land

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

3.4 LAND ACT, 2012

The Land Act (“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.

3.4.0 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 the Land Act 2012, the possession of the land must be necessary for public purpose or public interest, such as, in the interests of public defense, 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. The proposed sewerage system have 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, geo-references 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. 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.

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 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.

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. Determination of the value has to take into consideration the conditions of the title and the regulations that classify the land use e.g. agricultural, residential, commercial or industrial.

Increased market value is disregarded when: It is accrued by improvements made within two years before the date of the publication of the acquisition notice, unless it is proved that such improvement was made in good faith and not in contemplation of the proceedings for compulsory acquisition.

It is accrued by land use contrary to the law or detrimental to the health of the occupiers of the premises or public health.

- ✓ *Any damages sustained or likely to be sustained by reason of severing such land from other land owned by the claimant.*
- ✓ *Any damage sustained or likely to be sustained if the acquisition of the land had negative effects on other property owned by the claimant.*
- ✓ *Reasonable expenses, if as a consequence of the acquisition, the claimant was compelled to change his residence or place of business (i.e., compensation for disruption to the claimant's life).*
- ✓ *Any damage from loss of profits over the land occurring between the date of the publication of the acquisition notice and the date the NLC takes possession of the land.*

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.

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. The law could be interpreted that any dispossessed person shall be awarded the market value of the land. 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. NLC will publish these awards, which will be considered "final and conclusive evidence" of the area of the land to be acquired, the value of the land and the amount payable as compensation. Land Act, Section 115 further stipulates that an award shall not be invalidated by reason only of a discrepancy between the area specified in the award and the actual area of the land. Compensation cannot include attorney's fees, costs of obtaining advice, and costs incurred in preparing and submitting written claims.

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 serve 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.

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. 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.*

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.

3.4.1 Children and Orphans Provision of Land Possession

The Land Act 2012, Part III, section 2750 recognizes the capacity of a child as being capable of holding title to land. However this can only happen through a trustee and such a child shall be in the same position as an adult with regard to child's liability and obligation to the land.

3.5 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 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. The Valuers Act does not provide for a description of the valuation procedures and methods. The RAP study 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:-

- False or incorrect entry in the register;
- False or misleading statement caused by omission or suppression of a material fact; and
- The acceptance of “any professional valuation work which involves the giving or receiving of discounts or commissions.”

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”⁵⁵ and are paid by those who requested the valuation.

3.6 KENYA ROADS ACT, 2007 (NO. 201 OF 2007)

Section 49 of the Kenya Roads Act, 2007 (No. 201 of 2007) prohibits erection of structures on a road reserve without permission from the Roads’ Authority. Where a person, without the required permission, erects constructs or establishes a structure or other thing, or makes a structural alteration or addition to a structure, the Authority may by notice in writing direct that person to remove the unauthorized structure. If the person to whom a notice has been issued fails to remove the structure, alteration or addition mentioned in the notice, within the period stated, such item may be removed by the Authority itself and the Authority can recover the cost of the removal from that person.

3.7 PHYSICAL PLANNING ACT (CAP. 286)

The Act provides for preparation of land use plans with a view to improving the affected land, securing suitable provision for transport, public purposes, utilities and services, commercial, industrial, residential uses among others. This is defined in the Section 16 of the Act. The process for plan preparation are included in the main Act whereby all plans have to be presented to the public and published in the local newspaper prior to approval by the Cabinet Secretary. Stakeholders have to be involved in the planning process and their views have to be incorporated in the land use plan.

Once the land use category has been incorporated in a land use plan and it has gone through the approval stage, the dedicated land use vests in the authority responsible for the activity or service for benefit of the public as a whole. A restriction is implied of any re-allocation of the user to any other purpose thereafter.

Section 29 of the Act allows County Governments to prohibit or control use and development of land and buildings and give to approve all developments within their areas of jurisdiction. Where no such permission has been granted, the local authority is allowed to demolish any such structures.

The Act, however, does not provide any procedures to be followed where demolition is to be carried out and can raise ugly confrontations between compliance enforcers and owners and occupiers of illegal developments.

3.8 ENVIRONMENT AND LAND COURT ACT (2011)

The Act gives effect to Article 162(2) (b) of the Constitution by establishing the Environment and Land Court that has original and appellate jurisdiction. According to Section 4 (2) and (3), it is a court with the status of the High Court. It exercises jurisdiction throughout Kenya and pursuant to section 26, is expected to ensure reasonable and equitable access to its services in every county.

The principal objective of this Act is to enable the Court to facilitate a just, expeditious, proportionate and accessible resolution of disputes governed by the Act. The Court exercises its jurisdiction under **Section 162** (2) (b) of the Constitution and has power to hear and determine disputes relating to —

(a) Environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) Compulsory acquisition of land;

(c) Land administration and management;

Public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) Any other dispute relating to environment and land.

Nothing in the Act precludes the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to land and to a clean and healthy environment under **Sections 42, 69 and 70** of the Constitution.

3.8.1 Environmental and Management Coordination Act No. 8 of 2015

Article 42 of the Constitution guarantees every person the right to a clean and healthy environment. Consequently the protection of the environment is a constitutional duty. The main objective of the Act, though enacted before promulgation of the new Kenyan Constitution, is to provide an appropriate legal and institutional framework for management of the environment.

The Act makes it a criminal offence to interfere with fragile ecosystems and the penalties provided are criminal in nature.

3.10 AFRICAN DEVELOPMENT BANK'S SAFEGUARD POLICY AND GUIDELINES

3.10.0 Involuntary Resettlement Policy, 2003.

The overall goal of the Bank's Policy on Involuntary Resettlement is to ensure that when people must be displaced they are treated equitably, and that they share in the benefits of the project that involve their resettlement. The Policy has the following key objectives;

- i. To avoid involuntary resettlement where feasible, or minimize resettlement impacts where population displacement is unavoidable, exploring all viable project designs. Particular attention must be given to socio-culture consideration such as culture or religious significance of land, the vulnerability of affected population, or the availability of in-kind replacement for assets, especially when they have important intangible implication. When a large number of people or a significant portion of the affected population would be subject to relocate or would suffer from the impacts that are difficult to quantify and to compensate, the alternative of not going ahead with the project should be give serious consideration;
- ii. To ensure that the displaced people receive resettlement assistance, preferably under the project, so that their standards of living, income earning capacity, and production levels are improved;
- iii. To provide explicit guidance to Bank staff and to the borrowers on the conditions that need to be met regarding involuntary resettlement issues in Bank operations in order to mitigate the negative impacts of displacement and resettlement and establish sustainable economy and society; and
- iv. To set up a mechanism for monitoring the performance of involuntary resettlement programs in Bank operations and remedying problems as they arise so as to safeguard against ill-prepared and poorly implemented resettlement plans.

In order to achieve the goals of this Policy that involve Involuntary Resettlement, the Plan shall be prepared and evaluated according to the following guiding principles;

- i. The borrower should develop a resettlement plan where physical displacement and loss of economic assets are unavoidable. The plan should ensure that displacement is minimized, and that the displaced persons are provided with assistance prior to, during and following physical relocation. The aim of the relocation and of the resettlement plan is to improve displaced persons former living standards, income earning capacity, and production levels. The resettlement plan should be conceived and executed as part of development program, with displaced persons provided with sufficient resources and opportunities to share in the project benefits. Project planners should work to ensure that the affected communities give their demonstrable acceptance to the resettlement plan and the development program, and that necessary displacement is done in the context of negotiated settlement with affected community.

- ii. Additionally, displaced persons and host community should be meaning-fully consulted early in the planning process and encourage participation in the planning and implementation of the resettlement program. The displaced persons should be informed about their options and right pertaining to resettlement. They should be given genuine choices among technically and economically feasible resettlement alternatives. In this regard, particular attention should be paid to the location and scheduling of activities. In order for consultations to be meaningful, information about the proposed project and the plans regarding resettlement and rehabilitation must be made available to local people and national civil society organizations in a timely manner and in a form and manner that is appropriate and understandable to the local people. As well, careful attention should be given in the organization of meetings. The feasibility of holding separate women's meetings and fair representation of female heads of households, in addition to mixed meetings should be explored. Also, the way in which information is disseminated should be cautiously planned as levels of literacy and networking may differ along gender liners;
- iii. Particular attention should be paid to the need of disadvantaged groups among those displaced, especially those below the poverty line, the land less, the elderly, women and children, and ethnic, religious and linguistic minorities; including those without legal title to asset, female headed households. Appropriate assistance must be provided to assist the disadvantaged groups cope with the dislocation and to improve their status. Provision of health care services, particularly for pregnant women , and infants, may be important during and after relocation to prevent increases in morbidity and mortality due to malnutrition, the psychological stress of being uprooted, and increased risk of diseases;
- iv. Resettles should be integrated socially and economically into host communities so that any adverse impacts on host communities are minimized. Any payment due to the hosts for land or other assets provided to resettles should promptly render. Conflicts between hosts and new arrivals may develop as increased demands are placed on land, water, forests, services, etc. or if the new arrivals are provided services and housing superior to those of the host. These impacts must be carefully considered when assessing the feasibility and cost of any proposed project involving displacement, and adequate resources must be reflected in the budget for the mitigation of those additional environmental and social impact.
- v. Displaced persons should be compensated for losses at “replacement cost” prior to their physical displacement or before taking-over of the land and related assets or commencement of project activities, whichever occurs first; and
- vi. The total cost of the project as a result should be included in the full cost of all resettlement activities, factoring in the loss of livelihood and earning potential among affected peoples. This attempt to calculate the “total economic cost” should also factor the social, health, environmental and psychological impacts of

the project and displacement, which may disrupt productivity and social integration. The resettlement cost should be treated against economic benefits of the project and any other net benefits to new arrivals should be added to the benefit stream of the project.

The policy defines the affected population in a resettlement program, describes the modes of identifying their loss of assets/income resources or access to assets, eligibility and entitlements within the context of a resettlement plan.

3.10.1 Disclosure and Access to Information

This revised policy supersedes the AfDB Policy on disclosure of information dated October 2005. The Policy provides the Bank group with an improved framework within which to disclose information on policies and strategies and key decision made during project development and implementation.

Maximum disclosure and access to information will increase public support for the Bank Groups Mission and enhance the effectiveness of its operations. The policy contains the following new elements;

- ✓ *A strengthened presumption of disclosure, eliminating the positive list and emphasizing a limited negative list;*
- ✓ *Introduction of an appeals mechanism;*
- ✓ *Provision of simultaneous disclosure and*
- ✓ *Increased access to the broad range of stakeholders.*

The policy aims to;

- i. Maximize disclosure of information within the Banks Groups possession and limit the list of expectations to reflect the Banks willingness to disclose information
- ii. Facilitate access to
- iii. and share information on the Bank group's operations with a broad range of stakeholders;
- iv. Promote good governance, transparency and accountability to provide leadership in this areas to RMCs;
- v. Improve on implementation effectiveness and better co-ordinate the information disclosure processes;
- vi. Give more visibility to the Bank Group's mission, strategies and activities to stakeholders
- vii. Support the Bank Group's consultative process in its activities and stakeholders participation in the implementation of the Bank Group financed projects
- viii. Ensure harmonization with other Development Finance Institutions (DFIs) on disclosure of information.

During the RAP implementation it is strongly recommended that AWSB through the RC should embark on sensitization strategy that endeavors to keep the community and the PAPS fully informed on the progress being made in the implementation of the project. This strategy will include among others: Holding workshops and seminars for the PAPs and the community, distribution of materials and literature on the project, Audio and

visual presentations including talk shows in the local radio and television stations. This should be conducted in a language understood locally by the community (vernacular / national language).

3.10.2 Handbook on Stakeholders Consultations and participation on AfDB Funded Projects
Participation in development can be defined as the process through which people with an interest (stakeholders) influence and share control over development issues that affect them. Measures have to be taken to identify the relevant stakeholders and involve them in the process of formulating the project. This entails sharing with them the objective of the project and seeking their views for integration in the project design before decisions are concluded. It might be necessary to take the stakeholders through a process of training and thus empowering them not only to meaningfully contribute to the project design but also for their future participation in the sustainability of the project.

