



**KENYA DIGITAL ECONOMY ACCELERATION PROJECT
P170941**

RESETTLEMENT POLICY FRAMEWORK

MAY 2023



Table of Contents

ACKNOWLEDGMENT	7
DEFINITION OF TERMS USED IN THE REPORT	8
EXECUTIVE SUMMARY	i
Introduction	i
Project Components	i
Rationale of the Resettlement Policy Framework	ii
Potential Resettlement Impact of KDEAP	iii
1. PROJECT DESCRIPTION	1
1.1 Background to the Project	1
1.3 Geographical Characteristic of the Project Area	1
1.2 Project Components	3
2 OBJECTIVES AND METHODOLOGY USED FOR PREPARATION OF RPF	7
2.1 Objectives of the Resettlement Policy Framework	7
2.2 Rationale for the Resettlement Policy Framework	9
2.2 Methodology of the Resettlement Policy Framework and Stakeholder Engagement/Consultation	9
2.2.1 <i>Methodology</i>	9
2.2.2 <i>Stakeholder Engagement</i>	9
2.3 Outcomes of Process Stakeholder Engagement	11
3. PRINCIPLES AND OBJECTIVIES GOVERNING RESETTLEMENT	13
PREPARATION AND IMPLEMENTATION	13
3.1 Basic Principles of Resettlement	13
3.2 Objectives of The Resettlement Framework Under ESS 5	14
4 PROCESSES FOR PREPARING AND APPROVING RESETTLEMENT PLANS ...	15
4.1 The Resettlement Process	15
4.1.1 Screening for Involuntary Resettlement and Restrictions on Land Use	15
4.1.2 Sub-Project Design	16
4.1.3 Project Affected Entities	19
4.1.4 Contents of the Resettlement Action Plans	20
5 LAND ACQUISITION, RESTRICTIONS ON LAND USE AND RESETTLEMENT	



IMPACTS	21
6 ELIGIBILITY CRITERIA AND CUT-OFF DATES	23
6.1 Criteria for Determining Eligibility for Compensation	23
6.2 Method to Determine Cut-Off Dates	23
7 LEGAL AND INSTITUTIONAL FRAMEWORKS	25
7.1 Legal Framework for Expropriation and Compensation	25
7.2 The Constitution of Kenya 2010	25
7.3 Overview of National Legislative and Constitutional Provisions on Acquisition, Restrictions on Land Use and Resettlement	26
7.4 Institutional Framework under the Project	37
8 METHODS OF VALUING AFFECTED ASSETS	39
8.1 Types of Compensation	39
8.2 Valuation of Assets and National Law	39
8.2.1 Valuation Procedure	39
8.2.3 Calculation of Compensation by Assets	42
8.6 Restoration of Livelihood	46
8.7 Timeframes	47
8.8 Linking Resettlement Implementation to Civil Works Project Affected Persons	47
9 GUIDING PRINCIPLES FOR LAND ACQUISITION AND COMPENSATION	49
9.1 Land Acquisition Procedure	49
9.2 Voluntary Land Donations	50
9.3 Involuntary Acquisition of Land	51
9.4 Eligibility Criteria for Compensation	52
9.5 Procedures for Payment of Compensation	52
10 GRIEVANCE MANAGEMENT MECHANISM	53
10.1 Background of the GRM	53
10.2 Proposed Grievance Redress Mechanism	53
10.3 Grievance Redress Mechanism Levels	53
10.4 Building Grievance Redress Mechanism Awareness	56
10.5 Recommended Grievance Redress Time Frame	56
10.6 Grievance Documentation and Reporting	57
11 ORGANIZATIONAL ELEMENTS PROCEDURE FOR DELIVERY OF COMPENSATION	59
11.1 The Procedure	59



11.2	Information, Communication and Technology Authority's Capacity	60
12	IMPLEMENTATION COSTS FOR THE RPF	61
13	MONITORING AND EVALUATION PLAN	63
13.1	Monitoring indicators	64
13.1.1	Performance/Evaluation Indicators	64
13.1.2	Indicators to Measure RAP Performance	64
13.1.3	Indicators to Monitor and Evaluate Implementation of RAPs	65
13.1.4	RAP Implementation Completion Report	65
13.2	External Monitoring Process	66
13.2.1	Responsibility of the Authorities	66
13.2.2	Indicators to Determine Status of Affected People	67
13.2.3	Annual Audit	67
13.2.4	Socio-Economic Monitoring	67
13.2.5	Reporting and Documentation	68
	Annexes	69
	Annex 1: Stakeholder Engagement Record	69
	Annex 2: Elements of a Resettlement Plan	75
	Annex 3:	Entitlement Matrix

Table of Tables

Table 1 : Likely Resettlement Impacts and Management Measures	iv
Table 2: Details of Resettlement Policy Framework Process Consultation	11
Table 3 : Outcomes of Resettlement Policy Framework Stakeholder Engagement	12
Table 4 : Likely Adverse Resettlement Impacts and Management Measures	21
Table 5 : Comparison of the Kenya Legal Framework with the ESS 5	30
Table 6 : Institutional Mandates on Land Use and Land Acquisition	37
Table 7 : Forms of Compensation	40
Table 9 : Grievance Redress Mechanism Levels	53
Table 10 : Proposed GRM Time Frame	56
Table 11 : Framework for Estimate of Costs for RAP implementation	61
Table 12 : Institutions to be Involved in Project Monitoring	66
Table 8 : Entitlement Matrix	79





ACRONYMS

ARAP	Abbreviated Resettlement Action Plan
CELARS	Center for Land Acquisition and Resettlement Studies
CSO	Civil Society Organisations
EAC	East Africa Community
EARDIP	East Africa Regional Digital Integration Program
ESMF	Environmental and Social Management Framework
ESMP	Environmental and Social Management Plan
ESS	Environmental and Social Standard
GBV	Gender-Based Violence
GRM	Grievance Redress Mechanism
GRC	Grievance Redress Committees
GO	Grievance Officer
GOK	Government of Kenya
MCDA	Ministries, Counties, Departments and Agencies
MICDE	Ministry of Information, Communications and Digital Economy
MPA	Multi Programmatic Approach
USF	Universal Service Fund
M&E	Monitoring and Evaluation
MICT&DE	Ministry of Information Communication Technology and Digital Economy
NEMA	National Environment Management Authority
NGO	Non-Governmental Organization
PAPs	Project Affected Persons
RAP	Resettlement Action Plan
ROW	Right of Way
RPF	Resettlement Policy Framework
SH	Sexual Harassment
SEA	Sexual Exploitation and Abuse
RPF	Resettlement Policy Framework
IRU	Indefeasible Rights of Use
CA	Communication Authority
TVET	Technical and Vocational Education and Training
KETRACO	Kenya Electricity Transmission Company Limited
KPLC	Kenya Power and Lighting Company
KPL	Kenya Pipeline Limited
FON	Fiber Optic Network
KWPF	Korea-World Bank Partnership Facility
PAP	Project Affected Person
PWD	persons with disabilities
ISP	Internet Service Providers
ICT	Information, Communication and Technology
ICTA	Information, Communication and Technology Authority
IGAD	Intergovernmental Authority on Development
KDEAP	Kenya Digital Economy Acceleration Program
PIU	Project Implementation Unit
KENET	Kenya Education Network



VMG

Vulnerable and Marginalized Group





ACKNOWLEDGMENT

The Resettlement Policy Framework (RPF) for the project, Kenya Digital Acceleration Project (KDEAP) was prepared by Prof. Edward Ontita of CRESS Africa Consulting Ltd and Center for Land Acquisition and Resettlement Studies (CELARS), University of Nairobi with the support of the KDEAP proponents Information Communication Technology Authority (ICTA) and the Ministry of Information Communication Technology and Digital Economy (MICT&DE) of the Government of Kenya. The RPF preparation was carried out under the Kenya Digital Economy Acceleration Project of the World Bank. We appreciate the input and comments from officers at Information, Communication and Technology Authority (ICTA), MICT&DE, and the World Bank.