According to the Handbook, many methods and technique have been developed to promote participation by stakeholders in development. Some of the methods and techniques used include:-

- i. Participatory stakeholders analysis
- ii. Participatory meetings and workshops
- iii. Participatory research /Data collection.
- iv. Participatory planning

In some instances, it might be necessary to combine the above techniques depending on the nature of the project at hand and the complexity of the stakeholders involved.

3.11 ANALYSIS OF GAPS BETWEEN KENYAN LEGAL AND POLICY FRAMEWORK AND AFDB POLICIES.

The Constitution of Kenya (2010), Section 60 (1) (f) seeks to eliminate gender discrimination in law, custom, and practices related to land and property.

Section 81 (b) , 175 (c) and 177 (1) (b) provides for no more than two- third of elected members in elective bodies, representation in devolved government and special seats of elective assemblies to be male.

Section 91 (1) (f) and 91 (2) (a) provides for observance of gender equality in the running and founding of political parties and similarly with the judicial service commission as provided for under section 172 (2) (b).The AfDB Gender Policy (2001) reinforces the provisions of the Constitution by providing specific direction on how gender issues are to be handled in the course of the project. This policy was therefore adhered to during public consultations and in the course of preparing this RAP Report.

Section 3.4.3 of the AfDB involuntary Resettlement policy provides for a third group of displaced persons who have no recognizable legal right on the land they are occupying in the project area. According to the Policy, this category of displaced persons, will be entitled to resettlement assistance in lieu of compensation for land to sustain and improve their former living standards (compensation for loss of livelihood activities, common

property resources, structure and crops etc.), provided they occupied the project area prior to a cut-off date established by the borrow and acceptable to Bank.

At the minimum, under the Bank's policy (with no contradiction to the borrower's legislation), land, housing, and infrastructure should be provided to the adversely affected population, including indigenous groups, ethnic, linguistic and religious minorities, and pastoralists who may have usufruct rights to the land or other resources taken for the project. The cut-off date must clearly be communicated to the project affected population. Persons who encroach on the project area after the cut-off date are not entitled to any form of resettlement assistance.

CHAPTER 4: SOCIO-ECONOMIC BASELINE CONDITIONS

The following sections provide a summary of the data collection methods and results used to characterize socio-economic baseline conditions in the project area prior to significant project implementation. The social economic status of the people is likely to be slightly disrupted during the construction period.

4.1 METHODOLOGY

Data used to establish socio – economic baseline conditions were derived from field surveys conducted in the project area during the preparation of the RAP. The survey team employed the following methodology while undertaking RAP.

- ✓ Census survey
- ✓ Socio-economic survey
- ✓ Land and Asset Valuation
- ✓ Key Informant Interviews

4.1.0 Data Collection

Both primary and secondary data was collected during the survey of the project area. Primary data from the field was carried out as follows:

- Qualitative data was collected through field visits, site walks as well as interactions with the stakeholders; and
 - Quantitative data was collected through a socio-economic, census and valuation survey of 100% of all the affected households. The socio-economic survey was carried out in tandem with the land/property assessments, so that as soon as an affected property was identified by the Surveyor, the Enumerators were able to conduct the socio-economic survey on that household. The surveys were carried out between 5th to 7th April 2018 as well as 26th April to 2nd May 2018. A sample questionnaire is provided in Appendix 2. Secondary data was collected through a detailed literature review which included a study of the following documents:
 - Policies, Acts and Regulations;
 - NCWSC;
 - Project Area Topographical and Cadastral Maps; and
 - Previous Project Study Documents.
- a) Fieldwork

The field visits were undertaken to identify the properties to be affected by the project. The field visits included the following tasks:

- i. Observation This included observation of social and physical setting of the area as well as economic activities
- ii. Identification of affected properties along the proposed sewer lines
- iii. Interviews and discussions - Interviews were held with the PAPs household heads/proxies, Local authorities, MCAs. Interviews for each of the individual affected households were conducted using predesigned semi-structured questionnaires (Ref Appendix 1). The issues covered included socio demography data, literacy levels, assets, structures, crops / trees affected by the proposed project, main challenges faced as residents and business persons of the area
- iv. Land Surveys - The Land Surveyor using maps guided the RAP team along the proposed sewerage lines. All the developments such as the structures, trees and crops within the affected area would be noted.

b) Data analysis and reporting

Data entry was carried out on Excel Spreadsheets. Excel software is found to be appropriate due to its statistical data analysis capabilities for both qualitative and quantitative analysis. Qualitative data was coded for easier analysis and interpretation. The analyzed data was presented in percentages, tables, numbers, figures and charts in reporting the findings.

4.1.1. Description of the target area

a) Karen

Karen is an affluent suburb in Nairobi. The affected area is mainly the residential area. Institutions found in the target area are religious congregation, dormant animal feed factory and university – Marist International University

The area is well planned except that many of the feeder roads are not yet developed. There are few encroachers except development of drive ways to residents, landscape developed along the fences and onto the road reserves. It was observed that there were no through ways on several public roads leading to residents as they were blocked due to security reasons



Plate 1: LEFT: Cloth Hanging lines, concrete floor and septic tank that will be affected in Karen. MIDDLE: A fenced off road with mabati due to insecurity. RIGHT: Feeder road that is almost impassable during rainy season

b) Westlands

- Westlands is an affluent neighbourhood and an administrative division in Nairobi city
- Generally the area has existing sewer lines along the road reserves
- Encroachment is low except for residents who have developed their drive ways which are on the road reserves.

c) Mountain view:

- Connect through Waiyaki road to Thiongo road or from Naivasha road.
- Has an existing sewerage line.
- Mostly rough roads, well spaced. The feeder roads are not labeled.
- First line is accessible via Naivasha road from the River bank. It is not accessible by car. No challenge as the space is enough road reserve to hold the line.
- Second road is a stretch about 200m, from the valley and stretches to Thiongo road. Total distance about 500m. Enough space for developing the line.
- 3rd road from Naivasha road There was a private or communal sewerage line under construction, draining into an existing sewerage line.
- 4th road rolls down towards Thiongo Road, the line will run into a mabati houses and 4 houses on the two lines will be affected. This is a visible encroachment since power line cross above the houses. The road narrows as there is an encroachment by kiosks, hawking sheds and residential houses protruding towards the road. Stretching about 100m, about.

- 5th road, stretches from Thiongo road near the Waiyaki way junction. Enough space except on a small place where about 4 mabati houses are extended to the road. Otherwise there is enough space as the road is wide .

d) Uthiru

- Uthiru is a settlement in Kiambu County on the northwest side of the city centre of Nairobi. It is located between Kikuyu and Kangemi. The population exceeds 100,000. It hosts a number of public institutions including University of Nairobi, Upper Kabete Campus, Kabete Technical Training Institute, and AHITI Kabete. ILRI (International Livestock Research Institute) has its headquarters in Uthiru.
- On the sewer line routes, the feeder roads linking Waiyaki way and Muge roads are very narrow. There is encroachment by some developers on both sides. Drive ways, pit latrines, plantations, trees, fences will be affected.

d) Kilimani / Kieleshwa

- Kilimani is an affluent neighborhood and is an administrative region belonging to Westlands. Kieleshwa is also an affluent neighbourhood and home to several towering apartments and offices. Perennial sewer bursts and water shortages are common

e) Kahawa West / Kahawa Sukari

River Kamai: Around about 600m from KU teaching and referral hospital, next to Uhuru primary school. The river is a swampy place with reeds. It stretches curving through private farms, with 4 man holes dotted along the line. The sewer line crosses river Kamai, Many trees and a visible water pipe, banana plantations. Takes a curve along a concrete perimeter wall along the bank with a 2m leeway Curves again, wire fence across the river then bushy bare land about 800m, with no activities. River bank is bushy almost impassable. There is a forest on the right hand side.

The area is not heavily encroached by traders or house owners except in the slum area known as Soweto where land lords have built on the roads.

There are 2 main institutions that will be affected and would require land acquisition – these are KU and Kamiti Maximum Security Prison.

i) Eastleigh

Eastleigh is a suburb in Nairobi county and predominantly inhabited by Somali immigrants and popularly known as "Little Mogadishu" or "a country within a country with its own economy" on account of its robust business sector. Eastleigh is a bee hive of economic activities including traders of food stuff, shoes and clothes, garages. Many traders have built structures (mostly movable) on the road reserves and even spilling onto the road. Shopping

shops have also encroached onto the road reserves. Apart from the encroachers, telephone and electricity lines and water pipes will be affected. Sewer lines exist – some are functioning while others are not. The encroachment may stifle the Project work schedule. The roads were flooded with rain water and sewer.



Plate 2: Flooded road and traders on the road reserve

j) Mathare North

Mathare North is a county assembly ward with a population of 53,658. It is part of the Mathare Constituency which is a collection of slums in Nairobi with a population of approximately 500,000 people. The area is congested with encroachments observed mainly on the feeder roads.



Plate 3: Existing manhole along Mathare River in which the proposed sewerline terminates

k) Huruma

Huruma is heavily congested and the roads are narrow and impassable. Insecurity is a major concern in the area such that people do not carry their phones or use them openly outside. Particularly the Ngei area was highly insecure and the RPA team was unable to complete their exercise due to the tension between the gangs operating in the area.



Plate 4: Huruma, proposed sewerlines in Huruma

Some routes with proposed sewerlines have existing ones

1) Githurai 44/45

4.1.2. Findings on Socio-Economic Profile of the PAPs

The table below present's summary of PAP interviews conducted:

Table 7: PAP Interviews Conducted by Administrative Areas County

No.	Area	Length In KM	No of PAPs
1.	Karen	18	75
2.	Westlands, Mountain View, Uthiru	15	95
3.	Kilimani	10	40
4.	Kileleshwa	10	40
5.	Kahawa Sukari, Kahawa West	72	310
6.	Eastleigh	10	154
7.	Mathare North, Huruma	10	452
8.	Githurai 44/45	72	277
9.	Mwiki, Clay works	66	300
10.	TOTAL	221	1,743

a) Population and demography

A total of 1,743 PAP businesses, households and institutions were enumerated identified. PAPs from the affected public institutions were 2 i.e. Kamiti Maximum Security Prison and Kenyatta University.