DEFINITION OF TERMS USED IN THE REPORT

Unless the context dictates otherwise, the following terms shall have the following meanings:

- sub projects is any activity which will potentially be directly implemented by the county government, Civil Society Organisation (CSOs) or project beneficiaries to be funded by the World Bank under KDEAP.
- census is a field survey carried out to identify and determine the number of Project Affected Persons (PAP), their assets, and potential impacts, in accordance with the procedures, satisfactory to the relevant government authorities, and the World Bank Environment and Social Framework and Standards. The meaning of the word shall also embrace the criteria for eligibility for compensation, resettlement, and other measures, emanating from consultations with affected communities and the local leaders.
- compensation is the payment in kind, cash or other assets given in exchange for the taking of land, or loss of other assets, income/profits including fixed assets thereon, in part or whole.
- cut-off date is the date of commencement of the census of PAPs within the project area boundaries. This is the date on and beyond which any person whose land is occupied for project use, will not be eligible for compensation.
- Project Affected Persons (PAPs) are persons who, for reasons of the involuntary taking or voluntary contribution of their land and other assets under the project, result in direct economic and or social adverse impacts, regardless of whether or not the said project affected persons physically relocates. These people may have their: (i) standard of living adversely affected, whether or not the Project Affected Person must move to another location; (ii) right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, temporarily or permanently, adversely affected; (iii) access to productive assets adversely affected, temporarily or permanently; or (iv) business, occupation, work or place of residence or habitat adversely affected.
- Involuntary resettlement according to ESS 5 refers to impacts related to project -related land acquisition or restriction on land use which may cause physical displacement – relocation, loss or residential land or loss of shelter), economic displacement (loss of land, assets, or access to assets, leading to loss of income sources or other means of livelihood) or both. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restriction on land use that result in displacement.
- Land acquisition refers to all methods of obtaining land for project purposes, which may include outright purchase, expropriation of property and acquisition of access rights such as easements or rights of way. Land acquisition may also include (a) acquisition of unoccupied or unutilized land whether or not the landholder relies upon such land for income or



livelihood purposes; (b) repossession of public land that is used or occupied by individuals or households and (c) project impacts that result in land being submerged or otherwise rendered unusable or inaccessible.

- Land includes anything growing on or permanently affixed to land, such as crops, buildings and other improvements and appurtenant water bodies.
- Livelihood refers to the full range of means that individuals, families, and communities utilize to make a living such as wage-based income, agriculture, fishing, foraging, other natural resource-based livelihoods, petty trade and bartering.
- Restrictions on land use refers to limitations or prohibitions on the use of agricultural, residential, commercial, or other land that are directly introduced and put into effect as part of the project. these may include restrictions on access to legally designated parks and protected areas, restriction on access to other common property resources, restriction on land use within utility easements or safety zones.
- Replacement cost is defined as a method of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement. Where functioning markets exist, replacement cost is the market value as established through independent and competent real estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means such as calculation of output value for land or productive assets, or the undepreciated value of replacement material and labor for construction of structures or other fixed assets, plus transaction costs. In all instances where physical displacement results in loss of shelter, replacement cost must at least be sufficient to enable purchase or construction of housing that meets acceptable minimum community standards of quality and safety. The valuation method for determining replacement cost should be documented and included in relevant resettlement planning documents. To ensure compensation at replacement cost, planned compensation rates may require updating in project areas where inflation is high or the period between calculation of compensation rates and delivery of compensation is extensive.
- Transaction costs include administrative charges, registration or title fees, reasonable moving expenses, and any similar costs imposed on affected persons.
- Resettlement Assistance means the measures to ensure that project affected persons who may require to be physically relocated are provided with assistance such as moving allowances, residential housing or rentals whichever is feasible and as required, for ease of resettlement during relocation.
- Resettlement plans include measures to address physical and/or economic displacement, depending on the nature of the impacts expected from a project. projects may use alternative nomenclature, depending on the scope of the resettlement plan. Once the individual project components are defined, and the necessary information becomes available, a resettlement plan is prepared proportionate to potential risks and impacts.



- Resettlement Policy Framework (RPF) this is a framework that clarifies resettlement principles, organizational arrangements, and design criteria to be applied to subprojects or project components to be prepared during project implementation. According to ESS 5, para 25, where the likely nature or magnitude of the land acquisition or restriction on land use related to a project with potential to cause physical and/or economic displacement is unknown during project preparation, the Borrower will develop a framework establishing general principles and procedures compatible with ESS 5.
- Vulnerable Groups includes widows, the elderly, the disabled, the sick, marginalized groups, low-income households and youth; incapacitated households – those with no one fit to work, child-headed households, street children and other people or households characterized by low nutrition levels, low or no education, lack of employment or incomes; ethnic minority and/or gender bias (GoK, 2011).
- Stakeholders is any and all individuals, groups, organizations, and institutions interested in and potentially affected by a project or having the ability to influence a project.



EXECUTIVE SUMMARY

Introduction

The Kenya Digital Economy Acceleration Program (KDEAP) aims to accelerate digital transformation at the regional level focusing on critical digital enablers that ‘future-proof’ economic growth and leveraging Kenya’s leadership role in the region to facilitate the adoption and implementation of regionally harmonized frameworks for digital integration.

KDEAP is designed as a vertical Multi Programmatic Approach (MPA) in Kenya, with strong complementarities and contributions towards integrating digital markets in the Eastern Africa region. The proposed design will directly complement, and contribute to the regional digital infrastructure and market integration agenda supported under the East Africa Regional Digital Integration Program (EARDIP, P176181) which will invest in additional regional activities, including strengthening the capacity and coordination of East Africa Community (EAC) and Intergovernmental Authority on Development (IGAD) and their member states towards regional policy and regulatory harmonization, and enhancing digital infrastructure for South Sudan and Somalia in its first Phase.

While KDEAP is a single-country operation, it meets all the criteria under the International Development Association (IDA)20 Regional Window financing under the Single Country exception, including (i) forming part of a Regional strategy for digital market integration, directly complementing EARDIP, which is reflected in its Program and Project Development Objectives and measured through applicable results indicators; (ii) having an expected transformational impact on regional integration with the potential to create key public goods and positive spillovers to other countries; (iii) clear evidence of country and regional ownership; (iv) requiring financing only for a single country with complementary investments for South Sudan and Somalia proposed to be funded through EARDIP; and (v) the proposed Regional IDA allocation would be financing subcomponents that focus on the implementation of regional activities in Kenya for which no other financing sources are available.

The project’s development objective is to expand access to high-speed internet, improve the quality and delivery of education and selected government services, and build skills for the regional digital economy.

Project Components

The three components within Phase 1 are (a) Component 1: Digital Infrastructure and Access; including expanding the national fiber backbone and enabling last mile connectivity to schools, TVETs, universities and MCDAs, through incentivizing greater private investment, strengthening Kenya’s role as a regional digital transit point and enhancing the enabling environment for Kenya’s digital economy; (b) Component 2: Digital Government and Services: including establishing a Shared Services Architecture, digitizing selected public services, and enhancing data governance to create a trusted environment for online transactions within Kenya and the region; and (c) Component 3: Digital Skills and Markets: supporting the Digital Literacy



Program (digital labs, teacher training, digital educational content for all secondary schools); strengthening specialized digital skills trainings to increase the pipeline of digital professionals in Kenya and the Eastern Africa region, facilitating access to affordable internet-enabled devices, and positioning Kenya as a regional digital hub for e-Commerce.

Rationale of the Resettlement Policy Framework

The Resettlement Policy Framework (RPF) is prepared and guided by environmental and Social Standard (ESS) 5 on land acquisition, restriction on land use and involuntary resettlement. ESS 5 recognizes that land acquisition and restriction on land use can have adverse impacts on communities and persons. Accordingly, the standard project-related land acquisition or restrictions on land use may cause physical displacement which involves relocation, loss of residential land or loss of shelter or economic displacement which result involving loss of land, assets or access to assets, leading to loss of income sources or other means of livelihood or both.

RPF this is a framework that clarifies resettlement principles, organizational arrangements, and design criteria to be applied to subprojects or project components to be prepared during project implementation. According to ESS 5, para 25, where the likely nature or magnitude of the land acquisition or restriction on land use related to a project with potential to cause physical and/or economic displacement is unknown during project preparation, the Borrower will develop a framework establishing general principles and procedures compatible with ESS 5. Once individual project components are defined, and the necessary information becomes available such a framework will be expanded into one or more specific plans proportionate to potential risks and impacts. Under the KDEAP project no physical and/or economic displacement will occur until plans required by ESS 5 have been finalized and approved by the World Bank.

To an extent possible, the project infrastructure (e.g., optic fibre cables) will be laid in reserves of existing public land or right of way hence avoiding land take, compensation, and resettlement. Environmental and Social Standard 5 applies to permanent or temporary physical and economic displacement resulting from project activities. Though highly unlikely however, physical, and economic displacement may occur for structures and persons living or doing businesses on the public land or right of way. This RPF will guide the management of resettlement impacts and subsequent resettlement action plans where they are necessary.

The key principles on management of these impacts as guided by ESS 5 include:

- To avoid involuntary resettlement or when unavoidable, minimize involuntary resettlement by exploring project designs alternatives.
- To avoid forced eviction.
- To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by: (a) providing timely compensation for loss of assets at replacement cost and (b) assisting displacement persons in their efforts to improve, or at least restore, their livelihoods and living standards, in real terms to pre displacement levels or to levels prevailing prior to the beginning or project implementation, whichever is higher.



- To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities, and security of tenure.
- To conceive and execute resettlement activities as sustainable development programs, providing sufficient investment resources to enable displaced persons to benefit directly from the project, as the nature of the project may warrant.
- To ensure that resettlement activities are planned and implemented with appropriate disclosure of information, meaningful consultation, and the informed participation of those affected.

Potential Resettlement Impact of KDEAP

Subcomponent 1.1 will extend the Reach of the Backbone Networks (middle mile) (US\$120 million including US\$60 million equivalent from IDA SUW and US\$60 million expected in unguaranteed commercial financing). This subcomponent aims to deepen the coverage of national broadband backbone networks by extending coverage to the ward level and by providing redundancy on key routes including cross-border ones. Project funds will be used, potentially complemented with funding from the country's USF and other donor partners to supplement investments from network operators. The aim is to increase the length of fiber networks from the current 8,900 km to a national target of 100,000 km, as set out in the ICT Master Plan 2022–2032. This new 'digital superhighway' is intended to extend coverage from the current sub-county level to ward level, thereby ensuring coverage of rural and underserved areas, and reducing the costs of last-mile connectivity.

Subcomponent 1.2 intends to increase Last Mile Connectivity for Education (US\$120 million including US\$90 million equivalent from IDA SUW and US\$30 million expected in unguaranteed commercial financing). This subcomponent will support the expansion of last mile internet connectivity for priority locations in the education sector, particularly in underserved rural areas. The aim is to ensure that students, at all levels and across the country, have access to good quality internet resources to help them build digital skills. By contracting with network operators and internet service providers (ISPs), through competitive tendering, this activity aims to leverage additional investment from network operators and spur service competition in rural areas, so that all consumers in the area will benefit from downstream services. Key public institutions to be connected include universities, TVETs, teacher training colleges and schools under Phase 1, as well as healthcare centers and law courts in Phase 2 (and by the USF in phase 1). The feasibility study conducted to explore connectivity costs has already evaluated the costs of connecting schools from the nearest existing fiber node. Almost 20,000 of Kenya's schools that were mapped (50 percent) are within 1 km of the nearest fiber node, and these can be served relatively profitably. A further 11,000 are within 1-5 km (28 percent) and would require some level of subsidy for service to be profitable. Serving those schools within 5 km of the nearest fiber node would require around 32,000 km of fiber. But for the remaining 9,000 (22 percent) that are beyond 5 km, which are clustered mainly in Northern and Eastern Kenya, a further 94,000 km of fiber (i.e., 75 percent of the total) would be required with today's backbone. The required level of subsidy would therefore be much higher. Other, non-fiber technologies (such as fixed wireless access, 5G cellular, or LEO satellites) may be more cost-efficient in these areas.



Involuntary resettlement according to ESS 5 refers to impacts related to project -related land acquisition or restriction on land use which may cause physical displacement – relocation, loss or residential land or loss of shelter), economic displacement (loss of land, assets or access to assets, leading to loss of income sources or other means of livelihood) or both. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restriction on land use that result in displacement. KDEAP sub project may result in involuntary resettlement which could lead to either physical displacement or economic displacement as a result of land related impacts. This resettlement policy framework focuses on direct economic and social impacts that result from the project that include:

- i. The involuntary taking of land and other resources resulting in (i) relocation or loss of shelter; (ii) loss of assets; or (iii) loss of income sources or means of livelihood.
- ii. The involuntary restriction of access to legally designated protected areas and gazette forests resulting in adverse impacts on the livelihoods of the displaced persons.

The key resettlement impacts of the project and how they can be managed are outlined in table below.

Table 1 : Likely Resettlement Impacts and Management Measures

No.	Project Activity	Nature of Impact	Management Measure
1	Installation of fibre optic cables	Trenching 1.5m below the ground and construction of a duct where the fiber optic cable is placed. limited linear impact, along existing roads right of way and public land.	Utilize road reserve and obtain Right of Way from appropriate Authorities like Kenya National Highways Authority, Kenya Urban Roads Authority, Kenya Rural Roads Authority, Telkom Kenya, Kenya Electricity Transmission Company (KETRACO), Kenya Power and Lighting Company (KPLC)
2	Installation of fibre optic cable along already existing transmission lines.	No resettlement impacts	Stakeholders' engagement process focused on interested parties.
3	Installation of fiber transmission sites	Plot for infrastructure	Utilize existing Government infrastructure/ facilities
4	Displacement of roadside traders/market vendors	Undertake trenching through roadside markets. Temporary financial	Assessment of impact through the preparation of a Resettlement Action Plan



		loss from disruption of trade activities.	
5	Physical and economic displacement of businesses located on the road reserves/right of way.	Undertake trenching in areas where businesses are located on the road reserves/right of way. Temporary financial loss from disruption of trade activities.	Assessment of impact through the preparation of a Resettlement Action Plan

The project at this stage does not have an estimate of the total number of persons to be affected by the project. once project areas are defined for the sub-projects, Resettlement Action Plans will be prepared as guided by this RPF and Environmental and Social Standard (ESS) 5.



1. PROJECT DESCRIPTION

1.1 Background to the Project

The Kenya Digital Economy Acceleration Project (KDEAP) aims to accelerate digital transformation at the regional level focusing on critical digital enablers that ‘future-proof’ economic growth and leveraging Kenya’s leadership role in the region to facilitate the adoption and implementation of regionally harmonized frameworks for digital integration. The project intends to expand access to high-speed internet, improve the quality and delivery of education and selected government services, and build skills for the regional digital economy.

KDEAP is designed as a vertical Multi Programmatic Approach (MPA) in Kenya, with strong complementarities and contributions towards integrating digital markets in the Eastern Africa region. The proposed design will directly complement, and contribute to the regional digital infrastructure and market integration agenda supported under the East Africa Regional Digital Integration Program (EARDIP, P176181) which will invest in additional regional activities, including strengthening the capacity and coordination of EAC and IGAD and their member states towards regional policy and regulatory harmonization, and enhancing digital infrastructure for South Sudan and Somalia in its first Phase.

While KDEAP is a single-country operation, it meets all the criteria under the IDA20 Regional Window financing under the Single Country exception, including (i) forming part of a Regional strategy for digital market integration, directly complementing EARDIP, which is reflected in its Program and Project Development Objectives and measured through applicable results indicators; (ii) having an expected transformational impact on regional integration with the potential to create key public goods and positive spillovers to other countries; (iii) clear evidence of country and regional ownership; (iv) requiring financing only for a single country with complementary investments for South Sudan and Somalia proposed to be funded through EARDIP; and (v) the proposed Regional IDA allocation would be financing subcomponents that focus on the implementation of regional activities in Kenya for which no other financing sources are available.

The project’s development objective is to expand access to high-speed internet, improve the quality and delivery of education and selected government services, and build skills for the regional digital economy.

1.3 Geographical Characteristic of the Project Area

The project will be implemented in all the forty-seven counties in Kenya. Population growth has averaged 2.7 percent annually since 2000, with the urban population growing at 4.4 percent, reaching over 27 percent in 2020. However, a vast majority of Kenyans (73 percent) continue to reside in rural areas. Kenya’s young population, coupled with the bulging urbanization, presents an opportunity to capitalize on a demographic dividend, paired with the challenge of creating enough jobs to support the boom in the working-age population. Kenya is the world’s seventh most ethnically diverse country with an evolving political structure aimed at balancing competition and fostering national unity. Access to national resources and services mirrored



access to political power in the past, fostering disparities across diverse communities and accentuating concerns over political exclusion, voice, and accountability.

In the subjectmatter of KDEAP, Kenya stands out as the digital leader in the East African Region, earning an early reputation as an innovator in digital services. The country continues to benefit from its early liberalization of the telecom sector, strategic public investments in the national fiber optic backbone infrastructure (NOFBI), and a vibrant private sector that has used this market openness and public infrastructure to invest in network expansion and roll out innovative digital services. As a result, Kenya boasts over 98 percent population coverage of mobile broadband networks of 3G and higher. Nationally, broadband penetration stood at 60 percent in September 2022, but this was mainly provided from 3G and 4G mobile services, with a fixed broadband penetration of only 1.7 percent. The country had a 70.6 percent mobile money penetration in September 2022 (the highest in the world, and a thriving technology ecosystem. Kenya is ranked third in the continent in the ‘Networked Readiness Index’ 2022 rankings. Kenya’s digital agenda is championed by the country’s top leaders and is reflected in the ambitious ‘Vision 2030’ aim of transforming Kenya into a regional ICT hub, coupled with a dedicated government ministry and agencies established to drive the digital agenda, principally the Ministry of Information, Communications and Digital Economy (MICDE), the Information and Communication Technology Authority (ICTA), and the Communications Authority (CA).