- Kamiti Maximum Security Prison houses about 3,600 male prisoners
- Kenyatta University has 71,000+ students (2016), Administrative staff 3,500+ (2015), Academic staff 1,500+ (2016)
- 51% of the PAPs are females while 49% are male.
- In- terms of marital status, 80% of the PAPs were married, 18% were single and the rest were widowed

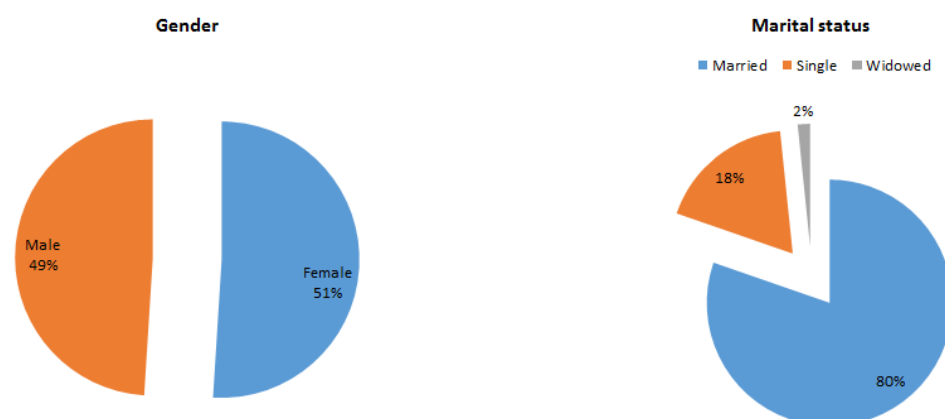


Figure 2: Gender and Marital Status

The youngest PAP is 21 years while the oldest PAP is 88 years. The average age of PAPs is 37 years. The variation of ages for PAPs in the area is presented in the following figure:

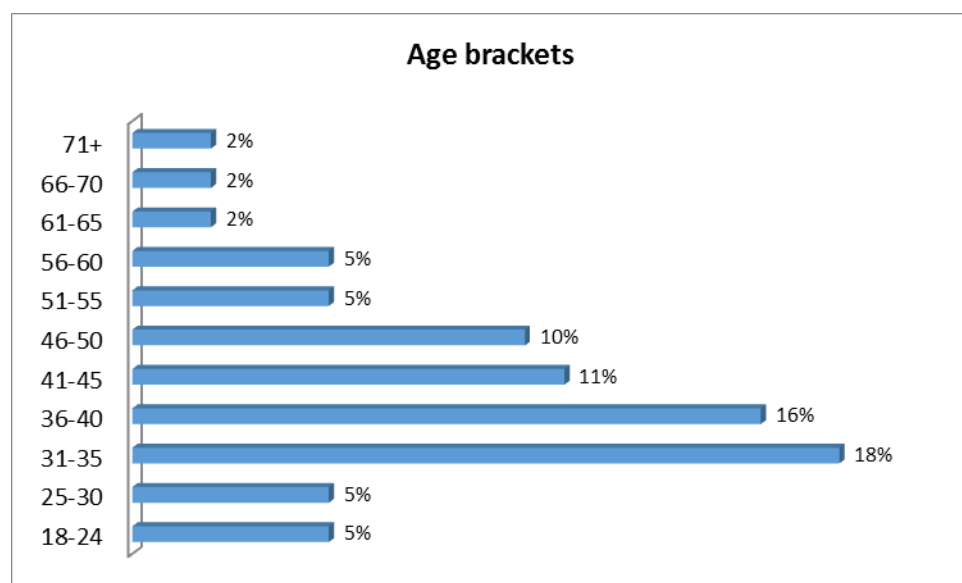


Figure 3: Range of Ages of PAPs

4.5.4 Education

More half (57%) of the PAPs had achieved secondary education and 11% had no formal education. See the chart below. This result concurs with responses of a question on literacy level. 60% indicated that they could read and write in both English and Kiswahili. 39% can read and write in Kiswahili only while 1% can do so in English only. This is important as it can inform ways of communicating with the PAPs when the Project is been implemented.

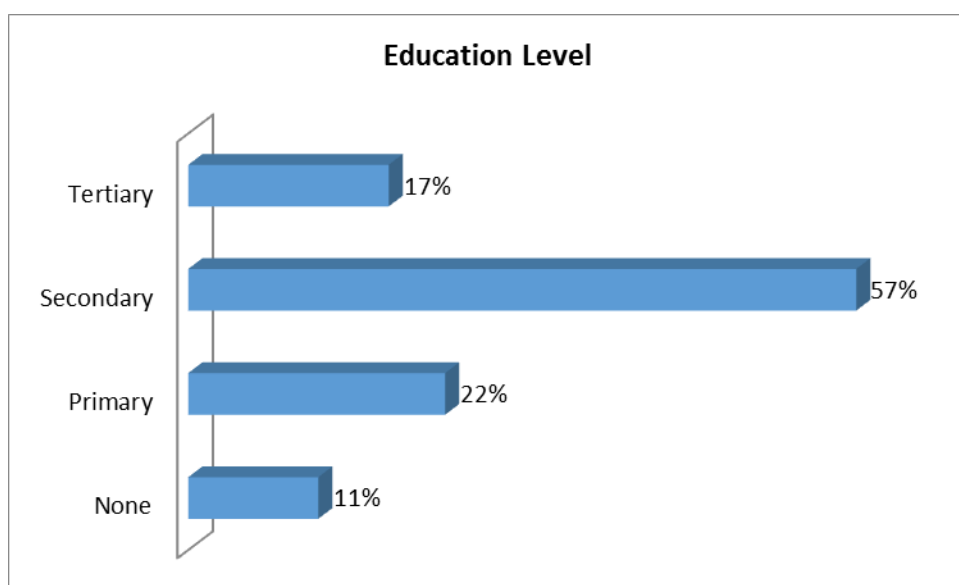


Figure 4: Education level of PAPs

4.5.5. Livelihoods and Incomes

The sewerage lines mainly followed the roads but in some cases passed through private and public lands. Along the way leaves there are many encroachers in congested areas like Eastleigh, Mwiki, Githurai 44/45, Kahawa West and Kahawa Sukari. These encroachers are mainly informal traders with make shift structures and table tops along the roads. This means that livelihoods will be affected. Livelihoods include urban and mixed farming, garages, top table informal traders (mama mboga). There were various businesses that will be affected ranging from groceries, retail shops, food stuff / hotels/ eating kiosks, flower sellers, Miraa/Moguka, cobblers, garages, welders, furniture shops, bookshops, shoe sellers, salons, slaughter house and farming.

The main agricultural crops affected are bananas, beans, green maize and Nappier grass. The farmers were mainly located in Mwiki around the riparian area and Mountain view. Incomes earned by businesses ranged from Kshs 1,000 to Over Kshs 100,000. Figure below summarises income levels of PAP business:

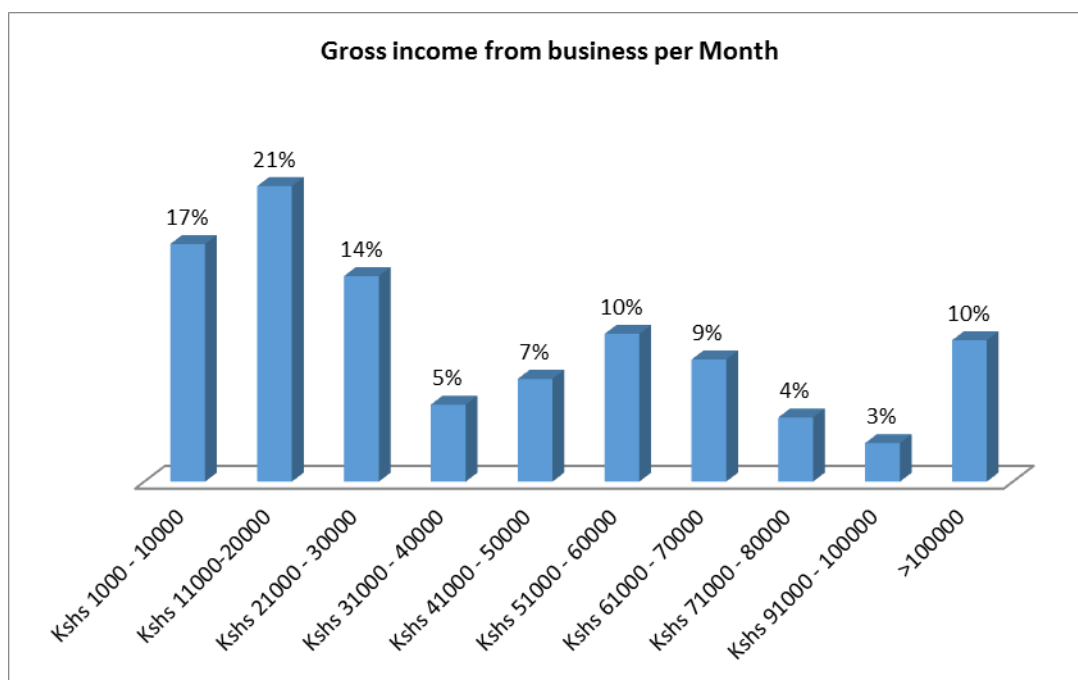


Figure 5: Monthly gross income per month

CHAPTER 5: PROJECT DISPLACEMENT IMPACTS

5.1 MINIMIZING DISPLACEMENT AND SOCIAL IMPACTS

Efforts have been made to align the sewer trunk lines and reticulation lines along the existing river bed within the 6 - 30m government owned riparian reserve land, road reserve, power way leave and public utility reserve land so as to avoid or minimize relocation and therefore resettlement and disturbances arising from land acquisition in line with the Kenyan Laws and AfDBs Operational Safeguards on Involuntary Resettlement.

Similarly, the land identified for the construction of the sewerage treatment plant for NaRSIP 11 is publicly owned land by Nairobi City County hence no efforts will be made to acquire the land for this proposed project. Additional measures taken or steps to be taken to reduce impacts include:

- i. 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.
- ii. All those that shall be affected by the project will be fully compensated before project commencement.
- iii. All PAPs shall be meaningfully consulted before commencement of construction activities.

5.1.0 Impact on Land

The proposed extension and duplication of the sewerage systems are confined within the existing road corridor and riparian reserves unless where its not feasible land will acquired through easement. Both public (institutions) and private lands will be acquired as indicated in the table below.

Table 8: Land Acquisition Parcels

S/No.	Location	Land parcel No.	fr no.	L (m)	W(m)	area(m2)	A(Ha)	Remarks
1	Githurai 44-45	L.R 22925/78	269/78	24	3	72	0.0072	Line MUT44-05
2	"	Block 124/173		13	3	39	0.0039	Line RIFLO 2
3	"	Block 124/62		30	3	90	0.009	Line RIFLO 2
5	Kamuthi	L.R 14225/190	"	52	3	156	0.0156	Line GAT1
6	Clayworks	L.R 57/1510	303/63	7	3	21	0.0021	Line CCN
7	Clayworks	Block 122/512	rim	92	3	276	0.0276	Line CCN
8	Clayworks	L.R 8469/6/530	185/1	27	3	81	0.0081	Line MWAC1

S/No.	Location	Land parcel No.	fr no.	L (m)	W(m)	area(m2)	A(Ha)	Remarks
9	Mwiki	Block 114/1	211/11	39	3	117	0.0117	Line GIT A
10	"	Block 114/10	211/11	46	3	138	0.0138	Line GIT A
11	"	Block 114/29	211/12	50	3	150	0.015	Line GIT A
12	Mwiki-Cieko	L.R 8480/1/1499	331/20	70	3	210	0.021	Line GIT A2
15	"	Block 3/2766		1217	3	3651	0.3651	Brookside land-next to kahawa sukari-Line K.U.1 (kamiti river trunk)
16	"	Kahawa/kongo/		62	3	186	0.0186	Kongo estate-Line KONGO\1
17	Mountain View	Dagoreti/Kangemi/573	adj	33	3	99	0.0099	
18	Karen	L.R 13460/8	177/73	108	3	324	0.0324	Kuwinda line
19	"	L.R 10262	87/85	340	3	1020	0.102	"
20	"	L.R 12494/6	137/39	345	3	1035	0.1035	"
21	"	L.R 23149	267/2	15	3	45	0.0045	Lower plains Rd line- Near Deputy president Official Residence
22	"	L.R 14654	197/53	113	3	339	0.0339	Lower plains Rd line- Near Deputy president Official Residence
23	"	L.R 12699/2	166/97	49	3	147	0.0147	Mukoyeti RD E line
24	Kileleshwa-Kilimani	L.R 4857/104	176/75	80	3	240	0.024	Laikipia rd line

S/No.	Location	Land parcel No.	fr no.	L (m)	W(m)	area(m2)	A(Ha)	Remarks
25	"	L.R 209/357/3	89/98	112	3	336	0.0336	Theta lane line

During the field survey and public consultations it was evident that most of the road reserves were highly encroached by informal traders as well as land lords. The RAP recommends adequate compensation for land to be affected by the project where legal ownership entails.



Plate 5: LEFT: Karen -An abandoned animal feed factory where the sewer line will pass through along its fence. RIGHT: Karen - Land joining Southern bypass

5.1.1 Impact on Residential and Commercial Structures

The proposed project will affect approximately more than 1,400 business structures mostly temporary structures during construction of the sewer lines. This has been attributed to the population influx in urban areas and mushrooming of informal settlements. Demand for housing in the area is increasing rapidly and this has triggered unplanned construction on certain project areas such as Eastleigh. Githurai 44/45, Mwiki, Kahawa West, Kahawa Sukari among others even within the riparian reserve.

The types of housing / residential structures that will be affected are mostly made of iron sheets and wood respectively. As seen on Erreur ! Source du renvoi introuvable.6 below



Plate 6: LEFT: Metal guard house and wall with creeping plants opposite Kenya High School. RIGHT: Kahawa West – TOP a kiosk that will be affected and BOTTOM – staircase of a building that will be affected

RAP Recommendations

- ✓ Compensation at Full Replacement Cost for the affected structures before commencement of works within the routes identified;
- ✓ Provision of a three month notice to structure owners after payment of compensation to relocate their structures;
- ✓ Provision of a notice of three months to tenants before the demolition exercise so as to source for alternative rental units;
- ✓ Provision of opportunity to salvage the remains from demolition of the PAPs structures.

5.1.2 Impact on Crops and Trees

Various crops and trees are grown within the riparian reserve where the laying of the trunk lines is envisaged. The crops vary from flowers, maize and variety of tree species as shown on Errreur ! Source du renvoi introuvable. below.



Plate 7: Karen – flower gardens and trees that will be affected

The valuation of trees and crops is a specialist area with guidelines being given by the agriculture expert and the forester on trees. The factors considered in the valuation of the trees is its commercial value and whether is mature (fruit bearing or not). Valuation for crops takes into account the acreage of the crop and the yield per acre in the general area.

Recommendation of RAP

- ✓ Compensation at the current market value for the affected trees and crops before commencement of works.

5.1.3 Impact on Public and Community Infrastructure

The Project's land acquisition will result in the loss of a number of public assets. These public assets play an important role in the community and their loss will be felt. Water, power and roads are expected to be affected by the construction activities of the sewer system.

There are several modern drilled wells and boreholes observed in the project affected areas. Piped water supply is more evident within the project areas as the area is more of urban setting. Water service lines run the risk of water contamination should the water lines be broken during construction exposing the water to pathogens.

Affected power lines pose a danger to the people working on the project and those living nearby thus the relocation of the power lines should be carried solely by Kenya Power.



Plate 8: LEFT: Pangani Girls Foot bridge RIGHT: Kahawa Sukari – power poles along a newly dug drainage

The proposed sewerage project will not adversely have impact on the road network instead improved access will be realized in the project sites that have limited or poor infrastructure since the construction process will entail construction of access roads to facilitate entry in the sewerage treatment plants and trunk lines.

RAP Recommendation

- ✓ Relocation of the power lines should be done by Kenya Power to ensure it does not pose a safety hazard;
- ✓ Notice should be given to all beneficiaries of public utilities to allow them to plan for the disruptions;
- ✓ The Bills of quantity (BoQ) for the project should include provisional sum for reestablishment of these services to the existing beneficiaries;
- ✓ Reestablishment of all these services should be done with constant communication and involvement of the service providers;

- ✓ The existing utilities should not be decommissioned until the new pipelines are established and connected to the existing system.

5.1.4 Impact on Businesses

There exists small businesses and enterprises within the proposed project areas though they will not be adversely affected by the project.

Table 9: Summary of Project Impacts per Sewer Line within the Proposed Project Area

No	Proposed Sewer line	Length Km	RAP Issues	Recommendation/ Comments
1.	Karen	18	<ul style="list-style-type: none"> There was low encroachment of the road reserves, however, the residents have landscape gardens around the fences that may be affected. Drive ways will also be affected It was noted that some roads were blocked and there were no through ways. This was a security measure by the residents. However this may stifle the constructions Reaching PAPs was challenging as most of them were not around. 	<ul style="list-style-type: none"> Flower beds, gardens and drive ways should be reinstated immediately after construction The PAPs should be notified through a formal letter. It was important to the PAPs that the first communication should come from NWSC. This should be done at least one month before commencement of constructions
2.	Westlands, Mountain View, Uthiru	15	<p>Westlands</p> <ul style="list-style-type: none"> There are existing sewer lines on the edge of the road. Drive ways, wall fence and 2 road junctions will be affected. In addition jua kali businesses such as kiosks, table top hawkers will have their businesses interrupted and structures affected Along Brookside road, water pipes, underground safaricom fiber cables, underground KPLC lines <p>Uthiru</p> <ul style="list-style-type: none"> Project well received The feeder roads linking Waiyaki ways and Muge roads are very narrow. There is encroachment by some developers on both sides 	<ul style="list-style-type: none"> PAPs should be notified one month before construction Compensation for the affected structures, flower beds, gardens and drive ways affected before commencement of construction Residents should be informed of any disruptions of the public utilities and involve the service providers; A meeting should be held with PAPs concerning the sacred tree that will be affected by the Project to find the best solution

No	Proposed Sewer line	Length Km	RAP Issues	Recommendation/ Comments
			<p>of the road.</p> <ul style="list-style-type: none"> • Drive ways, pit latrines, plantations, trees, fences will be affected. • Notable issue raised by PAP is a sacred tree (Mugumo tree) that will be affected. is the proposed line will affect a tree that the owner says is sacred. 	
3.	Kilimani	10	<ul style="list-style-type: none"> • There are existing sewer lines so the residents were questioning the need for the Project 	<ul style="list-style-type: none"> • PAPs should be notified through a formal letter and meetings held with the residents associations. NWSC should be in attendance • The drive ways, signage affected should be reinstated after constructions
4.	Kieleshwa	10	<ul style="list-style-type: none"> • On Dennis Pritt road, a cabro paved walkway stretching 500m for pedestrians will be affected • 5 Drive ways, petrol station and signage showing directions and water pipes will be affected • PAPs along Theta road via Dennis Pritt on the way to ICRC were not willing to talk to us without an official letter from NCSWC • Theta road: there is a wall fence that is blocking the sewer line path. This seems to be a public road that was fenced off due security concerns. This needs to be established. There is enough working space though on both sides 	

No	Proposed Sewer line	Length Km	RAP Issues	Recommendation/ Comments
			<p>of the road - one side is a well-organized residential area with nothing blocking. While the other area is a large bare land used as an improvised parking by ICRC and a stretch of residential house on one side and ICRC offices on the other side.</p> <ul style="list-style-type: none"> • The Chinese Embassy perimeter wall leaves limited space for the line and workmanship. • On Ring road the line goes a landscaped private perimeter wall. • From Kileleshwa Police Station along Loitoktok road, the line crosses the round about . The area is fenced with a mabati by a private developer and neighboring Apartments. • Dik Dik gated community has about 60 houses. We managed to see where the line will go through on the road side and along a stream in waterfront court, then drop into the main trunk line developed by the Chinese behind Kenya High. The Assistant chairman of the resident Association a Mr. Khan was 	

No	Proposed Sewer line	Length Km	RAP Issues	Recommendation/ Comments
			<p>happy with the initiative however the Chairman declined to allow us conduct the study until there is further consultation and formal communication from NCWSC, then they would agree on that way forward. According to the chairman the residents can afford to develop their own sewerage line.</p> <ul style="list-style-type: none"> • Off Oloitoktok road on Gem road the line will go through a private land still to be developed as it goes down the stream Stretching about 2000m. Site was closed so we could not collect information. • On Olenguroun road, the line goes through a construction site belonging to a Mr. Ali Noor. The proposed line stretches about 50M between two perimeter walls. The space between the two walls is about 1.5m too narrow to excavate and allow for work to be done. 	
5.	Kahawa Sukari, Kahawa West	72		
6.	Eastleigh	10	The way leave area is densely encroached with hawkers whose number fluctuate depending on the time of the day however it was established that the	<ul style="list-style-type: none"> • Compensation will be at full replacement cost.

No	Proposed Sewer line	Length Km	RAP Issues	Recommendation/ Comments
			working area will be adequate for construction of works.	<ul style="list-style-type: none"> PAPs will be given 1 month notice in advance to relocate.
7.	Mathare North, Huruma	10	<ul style="list-style-type: none"> Congested that construction will interrupt the residents daily lives Insecurity with different gangs operating in the areas and fighting for supremacy of territories 	<ul style="list-style-type: none"> The local authorities ie Dos, chiefs and assistant chiefs, should be notified one month before constructions. Local leaders e.g. village elders and MCAs will be involved. These leaders will then communicate to the PAPs
8.	Githurai 44/45	72	<ul style="list-style-type: none"> Some structures were closed with their owners not known Some of the PAPs were hostile and almost abusive to the local elders assisting the RAP team <p>Estimated number affected households are 220</p>	<ul style="list-style-type: none"> The affected requires a month notice plus and full compensation of their plants and structures. Work closely with the local authorities and leaders e.g. MCA, chiefs, assistant chiefs Hold a meeting with the PAPs one month before construction to remind address any issues
9.	Mwiki, Clay works	66	<ul style="list-style-type: none"> There are squatters who are practicing small scale farming along the riparian zone. There are several temporary mabati structures along this line. 	<ul style="list-style-type: none"> Valuation of the crops and trees will be done. Compensation will be at full replacement cost, PAPs will be

No	Proposed Sewer line	Length Km	RAP Issues	Recommendation/ Comments
			<ul style="list-style-type: none"> Few incidences of refusals to respond to questions – RAP team confused with City Council askaris Rejection of the Project by some landlords because they had already invested money on their sewer lines. They wondered where the government was when they were struggling and incurring huge costs Some tenants were not aware of their land lords full names or contacts because they deal with caretakers Red soil area had squatters and most residents didn't have proper documentation of their plots thus some landlords didn't want to identify themselves as owners. <p>Estimated number of affected households are 250</p>	allowed to harvest and use the raw materials

CHAPTER 6: PUBLIC CONSULTATION AND PARTICIPATION

6.1 PAPS AND COMMUNITY CONSULTATION

The PAP consultation process involved carrying out a census survey of all PAPs in the proposed project along the 221 Km of laterals and reticulation sewers and proposed treatment works site. The aim of the PAP consultation was to inform them of the proposed project and how they will be affected, establish the properties that will be affected.

The census survey, field identification of PAPs and affected land, structures, crops and trees was carried out from 26th April to 2nd May 2018 and in addition meetings were held with various stakeholders see **Table** below. Key Stakeholders in the project area were identified and consulted with the objective of establishing the existing social - economic conditions and community needs within the proposed project area and the immediate surroundings.



Plate 9: TOP: Consultation meeting at Githurai 44 ward with MCA and Senior Chief. LEFT BOTTOM: Surveyor and Mwiki ward PA going through the map. MCA accompanied the team in the field at Mutirithia phase 2 street 9. RIGHT BOTTOM: Mwiki ward administrator

Transect walks, where possible were conducted and observations were made on physical and environmental conditions.

During consultation meetings, the PAPs recognized that they have encroached on the public way leaves and are willing to remove their structures and crops to pave way for the project. However in Karen the neighbourhood committee declined to be counted as PAPs

as they were in the process of developing their own sewer line. Generally the PAPs described the Project as a much needed development. They recognize the benefits that the sewerage project will have on their communities. However they regret that they will be losing parts of their structures which they spent money constructing and some of their structures are business premises so they will lose their source of livelihood.