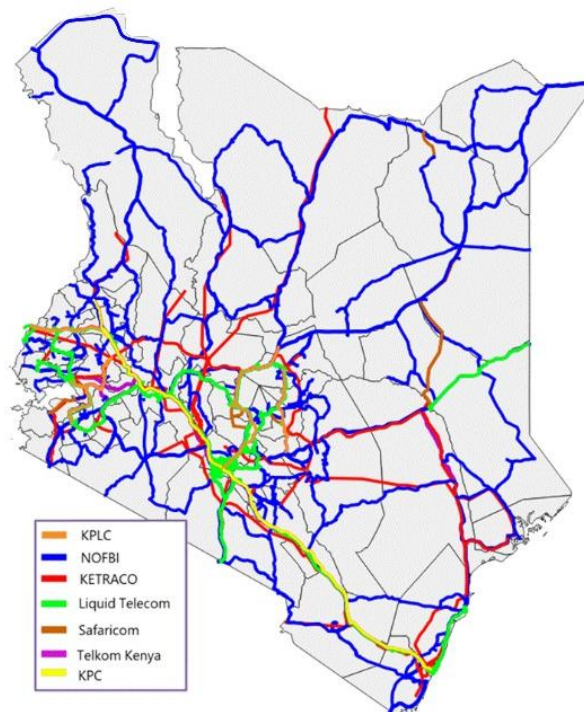


Figure 1. Kenya’s National Fiber Routes



1.2 Project Components

Component 1: Digital Infrastructure and Access (US\$215 million, including US\$195 million from National International Development Association (IDA) and US\$20 million from Regional IDA, with an additional US\$100 million expected in unguaranteed commercial financing). The aim of this component is to increase access to high-speed internet for individuals, industry, and government the ‘foundation of the foundations’ of a digital economy and strengthen Kenya’s role as a regional digital leader while leveraging investments from the private sector. Public funds will be used to unlock private infrastructure investments in the backbone, the last mile, and regional infrastructure to better serve rural areas and roll out next-generation connectivity services and technologies. The investment will be carried out by network operators, using the mechanism of smart subsidies (also known as “gap financing”) from project funds and the Universal Service Fund (USF) to stimulate private investment in a ratio of roughly 1:1 (i.e., US\$1 of private investment for every US\$1 of public funds). The project design uses public infrastructure investments (from project funds and the USF) to fill gaps in the public network and connect critical public institutions and service locations. These cover universities, TVETs, and schools in subcomponent 1.2, government MCDAs in subcomponent 1.3, as well as healthcare centers and law courts in Phase 2. As well as targeting supply-side interventions, this component will directly aid in increasing demand-side participation and inclusion in the digital economy—among the poor, rural communities, women, and persons with disabilities (PWDs)—by enhancing accessibility and thereby supporting their productive participation in the digital economy.

Subcomponent 1.1: Extending the Reach of the Backbone Networks (middle mile) (US\$60 million from National IDA with an additional US\$60 million expected in unguaranteed commercial financing). This subcomponent aims to deepen the coverage of the national broadband backbone networks by extending coverage to the ward level and by providing redundancy on key routes. Project funds will be used, potentially complemented with funding from the country’s USF and other donor partners to supplement investment from network operators. The aim is to increase the length of fiber networks from the current 8,900 km to the targeted 100,000 km, as set out in the ICT Master Plan 2022–2032. This new ‘digital superhighway’ is intended to extend coverage from the current sub-county level to ward level, thereby ensuring coverage of rural and underserved areas, and reducing the costs of last-mile connectivity.

This subproject will result to impacts related to land acquisition and restriction on access to land use activities. Since the exact location for the project subprojects have not yet been identified the RPF has been prepared.

Subcomponent 1.2: Increasing Last Mile Connectivity for Education (US\$90 million from National IDA with an additional US\$30 million expected in unguaranteed commercial financing). This subcomponent will support the expansion of last mile internet connectivity for priority locations in the education sector, particularly in underserved rural areas. By contracting with network operators and internet service providers (ISPs), through competitive tendering, this activity aims to leverage additional investment from the private sector and spur service



competition in rural areas, so that all consumers in the area will benefit from downstream services. Key public institutions to be connected include universities, TVETs, teacher training colleges and schools under Phase 1, as well as healthcare centers and law courts in Phase 2 (and by the USF), and Government MCDAs in subcomponent 1.3. The feasibility study conducted to explore connectivity costs has already evaluated the costs of connecting schools from the nearest existing fiber node. Almost 20,000 of Kenya's schools that were mapped (50 percent) are within 1 km of the nearest fiber node, and these can be served relatively profitably. A further 11,000 are within 1-5 km (28 percent) and would require some level of subsidy for service to be profitable. Serving those schools within 5 km of the nearest fiber node would require around 32'000 km of fiber. But for the remaining 9,000 (22 percent) that are beyond 5 km, which are clustered mainly in Northern and Eastern Kenya, a further 94,000 km of fiber (i.e., 75 percent of the total) would be required with today's backbone, and the required level of subsidy would therefore be much higher. Other, non-fiber technologies (such as fixed wireless access, 5G cellular, or LEO satellites) may be more cost-efficient in these areas.

This subproject will result to impacts related to land acquisition and restriction on access to land use activities. Since the exact location for the project subprojects have not yet been identified the RPF has been prepared.

Subcomponent 1.3: Enhancing Government Connectivity (US\$30 million from National IDA). This subcomponent aims to boost the level of internet connectivity provided to Government MCDAs in rural areas by extending last-mile connectivity and supplying them with pre-paid bandwidth under long-term supply agreements. The methodology to be used will be a mix of Smart Subsidies to extend fiber deployment to rural MCDAs and pre-purchase of internet capacity. The MCDAs initially targeted would be the main beneficiaries of initiatives under KDEAP (i.e., MICDE, Education, Healthcare and the Judiciary). In addition, this subcomponent will support the provision of internet capacity to around 300 of the 25,000 public WiFi hotspots the Government is aiming to provide, again focusing on those where there is overlap with those rural MCDAs already served with internet under the project.

This subproject will result to impacts related to land acquisition and restriction on access to land use activities. Since the exact location for the project subprojects have not yet been identified the RPF has been prepared.

Subcomponent 1.4: Strengthening the Digital Enabling Environment (US\$5 million from National IDA) : This subcomponent will finance TA and capacity building to enhance the policy and regulatory environment for the digital sector in line with the evolving needs of a thriving digital economy, including strengthening the Communication Authority (CA) and the USF (support for data protection and cybersecurity is covered under subcomponent R2.3). The support to the CA, Kenya's digital economy regulator, will include the implementation of Kenya's eCommerce Strategy and providing some targeted technical assistance and capacity building for the CA, to enhance the regulatory framework for the future growth of Kenya's digital economy and support regional digital market integration. For the USF, the Technical Assistance (TA) to be provided will seek to enable it to conduct its own smart subsidy reverse auctions. Most of its work to date has been for extension of the cellular network, but it may now



need to focus also on working to achieve the Government's goal of creating a digital superhighway.

Component 2: Digital Government and Services (US\$95 million IDA, of which US\$80 million from National IDA and US\$15 million from Regional IDA). This component will invest in automating and digitizing selected government services while strengthening the legal and policy frameworks and the technical architecture needed to enable a whole-of-government transition to e-Government. Many MCDAs have adopted individual data hosting and digital solutions which hamper the cohesiveness of digital platforms across Government. Some e-Services introduced have not been user-friendly, pointing to gaps in business process reengineering and the application of user-centric design. Lack of a secure and robust foundational integrated digital infrastructure enabling workflow and exchange of information across the public sector limits the scope of services that can be provided electronically to citizens and businesses.

Subcomponent 2.1: Digitizing Selected Government Services (US\$35 million from National IDA). This subcomponent will provide end-to-end digitization for selected key government services. Despite good progress in recent years regarding digitizing some government services, many of these services still require some level of offline processing, the reliability of the existing e-Service delivery channels and portals has been less than optimal, and the interfaces are now showing their age.

Subcomponent 2.2: Developing the Critical Enablers for e-Government (US\$45 million). This subcomponent will strengthen the technical, institutional, legal, and regulatory foundations that provide the enabling environment for internal efficiencies and collaboration across the government. It will support: (i) the design and implementation of a government-wide Enterprise Architecture and Interoperability Framework for deploying the cross-cutting platforms (i.e., "government shared services") that are fundamental for information exchange, workflows, and business continuity; and (ii) the design of four cross-cutting platforms ("critical enablers") that constitute the foundation for an e-Government that can facilitate the digitization of most government services.

Component 3: Digital Skills and Markets (US\$65 million, of which US\$50 million from National IDA, US\$15 million from Regional IDA). This component aims to equip young Kenyans with digital skills and strengthen their abilities to compete for job opportunities, and to enhance the enabling environment for e-commerce to support Kenya's role as a regional digital hub. This component will complement interventions to connect educational institutions under Component 1 and support wider access to digital skills development, including strengthening basic digital literacy through the formal education system, entry-level digital skills through the tertiary education system as well as advanced digital skills certification programs for professionals. The activities to develop digital skills will be paired with an assessment study and financing towards a proposed scheme to make digital devices more affordable for targeted groups.

The component will also finance complementary technical assistance, legal advisory and capacity building to enhance the enabling environment for e-commerce and cross-border digital



services so that Kenyan entrepreneurs can more easily access regional and global markets. All activities will be geared toward increasing the supply of employment-ready technology talent in the local market and would include support gender targets and targets for PWDs. By facilitating digital adoption through investing in digital skills, the project will support the vulnerable who would otherwise have been excluded from accessing digital services and operations. It will also create a resilient and digitally skilled citizenry who would be better prepared for the update of digital services. Related investments are expected to yield spillover benefits on private sector innovation.

Component 4: Project Management (US\$15 million of which US\$10 million from National IDA Regional and US\$5 million from Regional IDA): This component will support project implementation, coordination, and capacity building for the Project Implementation Unit (PIU) within ICTA. At a minimum this will include support for a dedicated project manager, procurement and financial management specialists, and environmental and social specialists. Other positions, for instance technical specialists, M&E, gender, communications, etc. may be added later. It will also provide support for office equipment, incremental operating costs, and audits. If necessary, this component will also fund technical assistance for M&E, such as a survey of ICT usage by households and individuals, to supplement the work of the CA and KNBS. Relevant MCDAs will also receive training on measures to be taken during emergencies such as on emergency response procedures at times of health or climate emergencies, to ensure continuity of operations and minimize disruptions. The PIU will also manage the regional activities under the project, as covered in Subcomponents R1.5, R2.3 and R3.4. Implementation arrangements are discussed in more detail below.

Component 5: Contingent Emergency Response Component (US\$0): A Contingent Emergency Response Component (CERC) is added to the project structure. This will have an initial zero value but may be financed during the project to allow for an agile response to an eligible crisis or emergency. Adding the component from the beginning, albeit with zero funding, provides for flexibility to respond to crises as they arise, and the Project Implementation Manual will be adapted to guide the utilization of this component including risk mitigation strategies. These could include, for instance, humanitarian crises which require the provision of emergency communications services to replace facilities that have been damaged or to facilitate emergency humanitarian payments using mobile money.



2 OBJECTIVES AND METHODOLOGY USED FOR PREPARATION OF RPF

2.1 Objectives of the Resettlement Policy Framework

This Resettlement Policy Framework (RPF) is a framework that clarifies resettlement principles, organizational arrangements, and design criteria to be applied to subprojects or project components to be prepared during project implementation. According to ESS 5, para 25, where the likely nature or magnitude of the land acquisition or restriction on land use related to a project with potential to cause physical and/or economic displacement is unknown during project preparation, the Borrower will develop a framework establishing general principles and procedures compatible with ESS 5.

Resettlement plans include measures to address physical and/or economic displacement, depending on the nature of the impacts expected from a project. projects may use alternative nomenclature, depending on the scope of the resettlement plan. Once the individual project components are defined, and the necessary information becomes available, a resettlement plan is prepared proportionate to potential risks and impacts.

To an extent possible, the project infrastructure (e.g., optic fibre cables) will be laid in reserves of existing public land or right of way coupled with the use of non-fiber technologies such as fixed wireless access hence avoiding land take, compensation, and resettlement. Environmental and Social Standard 5 applies to permanent or temporary physical and economic displacement resulting from project activities. Though highly unlikely, physical, and economic displacement may occur for structures and persons living or doing businesses on the public land or right of way. This RPF will guide the management of resettlement impacts and subsequent resettlement action plans where they are necessary.

The key principles on management of these impacts as guided by ESS 5 include:

- To avoid involuntary resettlement or when unavoidable, minimize involuntary resettlement by exploring project design alternatives.
- To avoid forced eviction.
- To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by: (a) providing timely compensation for loss of assets at replacement cost and (b) assisting displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards, in real terms to pre displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
- To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities, and security of tenure.
- To conceive and execute resettlement activities as sustainable development programs, providing sufficient investment resources to enable displaced persons to benefit directly from the project, as the nature of the project may warrant.



- To ensure that resettlement activities are planned and implemented with appropriate disclosure of information, meaningful consultation, and the informed participation of those affected.

The Resettlement Policy Framework (RPF) will guide implementation of land acquisition activities to facilitate ICTA civil works and ensure all negative displacement impacts are adequately addressed.

The project will be implemented in line with the World Bank Environmental and Social Framework and the RPF is prepared under the requirements of ESS5 that requires all World Bank funded projects to avoid involuntary displacement of people in project areas as much as possible. Where involuntary resettlement is unavoidable ESS5 requires it to be minimized and appropriate measures to mitigate adverse impacts on displaced persons (and on host communities receiving displaced persons) to be carefully planned and implemented.

The RFP states the principle and guide any resettlement action plans for avoidance of involuntary resettlement and management of the negative impacts where it is inevitable, this framework has thus been developed. A project RAP or site-specific RAPs will be prepared on confirmation of the project designs and locations which will inform the project land requirements. Specifically, the objectives of this Resettlement Policy Framework (RPF) are to provide:

- a) a brief description of the project and components for which land acquisition and resettlement are required.
- b) principles and objectives governing resettlement preparation and implementation.
- c) a description of the process for preparing and approving resettlement plans.
- d) estimated displacement impacts and estimated numbers and categories of displaced persons, to the extent feasible.
- e) eligibility criteria for compensation.
- f) a gap analysis of the borrower's laws and regulations and the Bank policy requirements and propose measures to bridge any identified gaps between them.
- g) methods of valuing affected assets.
- h) administrative structures and mandates in the delivery of compensation and other resettlement assistance, including, for projects involving private sector intermediaries, the responsibilities of the financial intermediary, the government, and the private developer.
- i) a description of the implementation process, linking resettlement implementation to civil works.
- j) a description of grievance redress mechanisms.
- k) a description of the arrangements for funding resettlement, including the preparation and review of cost estimates, the flow of funds, and contingency arrangements.
- l) a description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring; and
- m) arrangements for monitoring by the implementing agency and, if required, by third-party monitors



The RPF will provide principles, organizational arrangements, and funding mechanisms for any resettlement (if encountered), that may arise during implementation. Therefore, the RPF will guide preparation of Resettlement Action Plans (RAPs), as needed, for the projects.

2.2 Rationale for the Resettlement Policy Framework

The World Bank Environmental and Social Framework (ESF) has been adopted to manage environmental and Social Risks occasioned by the KDEAP. In line with the ESF, this Resettlement Policy Framework (RPF) has been prepared in compliance with World Bank ESS 5 on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement. A Framework document has been prepared under the rationale that although there is general knowledge about the types of sub-projects likely to be implemented by ICTA, their design specifications and features, specific locations and the type and zone of impacts cannot be determined at this stage of project preparation.

The RPF will therefore, be used to screen all project activities for their potential resettlement impact, propose and streamline all the necessary procedures to follow in mitigating and minimizing resettlement impacts including compensation. The Bank guidance indicates that involuntary resettlement is defined as referring to both the physical displacement (relocation or loss of shelters) and economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihoods) resulting from land acquisition undertaken specifically for a project. If unmitigated, such impacts often give rise to severe economic, social, and environmental risk. Among these are: production systems dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills maybe less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. This policy framework proposes measures to address and mitigate these risks.

2.2 Methodology of the Resettlement Policy Framework and Stakeholder Engagement/Consultation

2.2.1 Methodology

The RPF was prepared based on the following methodology a) review of project documents b) regulatory review c) review of the World Bank Environmental and Social Standards d) Visit to some potential project sites and counties; e) key stakeholder consultation.

2.2.2 Stakeholder Engagement

During the preparation process for the RPF, ICTA and the MICTA carried out stakeholders' consultations at national and devolved county levels from November 2022 to December 2022. The main aim of these consultations was to inform these stakeholders about the project, discuss the displacement impacts, soliciting their opinion, seek feedback on project risks and impacts and seek support for the project. These groups were from government entities, private entities,



target groups (hospitals, schools, universities and research institutes) and other target groups/communities/lower-level institutions to benefit from last mile broadband solution.

The key stakeholders consulted during the preparation of the RPF include:

a) Other interested parties this include other government agencies and agencies. Their concerns included:

- articulate the Kenya Kwanza priorities on digital connectivity.
- support in the project funds flow.
- contribute to the design of the project.
- primary beneficiaries of internet connection.
- support in land acquisition under the project.
- Project awareness creation.

b) County governments, wards, constituencies, and villages.

- Beneficiaries of the project
- Support in the project design process.
- Involved in land acquisition and resettlement of affected communities and persons.
- Supports the management of grievances.
- Supports community participation activities.
- Environmental and social risks including e-waste management.

c) Non-governmental organizations (local, regional, national)

- Ensure the environmental and social performance of the Project is protecting the environment and affected people and complies with international E&S standards.
- Universal access.

d) Business and workers' organizations

- Interest in procurement and supply chain, potential environmental and social impacts as well as community health and safety.
- Redress for grievances.
- Compensation for loss of business,

e) Local communities

- Consultation on areas where there will be impacts on land or land access involving community or public land.
- Access to project benefits.
- Resolution of grievances.



f) Press and media

- Inform residents in the project area and the wider public about the Project implementation and planned activities.

g) Environment and social risks management institutions

- Interest in management of environmental and social risks.
- Interest in land acquisition and resettlement.
- Interest in voluntary land donation processes.

h) Minority and marginalized groups

- Impact on land acquisition and resettlement.
- Interest in voluntary land donation processes.