Table 10: Schedule Public Consultation Meetings held with local leaders

No	Local Administration Representative	Designation	Location	Date of Visit
1.	Mr. Romano Mikigu	Chief	Githurai 44	30 th April 2018
2.	Mr Mathenge	MCA	Githurai 44	30 th April 2018
3.	Peter Njenge Kibe	Local elder	Githurai 44	30 th April 2018
4.	Mr Khan	Assistant chairman residents	Dik Dik gated community - Kileleshwa	30 th April 2018
5.	Edward Nyongesa-0715629905	Assistant Chief	Huruma	27/4/18
6.	Kimani-0722795421	Chief	Kahawa west	1/5/18
7.	Ephraim kiungu 0729722177	Warden guard	Kamiti prison	2/5/18
8.	Macharia Juma 0723178577	Village elder	Ngei 1 (Huruma)	30/4/18
9.	Mohamed Abdulahi 0728367860	Village elder	Kiamaico	30/4/18
10.	John kingori 0726240391	Village elder	Eastleigh	26/4/18
11.	Hara	Village elder	Kiamaico	29/4/18

6.2 OBJECTIVES OF PUBLIC INFORMATION AND CONSULTATION

Public information and awareness creation enlightens the PAPs on the importance of the project and how to positively handle the project impacts in a sustainable way. This is important in order to ensure that correct and accurate information is shared and misconceptions and wrong information does not take root thus interfering with the smooth implementation of the project. The specific objectives of the consultation process were;

- To create awareness and garner up support for the proposed project;
- To engage the local community especially the Interested and Affected Parties about the project benefits, problems they anticipate with the project and how these can be overcome and mitigated against;
- To consult and gather recommendations from the local administration e.g. County Commissioners, Chiefs, Assistant Chiefs, Village Elders and communities that have a stake in the project;
- To provide an opportunity to all the communities in the areas where the proposed sewerage system is expected to pass to raise issues and concerns pertaining to the project, and allow the identification of alternatives and recommendations.

- Provide correct and accurate information regarding the project.

6.3 CONSULTATION OUTCOMES

6.3.1 Key Issues Raised by Community, PAPs and Key Stakeholders

The community, PAPs and key stakeholders raised similar issues during the census survey and during the various consultation meetings. They wanted clarifications and assurances regarding the process of property evaluation, compensation payment, offering of resettlement assistance and job opportunities to the locals and mitigation measures during project implementation to reduce anticipated impacts. The issues raised are as shown on **Table .**

Table 11: Summary of Outcomes of Public Consultation and Participation

No	Issues	Response and Discussions
1.	Most of the PAPs wanted to know the expected date the project will commence	RAP team responded that the project will commence immediately after all the necessary stages of the Project such as consultations, valuation, tendering of the project etc have been finalized. It is expected that the project will commence late this year or next year depending on availability of funds.
2.	Compensation as most of the affected PAPs for the affected crops and structures within the proposed route.	Valuation of the assets will be done and notifications will be given for all encroachers and squatters to vacate the demarcated area before construction starts. The PAPs were informed that compensation will be done by another team of experts
3.	Employment	Most PAPs including their leaders were of the opinion that the locals should be given first priority for employment when the Project commences. The contractor to employ the youth and women in the area as casuals instead of sourcing them elsewhere.
4.	Connection to the sewers	PAPs especially land lords were interested in the connection process – they were interested to know how much it would cost to get connected, whether it is possible to get multiple connections The PAPs were informed that they would be informed by the service provider
5.	Spillage / flooding of sewers	Concerns were raised on the possibility of the sewers flooding exposing the residents to health risks and speed at which the same will be repaired. They also had concerns on the sewers contaminating the water supply
6.	Uncovered manholes	Concerns were raised on open man holes that

No	Issues	Response and Discussions
		poses insecurity risks e.g. thieves may use such places for hiding fire arms, children falling into the holes etc
7.	Notification of commencement of construction	PAPs especially those with businesses that will be affected requested that they should be notified at least one month before commencement of the Project Institutions like KU would require a formal letter addressed to the registrar

6.3.2 Consultations and Meetings during Implementation

The proponent will continuously hold meetings and consult with the PAPs during the Project Implementation Period as a means of evaluation and monitoring the progress of the resettlement process. This is also in light to the fact that some of the PAPs like the informal traders / hawkers are mobile by nature depending with weather, traffic of customers etc

It will be important that the PAPs comfortably settle and continue with their lives. Some of the PAPs will be offered employment opportunities as semi-skilled and unskilled laborers and hence there will be continued communication with a sample of the affected people during project implementation. This will ensure continued support to the project by all the stakeholders since they will directly fetch the benefits that accrue from the project.

During these meetings the PAPs will be informed about AWSB intention to acquire land for the proposed sewerage system and there will be compensation for the acquired land and the structures affected by the project at the current market rates. There will be further consultations when compensation offers will be given to the PAPs including actual date of compensation and demolitions. These consultative meetings shall include all stakeholders. The information gathered from the project area will be confirmed with the local administration, county government and finally at the Ministry of Land to confirm who the registered land owners so that compensation for the land and other assets is released to them.

6.3.3 Information Dissemination and Disclosure

All stakeholders must be consulted and be effectively involved in a two-way communication with the project sponsors according to the AfDB's guidelines and national policies regarding public participation in development of public projects. Special efforts will be made to consult with women headed households and vulnerable PAPs (physically challenged persons, widowed and the terminally ill persons).

There will be an explicit public information strategy. This will include the use of mass media, possibly through radio, to advise the dates and times of PAP and public meetings, availability of documents, selection criteria, cut-off dates, and compensation measures.

Public consultation should be preceded by providing all the relevant and accurate information to the PAPs. Following disclosure of all relevant information, the Client will consult with and facilitate the informed participation of affected persons and communities, including host communities, in decision-making processes related to resettlement. Consultation will continue during the implementation, monitoring, and evaluation of compensation payment and resettlement process.

Supply of information and consultation with different stakeholders should be through a language and medium they are comfortable with. In certain cases, for example, the land acquisition process, where the information is not easily understood by the people, AWSB shall take responsibility for simplifying and ensuring that the whole process is understood by the project affected persons, using appropriate methods of communication.

CHAPTER 7: INSTITUTIONAL FRAMEWORKS AND ARRANGEMENTS

Whereas AWSB is the project proponent and will be responsible for ensuring that the plan is implemented as agreed with the lenders, other Government agencies will be directly involved in the implementation of this RAP. Included in this category of agencies are also the County governments. Each of the agencies has its role to play in the process as mandated in its responsibilities vested by various laws and the Constitution of Kenya. These institutions include;

7.1.0 Ministry of Environment, Water and Natural Resources

The Ministry is responsible for bringing about efficiency, economy and sustainability in the provision of water and sewerage services and for procuring resources from the National Treasury for the overall project. The Ministry is also responsible for harmonizing the resettlement with other government policies on the same subject.

7.1.1 The National Land Commission

The Commission is responsible for compulsory land acquisition and payment of the compensation money to the affected persons. The Commission processes the request from the project promoter. The Commission handles the gazetting, inspections of affected properties. They prepare the awards and facilitate the taking of possession of the subject-matter land upon payment of the awards to the affected persons. The National Land Commission has established County offices that will be directly involved in matters arising from the land acquisition if the affected persons are not satisfied with the awards.

7.1.2 County Government

The County is responsible for ensuring that the plan is acceptable to the local residents as it supplements the County's capital programmes. The County government is also responsible for facilitation and assisting in the verification of the claims.

7.1.3 The local CBOs and other Civil Society

Member groups of the civil societies working in the proposed project area in related fields. Their responsibility is to ensure that the resettlement plan is implemented as suggested and in the event of any departure or change in circumstances, the project affected persons are not adversely affected. The group will also have a role to sensitize the people and empower them to realize maximum benefits from the project. They will be involved in the training and counseling of the project affected persons

7.1.4 The Office of the County Commissioner

The office particularly at the location level is best suited to mobilize the people as it has grass-root networks. It has the clout to chair meetings and settle disputes as it commands the general public support. The Chief knows all the residents of his area and has the advantage to give reliable information on various aspects of the plan for efficient

implementation. It has vast experience in dealing with matters of dispute that need not be referred to the Courts of law.

7.2 IMPLEMENTATION PROCESS

AWSB as the project proponent will set-up the Resettlement Committee to oversee the implementation of the RAP. This will entail verifying the details of the PAPs and facilitating the payment of any compensation or assistance benefits. The Committee will mobilize the PAPs and keep them informed of the various stages of the project implementation. The Committee will also create awareness among the communities living along the sewerage way leave area among the responsibilities of the Committee are;

- i. To ensure that appropriate agencies that are mandated to plan and implement compensation, income restoration, and rehabilitation programs are identified as early as possible in Project preparation;
- ii. To ensure compliance with the Resettlement Plan and Environmental Management Plan; and
- iii. To acquire the required land and payment of compensation to the PAPs during the preconstruction period, and monitoring the completed sewerage facility and to ensure that the objectives of the resettlement plan have been achieved.

The following four components will form part of Implementation of the RAP:-

- ✓ Notification,
- ✓ Verification of properties of affected persons and estimation of their type and level of losses,
- ✓ Preparation of entitlements for affected persons by Land Acquisition and
- ✓ Relocation and resettlement of the PAPs.

7.2.0 Notification

In this first stage, all the PAPs without legal titles will be notified to leave the way leave (riparian areas, road reserves, government land) for the PAPs who have legal titles the cut -off date will be the date of notification of acquisition.

7.2.1 Verification of properties of PAPs and losses

This is a second stage, which should be undertaken by the RC with assistance from the PAPs representatives and local administration (Chief). They should identify all PAPs and check records of addresses, type of property, estimation of type and level of losses. The procedure should also include consultations for explaining the entitlement framework to the PAPs, methods of payment of compensation, assistance entitlements, grievance procedures and participation in implementation.

7.2.2 Preparation for clearance of the way leave area

In this third stage the PAPs are prepared to surrender of their property. This may be achieved through ways that include giving information in written form and individual consultations. Consultation with the community will be done throughout the Project transactions, and efforts will be made to continue with all the development activities. No physical relocation should begin before alternate arrangements have been made and sufficient notice will be provided to PAPs before relocation.

7.2.3 Compensation and resettlement allowances

During this stage, compensation is made in accordance with standard Government procedures and the policies set out in this resettlement plan. The structures within the proposed way leave area will be demolished by the owners who will be entitled to take with them the salvage material to their new site or resell them for economic gain. The same applies to the trees and crops the PAPs will be allowed to harvest the crops and use the materials from the cut trees for their own use (livelihood).

7.3 MEMBERSHIP AND RESPONSIBILITY OF RESETTLEMENT COMMITTEE

Implementation of resettlement plan and ascertaining compensation shall be undertaken by a Resettlement Committee. The membership of the RC shall be made up of appointees from the relevant government organizations with a maximum of ten (10) persons who shall be involved in the exercise for pre-construction and post-construction period. NGOs with experience in social development and poverty alleviation programs and with a verifiable track record should be included as partners in the resettlement plan implementation. Among the areas where the NGOs/CBOs will provide assistance are in:-

- i. Gathering and sharing information and avoiding potential problems;
- ii. Mobilization and motivation to PAPs to form community based organizations;
- iii. Planning and implementing income-generating schemes for the PAPs;
- iv. Developing information campaigns and community participation;
- v. Strengthening local institutions and community self-reliance; and
- vi. Delivering services to communities in a more efficient and cost effective manner.

Once the Resettlement Plan obtains approval from the Government/Funding body and the Implementation Budget is secured, implementation of the RAP may proceed. The duration for each of the above activities shall be guided by the RAP Implementation Schedule as shown in **Table** .

7.4 ORGANIZATIONAL STRUCTURE FOR RAP IMPLEMENTATION

The overall responsibility of managing the implementation process of the project will vest under AWSB who will constitute a Project Management Unit (PMU) comprising of senior management staff. The unit will coordinate the project with other government ministries. The Unit will oversee the operations of the Resettlement Committee set-up for this purpose. To facilitate the realization of the Resettlement Action Plan, AWSB will set-

up the Resettlement Committee that will comprise of other pertinent government agencies and a consultant of sound standing to oversee the implementation of RAP.

The Resettlement Committee will operate within the guidelines given by the Project Management Unit in cognisance of the national and Banks' policies on resettlement. The Committee will operate within the project area to ensure contact with the project affected persons and internalize the emerging issues on the plan implementation.

Due to the extend of the proposed interventions (approximately 80km of trunk sewers and 160 km reticulation sewers) and the fact that it traverses different parts of the county, it is imperative that the sub-committees of the RC be constituted at locational level where there is more homogeneity and cohesion for efficient dispute resolution. The RC at the project level will maintain the co-ordination role for consistency. The details of the Grievance Redress Committee are discussed in the next Chapter.