Table 2: Details of Resettlement Policy Framework Process Consultation

Stakeholder	Mode of Engagement	Engagement Date	Venue
ICTA Team	Meeting	December 2 2022	Via MS Teams
ICTA/WBG	Meeting	December 7 2022	Via MS Teams
Various i.e. WBG, ICTA, Private Sector, NGOs/CSOs,	Workshop	December 13 2022	Sarova Stanley
Various i.e. WBG, ICTA, Counties	Workshop	December 13-14 2022	Sarova Stanley
E-Waste Initiative Kenya (EWIK)	KII & Observation	December 21 2022	Nyayo Market, Ngara

The stakeholder engagements sought to identify, engage, build relationship, share information and empower stakeholders as far as participation in KDEAP is concerned. Specifically, during the workshop the following were covered:

- The overview of the KDEAP including the project components
- Implementation of Kenya Digital Master Plan (2022-2032) and integration with County Integrated Development Plans (CIDPs); and
- Discussion on the land acquisition and resettlement risks and impacts under the project and the proposed mitigation measures.

2.3 Outcomes of Process Stakeholder Engagement

The key outcomes from the project's stakeholder's engagement process include:



Table 3 : Outcomes of Resettlement Policy Framework Stakeholder Engagement

Main theme raised by stakeholders	Key Stakeholder comment	Response to questions raised.
KDEAP sustainability	• What measures has the project designed to ensure sustainability of the Project? •	• KDEAP sustainability is assured through a greater focus on mobilizing private capital in existing markets, creating new markets in underserved areas, and optimizing long-term use of public infrastructure. •
Stakeholder engagement	• Need to change approach from information sharing to communication integration since it's the outreach to the community. •	• Its critical to ensure there is communication exchange to build a strong relationship with the community and other stakeholders. • Community sensitization and awareness to be done during all project phases. •
Negative impacts from repeated trenching	• The number of times fiber cables trenches are being dug is a lot: Why are we digging so many trenches? • The methodology for public works involves the use of locals to dig the trenches and some cases involve use of machinery. In some areas, locals demand digging jobs, and machines are used especially in areas with hard rocks. • It was agreed that there is need for standardization to avoid many trenches being dug by different agencies. Unification of ducts • Best practices of laying fiber globally • The ICT Authority has laid down standards on best practices, as well as International Telecommunication Union (ITU) standards. • Public and civil works 1.5m/0.3m uses machinery for areas where its rocky and gravel. • The blowing & pulling of the cable is based on ITU standards.	• All negative impacts will be mitigated. An Environmental and Social Impact Assessment will be prepared for each subproject. • Mitigation measures will be proposed. • Any impacts related to physical and economic displacement resulting from the trenching will be mitigated through the preparation of a resettlement action plan.

All stakeholder comments were noted and were considered in the assessment of the Project at all phases. Where necessary, responses were given by both the environment and social team and the ICTA present in the various meetings. A record of stakeholders consulted is presented in Annex 1.



3. PRINCIPLES AND OBJECTIVES GOVERNING RESETTLEMENT PREPARATION AND IMPLEMENTATION

3.1 Basic Principles of Resettlement

It is a generally accepted principle that infrastructure projects entailing land acquisition will most likely impose restrictions on land use can have adverse social and economic impacts on communities and persons. Project induced land acquisition or restrictions on land use may cause physical displacement (relocation, loss of residential land or loss of shelter), economic displacement (loss of land, assets, or access to assets, leading to loss of income sources or other means of livelihood) or both. These impacts are what is referred to as “Involuntary resettlement”. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in displacement.

These impacts that usually result from involuntary resettlement from development projects, may give rise to economic, social and environmental risks resulting in production systems being dismantled, people facing impoverishment when their productive assets or income sources are lost, people being relocated to environments where their productive skills may be less applicable and the competition of resources increases; community institutions and social networks being weakened; kin groups being dispersed; and cultural identity, traditional authority, and the potential for mutual help being diminished or lost. The applicability of ESS5 is established during the environmental and social assessment described in ESS1.

ESS5 refers to permanent or temporary physical and economic displacement resulting from the following types of land acquisition or restrictions on land use undertaken or imposed in connection with project implementation:

- i. land rights or land use rights acquired or restricted through expropriation or other compulsory procedures in accordance with national law.
- ii. land rights or land use rights acquired or restricted through negotiated settlements with property owners or those with legal rights to the land, if failure to reach settlement would have resulted in expropriation or other compulsory procedures.
- iii. restrictions on land use and access to natural resources that cause a community or groups within a community to lose access to resource usage where they have traditional or customary tenure, or recognizable usage rights. This may include situations where legally designated protected areas, forests, biodiversity areas or buffer zones are established in connection with the project.
- iv. relocation of people without formal, traditional, or recognizable usage rights, who are occupying or utilizing land prior to a project specific cut-off date.
- v. displacement of people as a result of project impacts that render their land unusable or inaccessible.
- vi. restriction on access to land or use of other resources including communal property and natural resources such as marine and aquatic resources, timber and non-timber forest products, fresh water, medicinal plants, hunting and gathering grounds and grazing and cropping areas.



- vii. land rights or claims to land or resources relinquished by individuals or communities without full payment of compensation and
- viii. land acquisition or land use restrictions occurring prior to the project, but which were undertaken or initiated in anticipation of, or in preparation for, the project.

This RPF is guided by World Bank ESS5 and the legal and institutional framework for Kenya on land acquisition and resettlement impacts on project-affected persons and affected assets. ICTA sets procedures and guidelines for compensation of project affected persons due to physical or economic displacement. It is important to note that both respective country laws and the World Bank's ESS 5 will be adhered to.

3.2 Objectives of The Resettlement Framework Under ESS 5

The requirements and objectives of ESS5 that underpin this policy and inform resettlement action planning that have been adopted are:

- a) To avoid involuntary resettlement or, when unavoidable, minimize involuntary resettlement by exploring project design alternatives.
 - To avoid forced eviction.
 - To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by:
 - providing timely compensation for loss of assets at replacement cost and
 - assisting displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher
- b) To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities, and security of tenure.
- c) To conceive and execute resettlement activities as sustainable development programs, providing sufficient investment resources to enable displaced persons to benefit directly from the project, as the nature of the project may warrant.
- d) To ensure that resettlement activities are planned and implemented with appropriate disclosure of information, meaningful consultation, and the informed participation of those affected.



4 PROCESSES FOR PREPARING AND APPROVING RESETTLEMENT PLANS

The proposed project will require a Resettlement plan since it will finance productive investments that may result in minimal temporary livelihood disruption. Since the final locations of these areas are not yet confirmed, the preparation and disclosure of this RPF by the World Bank and the Borrowers is conditionality for project effectiveness. However, during implementation of the project, in a process defined below, the identification of these areas will be made. This RPF provides a framework for resettlement associated with the project. Each subproject will need to go through a process to identify the level of resettlement required, and if so, the development of a plan for resettlement.

At this stage, the World Bank ESS 5 may call for the preparation of individual RAPs consistent with this RPF. To address the impacts under this policy, resettlement and compensation plans must include measures to ensure that impacted persons are:

- informed about their options and rights pertaining to the project, resettlement, and compensation.
- consulted on, offered choices among, and provided with technically and economically feasible resettlement and compensation alternatives.
- and provided prompt and effective compensation at full replacement value for losses of assets and access, attributable to the project.

According to the WB ESS 5, for all subprojects included in a project, the Bank requires that a satisfactory Resettlement Action Plan (RAP) that is consistent with the RPF be submitted to the Bank for approval prior to Bank financing. However, ESS 5 also suggests that: "For certain projects, subproject abbreviated RAPs maybe approved by the project implementing agency or a responsible government agency or financial intermediary without prior Bank review if that agency has demonstrated adequate institutional capacity to review resettlement plans and ensure their consistency with this policy. In all cases, implementation of the resettlement plans is subject to ex post review by the Bank. KDEAP will prepare RAPS to be reviewed and approved for disclosure by the World Bank.

4.1 The Resettlement Process

4.1.1 Screening for Involuntary Resettlement and Restrictions on Land Use

Once the details of the sub project activities are known, and where land acquisition or restrictions on land use will be necessary, the screening process (identification and analysis) of possible and alternative sites for sub-project activities implementation will commence. Screening for resettlement and restrictions on land use shall be part of the environmental and social screening.

During screening and all the other planning and preparatory activities, there will be adequate consultation and involvement of the local communities, relevant stakeholders and the affected



persons mapped under the sub-projects. Specifically, the affected persons will be informed about the intentions to use the earmarked sites for the KDEAP sub-projects.

The affected persons will be made aware of:

- Their options and rights pertaining to resettlement and restrictions on land use.
- Specific technically and economically feasible options and alternatives if required.
- Proposed dates for displacement or land repossession.
- Extent on the restrictions on land use.
- Effective compensation rates at full replacement costs for loss of assets and services.
- Proposed measures and costs to maintain or improve their living standards.
- Grievance procedure Screening checklist

The screening checklist form will be incorporated into the Project's Implementation Manual. The screening checklist will be completed by the KDEAP social specialist with the support of the relevant county and national government officers. The ESMF developed alongside this RPF will address environmental and social risks and impacts including the screening process.

4.1.2 Sub-Project Design

If the screening indicates that a subproject requires in its present layout the physical or economic resettlement, or restrictions on land use advice to consider feasible alternative sub-project designs to avoid or at least minimize physical or economic displacement, while balancing environmental, social and financial costs and benefits will be sought.