CHAPTER 8: GRIEVANCE REDRESS MECHANISM

8.1 OVERVIEW

During RAP preparation process, it is inevitable that complaints will arise among the affected people over contentious issues and dissatisfactions. Therefore timely and affordable redress is important in order to ensure satisfactory resettlement and completion of NaRSIP 11 project as scheduled. Procedures that allow people to lodge complaints or claims have been considered and they include usage of customary laws, and the locally established processes for timely and satisfactory settlement of claims or complaints.

Special arrangements have been made for women headed households and other vulnerable groups to ensure that they have equal access to redress procedures. This include deployment/ representation of women or other vulnerable groups in RAP committees to facilitate the redress process or ensure that groups that are representing interests of women and other vulnerable groups take part in the process.

8.1.0 Possible Sources of Grievances

During the public consultations, the communities were informed of the implications of the project and the impact it will have in their communities, the anticipated benefits from the project implementation. They were informed that the project was dependent on their acceptance and their being able to effectively participate at every stage of the project development.

However, there are occurring issues that can cause delays and calls for dispute resolution mechanism include;

- Inheritance issues / conflicts among families,
- Clerical errors in data entry that leads to delays in processing of compensation for the PAPs,
- Emerging issues such change in estate administration of affected properties causing delays to payment of compensation,
- Disputed ownership of an affected asset particularly where documentation is not reliable,
- Rejection of a compensation award considered not adequate and representative of market value,
- Change in mind of compensation mode by a PAP demanding for example land-for-land where only cash payment is preferred,
- Handling of cultural issues where there are no clearly agreed precedents such as relocation of graves or payment for compensation in a polygamous marriage.

8.1.1 Formations of the grievance redress committee (GRC)

In view of this, if there is any unwarranted change in the implementation process of the proposed project, it will trigger complaints from the PAPs. This will require to be addressed lest the project fails its acceptance criteria by the general public. To deal with

such emerging issues, a Grievance Redress Committee will be constituted with a membership inclusive of

- Representative of the PAPs (at least 30% women representation)
- Community liaison officer in the Project office
- Local leaders (village elders)
- Local Administration (Chief or Assistant Chief)

Grievance Redress Committee shall address the issues in the following manner;

- Register the grievances raised by the PAPs; and
- Address the grievances forwarded by the PAPs representatives.

Grievance Redress Committee shall try as much as possible to arrive at a compromise on complaints raised. This may be obtained through a series of mediation and negotiation /arbitration exercises conducted with the individual PAP. These kinds of disputes are best resolved at the local level to avoid time delays that may arise if people move to court. It would also help to manage the risk of loss of social capital due to bad relationships among family members and neighbors.

Grievances between PAPs and RAP implementers may arise if PAPs feel they are not adequately involved in the implementation process. Lack of perceived transparency may lead to feelings of mistrust and misinformed judgments on both sides. Some PAPs may also feel that the proposed compensation is not equal to their initial investment or just based on their current situation.

Such grievances may require calls for witnesses, unbiased parties or technical evaluations prior to proposing a solution. Local mechanisms may not have the capacity to meet all these requirements and would therefore require some form of support.

Some grievances may also occur that are outside of the direct control of the Grievance Redress Committee (GRC) and would require intervention at county or national government level. These include disputes that require policy interpretation or investigations prior to a conclusive resolution. In such cases, the GRC may require legal interpretation on certain aspects.

8.1.2 Proposed Grievance Redress Procedures

The following grievance mechanism is proposed for the implementation of this RAP:

a) Level One: Local Committee

A Local Grievance Committee constituted of the following members will be formed at the local level / community level:

- Chairman: Area Chief / Assistant Chief
- Secretary: Village Elder

- Members: three PAP representatives consisting of a man, a woman and a youth (18 to 30 years).

This committee will sit at the Chiefs office. The following procedure has been proposed:

- A PAP registers a grievance and within one working day, the committee members are alerted of the case,
- The affected person is immediately informed of the next date of the scheduled hearing. Depending on the case load, a maximum of 7 working days should be given between the date that a case is recorded and the date when the hearing is held,
- The committee meets once every seven calendar days to deal with emerging cases. At these meetings, hearings with the affected persons and related witnesses will be held,
- The committee will communicate its judgment to the affected persons within 3 working days,
- If no resolution is met or the PAP is not satisfied with the judgment, the case is moved to the next level by the committee. This will be done within 5 working days of the hearing.

b) Level Two: Project Committee

A Project Level Committee constituted of the following members will be formed at the county level:

- Chairman: Chief Executive Lands Housing and Urban Development
- Secretary: Deputy County Commissioner (DCC);
- Representative from Project Consultant, and other Project Supervising agency and client
- Representative from NCWSC
- Members: three PAP representatives consisting of a man, a woman and a youth.

This committee will sit once a month at the County Government Office. The following procedure is proposed;

- A grievance is logged at the County Government Office and within five working days, a notice is sent out to all the interested parties informing them of the date of the hearing,
- A hearing will then be held within thirty days of the grievance being raised,
- In the event that investigations and technical witnesses are required, a maximum of thirty (30) calendar days will be taken prior to a hearing being held,
- The committees decision will be communicated in writing within 5 working days of the date of the hearing,
- If the committee does not resolve an issue, the affected persons are free to go to the Land and Environment Court.

Grievance / Dispute Management Procedure as described above in **Figure 2**

8.1.3 The Functions of Grievance Redress Committee

The function of the Grievance Redress Committee is a forum for the PAPs through which they can air their dissatisfaction arising from the compensation or implementation process

of the project. The Committee will receive complaints from the PAPs through the project office either verbally or in writing and thereafter endeavor to address the issues to the satisfaction of the complainant. If the matter cannot be addressed to the satisfaction of the complainant within the prescribed period, the complainant then may have recourse to the GRC. Failure to be satisfied, the complainant have the right to seek redress from the court.

i. Role of PAP's Representatives in Grievance Redress Committee

- Collect views of the PAPS and present them to the Implementing agency or Grievance Redress Committee
- Help in confirmation of the asset inventory
- Debrief the PAPs on deliberations of the implementing agencies
- Coordinate the payment of the compensation on related assets inventoried

ii. The GRC headed by an elected chairperson will carry out the following responsibilities as regards redressing grievances;

- Hear the grievances of the PAPs and provide an early solution to those they are able to,
- Immediately bring any serious matters to the attention of the committee and
- Inform the aggrieved parties about the progress of their grievances and the decisions made by the GRC.

8.1.4 Role of Local Civil Administration and Other Mediation Channels

As it will be agreed upon by all parties such as traditional and customary channels that deal with issues concerning property ownership or inheritance. The legal system in this case the land and environment court recourse can be used but will be the last resort considering the arbitration time involved.

8.1.5 Grievance Redress Procedures

The grievance redress procedures will be put in place; this will help in monitoring and ensuring that grievances are properly handled. The grievance framework to be used includes the following:

- Established redress institutional arrangements specifically for RAP
- Procedure for recording and processing grievances clearly spelt out
- Mechanisms for adjudicating grievances and appealing judgments
- A schedule with deadlines for steps in the grievance redress process so that matters are sorted out quickly as they arise

8.1.6 PAPs Participation & Agreement on Grievance Process

All household adults will have an opportunity to review the grievance processes for efficacy in addressing potential issues of contention. They will have an opportunity to amend this before the actual disclosure of packages offered possibly in public barazas.

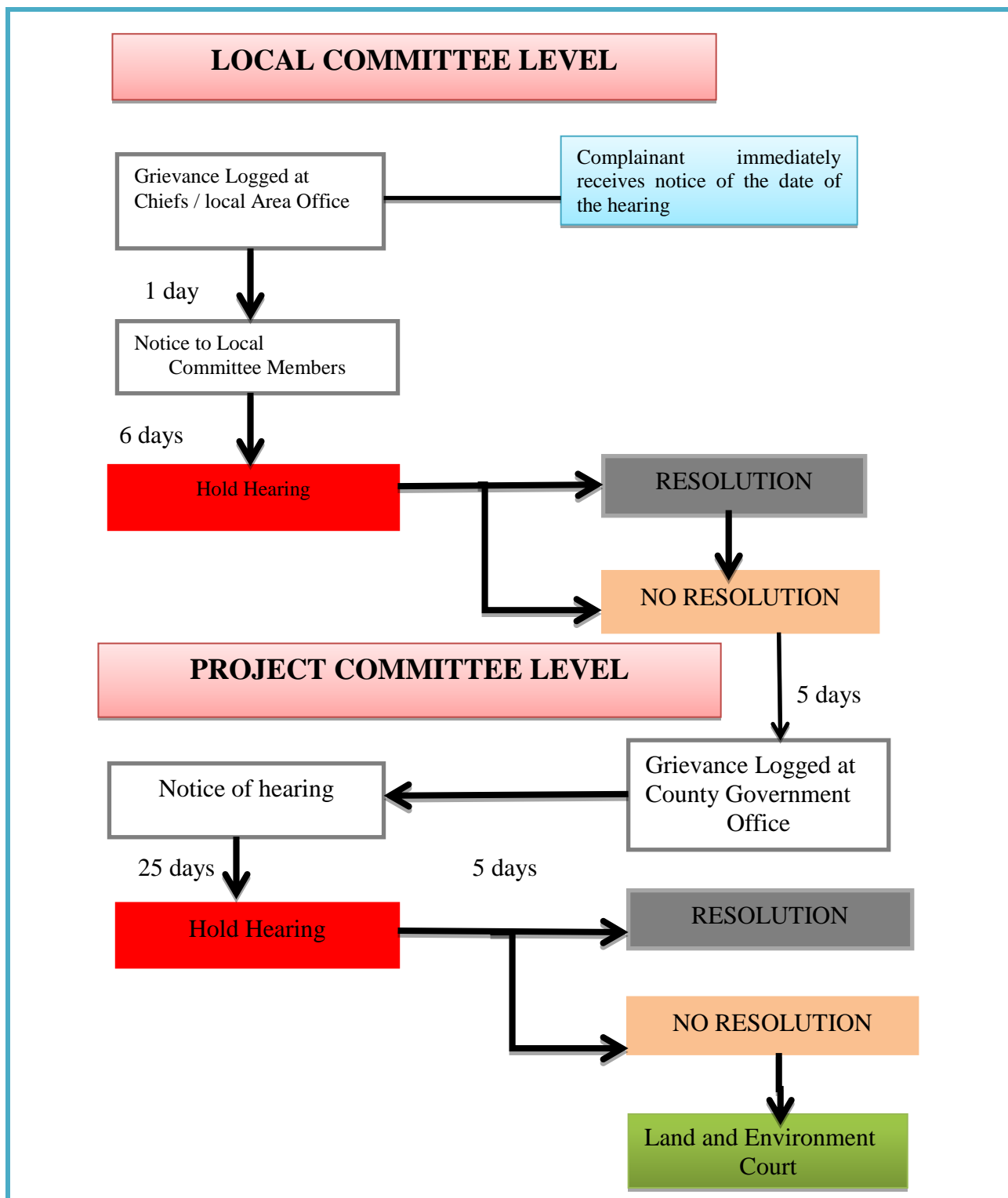


Figure 2: Grievance / Dispute Management Procedure

CHAPTER 9: ELIGIBILITY AND ENTITLEMENTS

9.1 INTRODUCTION

This chapter of the RAP report lays the basis on which the PAPs who own assets and businesses within the sewerage system network area should qualify for compensation or assistance from the project to be able to continue with their lives un-interrupted or improved as is the objective of the project. The chapter therefore establishes a criterion for one to qualify for benefits under the resettlement programme.

9.2 ELIGIBILITY CRITERIA

According to the AfDB Involuntary Resettlement Policy, the resettlement action plan should have a clear definition of the project affected persons (PAPs) by their socio-economic and gender category; household or family; the cut-off dates for eligibility for compensation; the assets to be compensated at replacement cost, and the infrastructure projects proposed. It is particularly important that the country national laws and legislation as well as local definitions of land tenure, rights to common resources and inheritance practices are recognized. The definition of the unit for compensation (family or household) should anticipate and accommodate the land and housing needs for elderly sons and daughters to establish their own households.