Once the decision has been made on which specific areas the sub-projects will be located for construction under the ICTA, PIU will meet the administrative and local leaders of those potentially affected areas to communicate to all those potentially affected persons in the chosen areas. ICTA will hire a resettlement consultant who will support this process. The cut-off date will be the commencement date of the socio-economic study and census on the chosen site to identify the potential PAPs on the individual, household, and vulnerable groups' level. The socio-economic study and the census constitute the first step in the preparation of the RAPs.

This RPF will culminate in the preparation of Plans as may be required in instances of acquisition of land outside the existing road reserves rights of ways and land already in the custody of Government Institutions. Where Resettlement is required, the following steps will be undertaken:

- 1) Step 1: consultation and participatory approaches, preliminary evaluation shall be carried out based on the objectives through a participatory approach. The consultations shall commence during the planning stages when the technical designs are being developed, and at the land selection/screening stage. The process therefore seeks the involvement of PAPs throughout the census for identifying eligible PAPs and throughout the RAP preparation process.



- 2) Step 2: Baseline and Socio-economic Survey: This survey will establish the socio-economic baseline information, identify the persons who will be displaced by the individual subprojects, and determine who will be eligible for compensation and assistance. The purpose of the socio-economic study is also to collect baseline data within the chosen/targeted sites/areas/homesteads/villages thereby enabling the social assessment of potentially affected populations/communities/homesteads/villages. This study will provide comprehensive base line data on potentially affected people at individual and household levels, vulnerable groups (women, children, the elderly, female headed households, affected internally displaced people, affected internally displaced households, etc.) and to discourage inflow of people ineligible for assistance.

The study will focus on the identification of stakeholders (demographic data), the public participation process, identification of affected people (including owners and users of land) and impact on their property and their production systems, the institutional analysis including local social capital or inter-connectedness that supports livelihoods and how these will be affected by the respective sub-projects. The system for monitoring and evaluation of the RAP is also captured. Detailed calculation of individual and household economies and identification of all impacts will be undertaken as part of the socio-economic study and be the determinant in the potential compensation process.

- 3) Step 3: Census of affected entities. In this step every owner of an asset to be affected by the project is enumerated, property assessed, and their socio-economic status documented. At the beginning of the census the cut-off date is established and communicated.

The census of all the PAPs is carried out to ascertain their details and assets that will be affected. The aim is to ensure that the identity of each of them and an inventory of their affected assets are documented. The census will consolidate information that

- (i) provides initial information on the scale of resettlement to be undertaken;
- (ii) gives an indication of further socio-economic research/asset survey needed to quantify losses to be compensated and, if required, to design appropriate development interventions; and establishes indicators that can be measured at a later date during monitoring and evaluation.

Baseline data for sub-project RAPs will include number of persons; number, type, and area of the houses to be affected; number, category and area of residential plots and agricultural land and crops to be affected; and productive assets to be affected as a percentage of total productive assets. The census will be combined with an inventory of assets which takes stock of all assets, their size, status, value, ownership and use. Following this exercise, the ownership of assets shall be verified using records such as title deeds, allotment letters, and so on where possible but also through consultations with community members and local administration. After this survey, valuation of assets shall be undertaken and detailed compensation for each project affected person or entity worked out.



Once the census is completed and compiled together with the valuation figures of affected assets for every PAP, this will be validated in a local workshop bringing together representatives of affected persons, VMGs, women, youth, religious leaders and local administration including chiefs and their assistants. The aim of this validation process is to ensure that the census data are owned locally and thus that the RAP report will be implemented smoothly when the time comes. RAP Report Review and Approval Processes Upon completion of the socio-economic study and the census, site specific resettlement action plans (RAPs) will be prepared.

- 4) Step 4: Defining Entitlements and Preparing an Entitlement Matrix. The basis of what is to be paid as compensation will be determined by identifying the most appropriate entitlement for each loss. Based on the entitlements, options for resettlement would be selected in accordance with Bank Policy ESS 5 and the merits of the option. The RAP planner will prepare an entitlement matrix with respect to both temporary and permanent displacement. This matrix will set the measure for the payment for all losses or impacts. It will also list the type of loss, criteria for eligibility and define entitlements.
- 5) Step 5: Assessing project impacts and minimizing displacement impacts: This will entail adjustments to the sub-project designs to minimize displacement in line with stakeholder opinions to the extent possible. This will especially be the case where sensitive heritage or sacred assets are in the way of the a sub-project.
- 6) Step 6: Documentation and verification of land and other impacted assets. The government authorities at both national and local levels; community elders and leaders; representatives from ICTA will arrange meetings with PAPs to discuss the compensation, valuation and disclosure process. For each individual or household affected by the sub-project, the RAP preparation team will complete a Compensation Report containing necessary personal information on the PAPs and their household members; their total land holdings; inventory of assets affected; and demographic and socio-economic baseline studies for monitoring of impacts. This information will be documented in a Report, and ideally should be “witnessed” by an independent or locally acceptable body. The Reports will be regularly updated and monitored.
- 7) Step 7: Individual Compensation and valuation. All types of compensation will be clearly explained to the individuals and households involved. These refer especially to the basis for valuing the land and other assets. Once such valuation is established, ICTA will produce a Contract or Agreement that lists all property and assets being acquired by the sub- project and the types of compensation selected.

The RPF presents the entitlements that are eligible for compensation. These options include in-kind (e.g. replacement housing) and cash compensation enumerated through an agreed compensation matrix. All compensation should occur in the presence of the affected persons and the community local leaders. Compensation agreement forms must be signed by the affected persons, ICTA and an appointed community local leader.



- 8) Step 8: Community payments, PAPs Compensation and Livelihood Restoration. Community payments will apply where the proposed project affected asset belongs to a community. Examples of community compensation expansion of grazing grounds or school land. PAPs will be compensated in line with the asset registers developed in line with the entitlement matrix. Livelihood restoration brings the economic statuses of the affected persons and communities to pre-project or better conditions.
- 9) Step 9: Grievance mechanism. The sub-project RAP team will establish community grievance mechanism. This may be set up through Local Authorities, including a Resettlement or Land Committee and through community leaders. All PAPs will be informed about how to register grievances or complaints, including specific concerns about compensation and relocation. The PAPs should also be informed about the dispute resolution process, specifically about how the disputes will be resolved in an impartial and timely manner.

The RAP Team will produce a Report containing a summary of all grievances. If needed, the dispute resolution process but traditional institutions can be an effective first step in both receiving and resolving grievances.

- 10) Step 10: Disclosure and notification. This process is continuous throughout the project to foster confidence in the project. The subject of disclosure will include cut-off date, economic and displacement impacts, eligibility criteria, the RAP process and grievance redress mechanisms. In special cases where there are no clearly identifiable owners or users of the land or asset, the RAP team must notify the respective local authorities and leaders.
- 11) Step 11: Monitoring and Evaluation. This will be continuous through the RAP process. The indicators provided under the chapter on monitoring and evaluation in this RPF will form a guide for this process.

4.1.3 Project Affected Entities

These are entities whose assets may be lost, or access to natural and/or economic resources as a result of activities related to sub-project(s). Project affected persons (PAPs) irrespective of their status (whether they have formal title, legal rights, non-legal right) are eligible for some kind of assistance if they occupied a given land parcel before the cut-off date. According to World Bank ESS 5, owners of businesses or persons employed are also eligible for compensation. The likely displaced persons can be categorized into four groups, namely.

- i. Affected Individuals: An individual who suffers loss of assets or investments, land and property and/or access to natural and/or economic resources as a result of the sub-project activities and to whom compensation is due. For example, an affected individual is a person who farms a land, or who has built a structure on land that is now required by a sub project for purposes other than farming or residence by the initial individuals.



- ii. **Affected Household:** A household is affected if one or more of its members is affected by sub-project activities, either by loss of property, land, loss of access, livelihoods or otherwise affected in any way by project activities. This includes :
 - any members in the households, men, women, children, dependent relatives and friends, tenants.
 - vulnerable individuals who may be too old or ill to farm along with the others.
 - relatives who depend on one another for their daily existence, and
 - other vulnerable people who cannot participate for physical or cultural reasons in production, consumption, or co-residence but are part of the impacted household
- iii. **Community:** A community is affected if project activities affect their socio-economic and/or social-cultural relationships or cohesion.
- iv. **Vulnerable Households** Vulnerable people are people who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status, may be more adversely affected by resettlement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. For this project, this category will include orphans, the infirm or ill, children, elderly people, women and people with disabilities.
- v. **Institutions** This category comprises as schools, health centers and community resource centers. Compensation in this case is given to institution as a single entity rather than individual.
- vi. **Utility companies** whose infrastructures may be damaged when laying optic cables:
 - Telecommunication companies
 - Water/sewerage companies
 - Power supply companies
 - Road's authorities- municipalities etc.