It further states that the benefits offered by the resettlement program should be clearly established. This may cover, for urban resettlement activities, financial compensation; housing and service provision; transport, temporary accommodation and other short-term provisions required for relocation such as, credit facilities, training or job opportunity. In rural areas however, this may cover land-for-land, participation in training and access to material equipment, inputs and credit. In cases, where land is not the preferred option for some of the displaced persons, non-land-based options should be considered. These options should be built around creating employment opportunity or self-employment.

Moreover, resettlement offers a unique opportunity for addressing gender inequality in land ownership and control. For example, Bank staff should make sure that project planners are ensuring that replacement land is registered in the name of women and men, when applicable (case for instance of absence of formal legal rights to land or other assets) and in conformity with the borrower's own laws and legislation, either by establishing independent ownership rights for women or jointly under both the husband and the wife's name. For the proposed NaRSIP 11 Project the following groups are entitled to compensation and/or assistance under the project;

- i. Those who have formal legal rights to land or other assets recognized under the laws of the country concerned. This category generally includes people who are physically residing at the project site and those who will be displaced or may lose access or suffer a loss in their livelihood as a result of project activities.

- ii. Those that may not have formal legal rights to land or other assets at the time of the census/ evaluation but can prove that they have a claim that would be recognized under the customary laws of the country. This category may include people who may not be physically residing at the project site or persons who may not have any assets or direct sources of livelihood derived from the project site, but who have spiritual and/or ancestral ties with the land and are locally recognized by communities as customary inheritors. Depending on the country's customary land use rights, they may also be considered to have a claim if they are sharecroppers, tenant farmers, and seasonal migrants or nomadic families losing user rights.
- iii. Those who have no recognizable legal right or claim to the land they are occupying in the project area of influence and who do not fall into either of the two categories described above, if, they themselves or witnesses can, demonstrate that they occupied, the project area of influence for at least six months prior to a cut-off date established by the borrower or client and acceptable to the Bank. These groups may be entitled to resettlement assistance other than compensation for land to improve their former living standards (compensation for loss of livelihood activities, common property resources, structures and crops, etc.).

9.3 CONDITIONS OF ELIGIBILITY FOR COMPENSATION

9.3.0 Cut-Off Date

The Cut -Off date for eligibility for compensation was deemed to be the date at which all the census of all affected people and assets was completed that is 2nd May 2018. It was clearly stated to the PAPs during the interviews that no structure or field established after the project affected area after the cutoff date will be eligible for compensation it is worth noting that thereafter the social economic conditions keep changing with time even during implementation.

9.3.1 Eligibility

Assets, including structures and fields, that were surveyed in the Project-Affected Area by the Cut-Off Date are eligible for compensation. People residing in the Project-Affected Area by the Cut-Off Date are eligible for compensation even if they have no legal tenure (encroachers, squatters, sharecroppers).

9.3.2 Database

A database of affected households will be established for purposes of compensation management. All relevant census and socio-economic information related to both affected assets and affected households will be entered into this database.

9.3.3 Public consultations and disclosure

In an effort to disseminate information to affected populations and stakeholders disclosure should be done by submitting a copy of the RAP Report in a form, manner, and language that is understandable to the PAPs.

The Deputy County Commissioner officer is central in the disclosure process and his/her office will provide support during the disclosure process. The reports will also be uploaded in AWSB, NCWSC and AfDB websites for review and comments from the general public.

9.3.4 Salvaging

PAPs will be allowed to salvage any materials in the structures they own at the current project area. These materials are iron sheets, poles and other components.

9.4 ENTITLEMENT MATRIX

The Entitlement Matrix describes compensation and related assistance for each category of affected PAP. It is presented in **Table 12** hereunder.

Table 12: Entitlement Matrix

TYPE OF LOSSES	CATEGORIES OF PAPS	ENTITLEMENT
Loss of Residential land	All types of affected persons	<ul style="list-style-type: none"> • 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 immoveable developments on the affected land, such as structures, wells,
Loss of Structures on public land (Road reserve, river riparian)	All types of affected persons	<ul style="list-style-type: none"> • No cash compensation or land replacement for loss of land. This is because public right of way is public property and the PAPS are considered as encroachers or squatters. But affected persons will be compensated for the loss of structures and livelihood. • Movement allowance to cover the cost of moving structures (transport plus loading/unloading) shall be compensated. • Cost of labour for dismantling and reconstruction will also be provided. • Owners of affected structures will be allowed to take/reuse all the salvageable materials for rebuilding/rehabilitation of the structure.
Loss of Crops and structures within the riparian area	All types of affected persons	<ul style="list-style-type: none"> • Cash compensation of all immoveable developments on the affected land, such as structures • Cash compensation of standing crops and trees

CHAPTER 10: VALUATION AND COMPENSATION

10.1 VALUATION AND RELATED LEGAL ISSUES

As it is crucial in the social safe-guards to protect the project affected persons from being adversely impacted by the project, a sound basis of valuation is necessary to ensure fair compensation. The process for land valuation for compulsory acquisition is governed by provisions of the Land Act.

10.2 RAP VALUATION PROCESS

Detailed valuation of assets along the proposed project way leave has been undertaken for estimate purpose. For a final valuation to be undertaken, it will be necessary for the assets acquisition formalities to be completed in accordance with the provisions of the law governing compulsory acquisitions. This will entail the Gazetting of the affected properties, holding public inquiries to receive claims from the owners and any other interest holder. Secondly, the detailed design has to be completed to ensure that all the land affected to achieve the design specifications is identified for acquisition purposes.

During the intervening period, an inspection will be carried out to ascertain the condition of the premises affected for assessment purposes. Official searches would also be conducted to verify ownership and any encumbrances attached to the title.

After the inquiries are held, an award is made to the registered owner after comparison of his claim and the official assessment by the government valuer. Option is provided to accept or reject the offer and recourse is provided to appeal on the quantum of the award for enhancement by the tribunal or the Environment and Land Court established by provisions of the Constitution of Kenya (2010).

10.2.0 Land Acquisition

The function of acquiring land compulsorily for public purposes is vested in the National Land Commission by the Constitution of Kenya (2010) and the Land Act. The Commission is responsible for arranging the Gazetting of land to give notice to the affected persons. It arranges for valuation inspections of the affected properties and issues the award after determining the claims submitted at the public inquiries. The National Land Commission acts on behalf of the project proponent in arranging for land acquisition and taking possession of the affected land after making the compensation payment to the land-owners.

The valuation process will provide compensation for loss of land and developments, loss of incomes to both lease-holder and the landlords. A flat rate disturbance allowance (15%) will be payable to the property owners over and above the award for any inconvenience suffered as a result of the acquisition of land and developments.

10.2.1 Valuation Methodology

Valuation can be defined as the art or science of establishing the value (worth) of a particular interest in property for a specific purpose and at a particular moment in time;

taking into considerations all the features of the property and also considering all the underlying factors of the market.

All valuation techniques rely on the collection and analysis of data such as social, economic, government and environmental attributes. Specific data include local market conditions and details of property transactions such as location, physical and functional form and legal characteristics. The value of the property is affected by the rights of enjoyment or compensation when such benefit may be alienated.

In Kenya, compensation for land requires that the value paid to include all the other miscellaneous expenses as well as the injurious affection due to the disturbance to them. Thus in such circumstances, the value paid is higher than normal market. Thus the factors that affect the value are those that affect the rights on land. These include location, legal rights and permitted land user.

The exercise was carried out together with the household survey to ensure that the project affected persons would physically identify all the assets to be affected within the delimitations of the project.

Basically there are five methods of valuation namely:

A. Comparison Method: while it is true that no two properties can be the same, this method compares like properties. It is the most reliable and requires an active market while adjustments are made to fit specific properties. The limitation faced by this method is lack of data and sometimes misleading data.

Comparables may be biased where the seller may sell more or less depending on the needs at the time. Elsewhere the data given may not be correct because of personal secrecy. Thus in long run, valuers have been able to come up with values per square foot/meter that can be used in various regions and give a reasonable value. Adjustments are made depending on various factors.

B. Investment Method: This method of valuation is based on the expected future returns and its applicable where active investment market is available. Just like comparison method, investment method is limited due to lack of varied data.

C. Full Replacement Cost approach method: this is where the property value is assessed based on the cost of buying the site and constructing the building. It is based on the reproduction/replacement value.

D. Profit method: this method is used in absence of sufficient rental or sales evidence and where the hypothetical purchaser would base his/her offer of profit from the business conducted from the property.

E. Residual method: this is applied to property with development potential either undeveloped or partially developed.

The above methods together with the above factors lead to the value of the property. It is important to note that the above methods can apply to the same property if the data was

available. They however give varied values; experience and the knowledge of the existing property market are necessities for any property valuer to come up with appropriate value and not just the quantification and method of calculation.

The method that is found to be appropriate for this exercise is the **Full Replacement Cost Approach**. The aim of carrying out the estimates of values is to ensure that the affected persons PAPs would not be worse off in their economic and social status when the project is implemented.

10.2.2 Basis for Valuation for Land

The working area that will be required for the construction of the sewer lines where the reserved areas will not be wide enough there will be compulsory acquisition under the Land Act. The amount of award for compensation depends on:

- i. Area affected by the proposed project
- ii. The value of interests in land can be affected by the sewer line
- iii. The valuation is based on the principal of prevailing replacement cost which is normally determined by the various valuation methods used locally and internationally.

The RAP has proposed that the valuation of land be dealt with on a case by case basis during implementation / construction as during survey most of the trunk lines were envisaged to pass through the riparian reserves.

10.2.3 Valuation and Compensation for Structures

If structures are primarily for investments purposes, then the 'income approach' is sometimes used. However, the preferred method of valuation is the 'replacement cost' method. It is based on the theory that the replacement cost of an improved parcel can be estimated as the sum of the land value and the depreciated value of improvements. In other words - subtracting the land value from the overall value of the land and fixed structures gives the value of the structures. Replacement value requires the estimate of land value, accrued depreciation and the current cost of constructing of improvements. Depreciation is deducted from the current cost of construction to get an estimate of improvement value.

In carrying out replacement cost value three steps are required:

- i. Data collection: descriptive data on the improvement being valued
- ii. Determining an accurate cost of estimate: expenditure involved in completing a house based on replacement cost or reproduction cost. Reproduction cost is the cost of constructing an identical structure by using the same design and materials.
- iii. Replacement cost is the cost of constructing a substitute structure of equal utility using current materials, design and standards.
- iv. Estimation of accrued depreciation – which is the loss in value from replacement cost new.

The replacement value of structures was investigated during the Socio- Economic Baseline Survey. Replacement costs were calculated based on actual cost of construction/re-establishment of a structure of at least equal quality as the affected structure.

Below is a summary of the structures likely to be affected during construction and there costs / rate for each trunk line as seen on **Table** below.

Table 13: Summary costs of Structures (residential / non residential)

VALUATION COMPENSATION MATRIX_NARSIP II STRUCTURES VALUE ESTIMATES (TEMPORARY) AND ON ROAD RESERVE							
S/No.	Location	No. Affected	Description	Area (Acres)	Value (Kshs)	15% Disturbances Allowance	Total (Kshs)
1	Mukinduri Lane, Karen	1	Temporary GCI shops on road reserve	0.0178	7,000	1,050	8,050
2	Near Kuwinda slums, off Kufunga road	1	Temporary mabati house on road reserve	0.0096	5,000	750	5,750
3	Kuwinda slums	5	Temporary mabati house on road reserve		25,000	3,750	28,750
4	Near Kuwinda slums, off Kufunga road	1	Temporary mabati toilet on road reserve	0.0222	5,000	750	5,750
5	Kufunga Farm	1	Wooden house + Live fence	0.0385	70,000	10,500	80,500
6	Kirichwa road	1	Temporary wooden+mabati kiosk on road reserve	0.0052	5,000	750	5,750
7	Kangemi/Uthiru/M.View	10	Temporary wooden+mabati kiosk on road reserve	0.0682	50,000	7,500	57,500
8	Kahawa West	150	Temporary wooden+GCI sheets +veranda extension kiosks on road reserve	0.0200	750,000	112,500	862,500
9	Githurai 44	45	Temporary Metal sheets kiosks on road reserve		315,000	47,250	362,250
10	Githurai 44	170	Temporary wooden+GCI sheets kiosk on road reserve	0.0289	850,000	127,500	977,500
11	Githurai 45	50	Semi-permanent Kiosk on road	0.0371	350,000	52,500	



VALUATION COMPENSATION MATRIX_NARSIP II
STRUCTURES VALUE ESTIMATES (TEMPORARY) AND ON ROAD RESERVE

S/No.	Location	No. Affected	Description	Area (Acres)	Value (Kshs)	15% Disturbances Allowance	Total (Kshs)
			reserve				402,500
12	Githurai 45	150	Temporary wooden + GCI sheets +grilled kiosks on road reserve	0.0519	750,000	112,500	862,500
13	Huruma	200	Temporary GCI sheets kiosk on road reserve	0.0801	1,000,000	150,000	1,150,000
14	Mathare North	100	Temporary GCI sheets kiosk on road reserve	0.2520	500,000	75,000	575,000
15	Mathare North	100	Temporary Grilled kiosk on road reserve	0.2557	500,000	75,000	575,000
16	Mwiki&Kasarani	256	Temporary GCI sheets kiosk on road reserve	0.0111	1,280,000	192,000	1,472,000
17	Maziwa/Jacarada/Kamuthi	8	Temporary GCI sheets kiosk on road reserve	0.0838	40,000	6,000	46,000
	GRAND TOTAL						7,477,300

NB: 462 PAPs were mainly hawkers selling their commodities on movable structures (table tops) who were ready to move when the Project commences. This will be dealt with case by case during constructions



10.2.4 Valuation of Crops and Trees

Compensation of crops is decided according to the gross market value of the lost crops. Gross market value makes full provision for owners' crops or users input already expended (labor, seeds, fertilizer, etc) in the event that there is a crop in ground at the time of implementation. There are two determinant of gross or full market value which are market value for crops and the average annual yield of the crop. The price used to calculate compensation is the highest market price of the crop during the year. The average annual yield of the crop involves some degree of data collection and analysis.

Harvesting of crops and trees will be given first priority but where harvesting will not be possible, counting of the affected crops will be carried out and values applied according to the market rates. Compensation for crops is done on the basis of the requirements of Kenyan laws under the Ministry of Agriculture. 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. Compensation of crops and trees was done according to the market value of the crop at each sub county in Nairobi.

The RAP proposes that the parcel of lands which crop and tree valuation was not done to be valued during implementation of the project on case by case basis.

10.3 RAP IMPLEMENTATION BUDGET

Table below represents the cost estimates for the implementation of the NaRSIP II RAP including a 10 per cent contingency item. In addition, a 20 per cent each for administration cost for the RAP implementation, financial management training, monitoring and evaluation has been considered.

PAPs will be paid their resettlement and compensation entitlements prior to the project works being carried out in the affected project sites. Monitoring the RAP implementation process (part of the role of the AWSB internal Resettlement Implementation Unit (RIU)) and external evaluation of outcomes will be necessary in order to ensure the effectiveness and impact of the RAP.

Table 3: RAP Budget Estimates (Ksh) for NaRSIP 11

Item	Estimated Value (Kshs)	Statutory Allowance 15% (Kshs)	Total Value (Kshs)
Structures Value	7,477,300	1,121,595	8,598,895
Crops and Trees Value (<i>not valued</i>)			
Land Value (<i>Estimated cost of land in Nairobi per acre</i>)	181,230,812	27,184,621	208,415,433
Sub Total Costs			217,014,328
Implementation costs (Administrative costs 20%)			43,402,865
Monitoring and Evaluation (20%)			43,402,865
Notification, communication (1.5%)			3,255,214.9
Sub Total Costs			307,075,272.9
10% Contingency Fee			30,707,527.3
Total Costs of RAP Implementation			337,782,800.19

CHAPTER 11: MONITORING AND EVALUATION

11.1 INTRODUCTION

A monitoring and evaluation (M&E) program is required to be developed to provide feedback to project management which will help keep the programs on schedule and successful. Monitoring provides both a working system for effective implementation of the RAP by the project managers, and an information channel for the PAPs to assess how their needs are being met. Monitoring is a key component of the Resettlement Action Plan and is an integral part of NaRSIP 11 Project Implementation Unit (PIU) responsibility and obligations. It has the following general objectives;

- i. 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 AfBD's Principles, Kenyan regulations and this RAP,
- ii. 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.
- iii. 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.

11.2 INTERNAL MONITORING

The proponent (AWSB) will conduct regular internal monitoring of the resettlement performance of the operation through the Resettlement Action Implementation Team which will be responsible for implementing resettlement and compensation activities and monitor its efficiency. The objective of internal monitoring and supervision will be:

- 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:

- Numbers of households and individuals affected by Project activities;
- Numbers of households and individuals displaced as a result of Project activities;
- Numbers of structures taken possession of by PAPs;
- Grievances (open, closed); and
- Amounts of compensation paid per category (structures, land, crops, others).

A brief quarterly internal monitoring report will be prepared on this basis. It will be publicly disclosed. In addition, simple socio-economic parameters will be established and monitored annually for a sample of about 20% of PAPs. The following will be assessed among others:

- Average monetary income, and total income including self-consumption;
- Breakdown of household expenditures;
- Surface area of land holdings,
- Crops and estimated or observed yields,
- Number of unemployed people; and
- Number of children at school.

Every two years, the socio-economic quality of life index will also be measured and calculated to allow comparisons. This will require socioeconomic surveys to be administered once every two years for 3 years on a sample of about 20% of PAPs.

11.3 EXTERNAL MONITORING

The Project Implementation Unit (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 AfDB Principles, in this Resettlement Action Plan(s), in the ESIA and its attached action plans, and in the Environmental 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 ESMP 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 after review by PIU for factual accuracy.

11.4 RESETTLEMENT COMPLETION AUDIT

The purpose of the Completion Audit is to verify that the Proposed Project has complied with resettlement commitments defined by the RAP, and more generally if compliance with AfDB Safeguards on involuntary resettlement is always warranted. Reference documents for the Completion Audit are the following:

- This Resettlement Action Plan,
- Kenyan laws as they are described in **Section 3** of this RAP,
- Reference policies contained in AfDB procedures related to involuntary resettlement.

The Completion Audit has the following specific objectives:

- General assessment of the implementation of the RAP against the objectives and methods set forth in the RAP,
- Assessment of compliance of implementation with laws, regulations and safeguard policies;
- Assessment of the fairness, adequacy and promptness of the compensation and resettlement procedures as implemented;
- Evaluation of the impact of the compensation and resettlement program on livelihood restoration, measured through incomes and standards of living, with an emphasis on the “no worse-off if not better-off” requirement; and

- Identification of potential corrective actions necessary to mitigate the negative impacts of the program, if any, and to enhance its positive impacts.

The Completion Audit will be based on documents and materials generated by internal and external monitoring. In addition, auditors will make their own assessments, surveys and interviews in the field and with Project-Affected- Persons.

CHAPTER 12: IMPLEMENTATION OF THE RAP

12.1 INTRODUCTION

The implementation schedule for this RAP covers the periods from the preparation of the RAP to the conclusion of the NaRSIP 11 project up-to the completion and the time that the infrastructure will be fully available to full use.

The procedure in the schedule starting from notification of the PAPs before their displacement through compensation and resettlement will be done in phases to synchronize with the various phases of the project. The RAP Implementation schedule defines the duration and timing of the key milestones and tasks. The major component tasks for the schedule include:

- Preparation of RAP
- Consultation and Disclosure of RAP
- Audit of the PAP register and compensation package due to each PAP
- Signing of agreements on compensation packages by PAPs
- Resolving emerging grievances
- Compensation and/or Supplementary assistance
- Notification of PAPs to relocate
- Commencement of project operations
- Monitoring and evaluation, including baseline update

Table 15: Implementation Schedule

Activity	Months														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Preparation of RAP															
Disclosure of the RAP Report															
Audit of the RAP report to verify PAPs and compensation details															
Signing of compensation and relocation assistance agreements															
Resolution of conflicts and Grievances															
Payment of compensation to PAPs and facilitation of relocation															
Issuance of notices for relocation															
Commencement of works															
Monitoring of the resettlement activities															

ANNEX 1: CENSUS AND ASSETS INVENTORY TOOL

CENSUS AND ASSET INVENTORY TOOL NARSSIP RESETTLEMENT ACTION PLAN

Note: Runji & Partners Ltd were contracted to prepare Resettlement Action Plans (RAPs) for the Nairobi sewerage project covering the following areas:

	Area	Proposed Km	TICK
1	Karen	18	
2	Westlands	15	
3	Mountain View		
4	Uthiru		
5	Kileleshwa	10	
6	Kilimani	10	
7	Eastleigh	10	
8	Huruma	10	
9	Mathare North		
10	Kahawa West	72	
11	Kahawa Sukari		
12	Githurai 44 /45		
13	Mwiki	66	
14	Clay works		

As a Project Affected Person (PAP) you are kindly requested to provide the following information to assist the consultant gather required information for the RAP

Names of interviewer Filling this Form: _____ Date: _____

A. Bio Data

1	Name of area	
2	Full Name of PAP / Trader / Establishment owner per ID	
3	Identification: National ID. No: (Provide Clean Photocopy)	
4	Mobile no	
5	Gender	a) Male () b) Female ()
6	Marital status	a) Single () b) Married () c)Widowed () d)Separated () e) Divorced()
7	Age	

B. Socio-Economic Data

8	Education Level:	a) None () b) Primary () c) Secondary () d) Tertiary ()
9	Literacy level (Reading and Writing):	a) English () b)Kiswahili () c)Both ()
10	Household Size:	
11	No children	

12	Ownership of business:	a) Owner () b) Employee ()
13	Size of Business (No. of employees):	1-5 pple () b) 6-10pple () c) >10pple ()
14	Other business stalls owned/sublet	a) Yes () b) No () C. Business Income
15	Type of trade:	Wholesale () b Retail () c Hawker ()
16	Trade commodity	(), Clothes and Shoes () Groceries and food stuff vending (), Electronics ():
17	Gross Income from the Business per Month in Ksh.:	a) 1000-10K () b) 11-20K () c) 21-30K () d)31-40K () e)41-50K () f)51-60K () g) 61-70K () h) 71-80K () i)81-90K () j)91-100K () k)>100K ()

18. Duration of tenancy in the residence/ business operation area a) < 1 year () b) 1-5 years () c)6-10 years () d) > 10years ()

27. List any most common health, environmental, social problems and general business challenges you face within the area:

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28. General views on the proposed project and disturbances likely to happen:

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C. ASSETS INVENTORY

29. Registered by: a) County () b) Unregistered ()

30. If Unregistered: a) Fixed premises () b) Mobile vendors (Hawkers) () c) Both ()

31. Amount of rent/cess paid per month: _____

32. Ownership of business premise: a) County () b) Private () c) Rented ()

33. List of assets a. Movable Assets (specify if private, public or joint venture)

Type of Asset	Description



Stationery Assets

i. Structure Details

	Owners hip (county or private)- if private, is it personal or rented. How much rent? Who is the landlord ?	Size of structure/s tall (Length x Width)	Nature of structure (permane nt, temporar y)	Construction Material used (type of flooring, roofing, wall and counter material)	Cost estimat es of the materia ls	Cost of labo ur	Observati ons (Type of trade, type of commodit y, average income)
				Floor _____ _____ Walls _____ ____ Trading Base/counter _____ _____ Roof _____ ____ Other Materials _____			
				Floor _____ _____ Walls _____ ____ Trading Base/counter _____ _____ Roof _____ ____ Other Materials _____			

Other details:

ANNEX 1: PROPOSED PROJECT AREA LAYOUTS