4.1.4 Contents of the Resettlement Action Plans

ESS 5 Annex 1 provides the guidance of the contents of a resettlement plan which will be adopted by the KDEAP. The scope of requirements and level of detail of the resettlement plan vary with the magnitude and complexity of resettlement. The plan will be based on up-to-date and reliable information about (a) the proposed project and its potential impacts on the displaced persons and other adversely affected groups, (b) appropriate and feasible mitigation measures, and (c) the legal and institutional arrangements required for effective implementation of resettlement measures.



5 LAND ACQUISITION, RESTRICTIONS ON LAND USE AND RESETTLEMENT IMPACTS

The acquisition of land for the KDEAP project facilities will have different impacts (both positively and negatively) depending on the location, the existing developments, land tenure systems and the socioeconomic activities in the area. Since the fiber optic cables will be buried in ground, no permanent impact is anticipated even when trenching is done on community assets (playgrounds, school or roadside markets) but only temporary disruptions. Road users and roadside vendors are another category of entities that would be affected under this category, particularly during trenching to lay fiber optic cables might result in minimal income loss. Potential resettlement impacts are discussed in table below.

Table 4 : Likely Adverse Resettlement Impacts and Management Measures

No.	Project Activity	Nature of Impact	Management Measure
1	Installation of fibre optic cables	trenching 1.5m below the ground and construction of a duct where the fiber optic cable is placed. limited linear impact, along existing roads right of way and public land. restrictions on land use on the areas where fiber optic cables has been laid. Disruption of agricultural livelihoods on the road reserves and other affected public land	Utilize road reserve and obtain Right of Way from appropriate Authorities like Kenya National Highways Authority, Kenya Urban Roads Authority, Kenya Rural Roads Authority, Telkom Kenya, Kenya Electricity Transmission Company (KETRACO), Kenya Power and Lighting Company (KPLC) Assessment of impact through the preparation of a Resettlement Action Plan
2	Installation of fibre optic cable along already existing Kenya Power Electricity transmission lines.	No resettlement impacts	Stakeholders' engagement process focused on interested parties.
3	Installation of fiber transmission sites	Plot for infrastructure	Utilize existing Government infrastructure/ facilities
4	Undertake trenching through roadside markets and other businesses are located on the road	Displacement of roadside traders/market	Assessment of impact through the preparation of a Resettlement Action



	reserves/right of way.	vendors Temporary financial loss from disruption of trade activities.	Plan
--	------------------------	--	------



6 ELIGIBILITY CRITERIA AND CUT-OFF DATES

6.1 Criteria for Determining Eligibility for Compensation

In compliance with ESS 5 of the World Bank, the criteria for determining eligibility for compensation, resettlement and rehabilitation assistance measures for persons to be displaced, will be based on the following:

- a) Persons that have formal legal rights to land, including customary and traditional; and religious rights recognized under the laws of Kenya. This class of people includes those holding leasehold land, freehold land and land held within the family or passed on through generations.
- b) Persons who do not have formal legal rights to land or assets but have a claim to land or assets that is recognized under national law.
- c) Persons who have no recognizable legal right or claim to the land they are occupying, using or getting their livelihood from. This class of people includes encroachers, illegal occupants/squatters and/ (ownerships under dispute etc.).

Affected persons classified under paragraph (a) and (b) will be provided compensation, resettlement, and rehabilitation assistance for the land, building or fixed assets on the land and buildings taken by the project. The compensation will be in accordance with the provisions of this framework and if affected persons occupied the project area prior to the date of commencement of the Census. Persons covered under sub-section (c) above are to be provided with resettlement assistance in lieu of compensation. In addition, they must be given the necessary relocation assistance in conformity with the provisions of this policy framework provided the land was occupied prior to the established cut-off date. All persons in the three sub-sections above are to be provided with compensation for loss of assets other than land. Consequently, this policy advocates for assistance to all affected persons, including illegal occupants/squatters and encroachers, that is, irrespective of whether they have formal titles, legal rights or not.

Therefore, it is clear that all affected persons irrespective of their status or whether they have formal titles, legal rights or not, are eligible for assistance if they occupied the land before the entitlement cut-off date. The entitlement cut-off date refers to the time when the census of persons and their property in the project area begins, i.e. the first day of the census. Thereafter, namely after the cut-off date no new cases of affected people will be considered. Persons who encroach the area after the cut-off date are not eligible for compensation or any form of resettlement assistance. A general template of entitlement matrix is provided in Annex 3 for guidance in the development of RAPs.

6.2 Method to Determine Cut-Off Dates

Cut-off dates are essential in the process of drawing up lists to ensure that ineligible persons do not take the opportunity to claim eligibility. The establishment of a cut-off date is required to



prevent opportunistic invasions/rush migration into the earmarked land, thereby posing costly risks arising out of speculative tendencies to the subproject. The cut-off date will be the first date of the census. It is a date, after which people who are not included in the list of PAPs as defined by the census will not be considered eligible for compensation. The census will be carried out to collect socio-economic data on the affected households. The specific cutoff date will be included in the RAP and clearly communicated to the affected communities through the available media platforms including social, print and electronic. After the cut-off date, no new developments in or entrants to the project area claiming to be cases of affected people will be considered for compensation.

This process is explained during the census and valuation exercise to all stakeholders in the area, including project-affected people, relevant stakeholders in which consultations are undertaken. Failure in setting and clearly communicating this date often leads to speculative development along the project route in an effort to target compensation. This affects project schedule and unduly increases resettlement cost. Communicating and enforcing the cut-off date will be the role of ICTA.

Continued information on the cutoff-date will be communicated as part of the community engagement on the eligibility to avoid speculative encroachment on project areas. Measures for alerting absent affected people/households on eligibility for compensation will include the following: reaching project-affected people by telephone; putting up official notices on project counties, sub counties, community notice boards and affected houses; and informing other affected households at community meetings so that they may pass on the information to the absent affected persons.



7 LEGAL AND INSTITUTIONAL FRAMEWORKS

7.1 Legal Framework for Expropriation and Compensation

This chapter briefly reviews the legal and regulatory framework for resettlement in Kenya and compares that with World Bank Environmental and Social Framework (ESS 5) on Land Acquisition, Restriction on Land Use and Involuntary Resettlement and other related environment and social standards. The emerging gaps between the two regimes is identified and some efforts at bridging the gaps discussed.

7.2 The Constitution of Kenya 2010

The Constitution of Kenya 2010 has a comprehensive Bill of Rights at Chapter Four which among others guarantees the right to private property in land. The constitution also has a well elaborated Chapter Five on Land and Environment. These two chapters provide constitutional basis for land ownership, expropriation and protection of rights to land. According to Institute for Human Rights and Business¹, Chapter V. of the Constitution provides the principles on land ownership and management. All land in Kenya belongs to the people of Kenya collectively as a nation, as communities or as individuals. Land is further classified as public, private or community. The classification or tenure system is important as it determines the terms and conditions under which land rights are acquired, retained, used or transferred.

The Constitution of Kenya provides the framework for all legislation on Land and land acquisition in Kenya, including the Land Act 2012 and the Community Land Act, 2016. Sixty seven percent (67%) of the land in Northern Kenya falls under community land that is governed by the Community Land Act, 2016, but in between there are enclaves of private land especially in urban areas which are governed through the Land Act 2012.

The Constitution of Kenya provides for public participation in Article 35 on Access to Information held by the state or by another person. Article 10 (2a) speaks to the issue of public participation in particular in the context of accountability and democracy in governance. Also Article 174(c) describes devolution structures as meant to - “enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them.” Therefore, the preparation and implementation of any project is required to entail engagement and participation of affected and interested people or stakeholders.

The Commission on Administrative Justice (CAJ) Act No. 23 of 2011 establishes the CAJ to facilitate investigation of complaints about administrative bodies and generally inquire into the behaviour of those bodies. The CAJ fits into project GRM in the sense that in the event that grievances are not resolved by the project GRM, then the stakeholders have one more non-judicial body to complain to before getting into the judicial system. Moreover, the CAJ has offices in the counties and is thus accessible to the stakeholders in the KDEAP. The RAP reports will provide the place of CAJ in the GRM and related processes.



The Constitution of Kenya at Article 260 defines a marginalized groups thus: “a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4)”. These grounds interlia include race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, dress, culture or language. Therefore article 56 of the constitution requires affirmative action programs to ensure that minorities and marginalized groups have reasonable access to services and infrastructure and that they develop and participate in affairs that affect them.

Preparation of specific RAP reports will thus take these provisions into consideration and provide avenues for the said groups to access services and infrastructure as appropriate. Article 204(2) states that the national government shall use the equalization fund only to provide basic services including roads, water, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

Article 204(4) adds that the Commission on Revenue Allocation shall be consulted, and its recommendations considered before parliament passes any bill appropriating money out of the Equalization Fund.

7.3 Overview of National Legislative and Constitutional Provisions on Acquisition, Restrictions on Land Use and Resettlement

Absolute or complete ownership of land is vested in the state. Under the Land Act No. 6 of 2012, the Commissioner of Lands, on behalf of the Republic of Kenya grants leases of town plots for any term not exceeding ninety-nine (99) years and of agricultural land for 999 years. The grantee becomes owner and subject to the terms and conditions of the lease he possesses the bundle of rights of ownership. The 999-year leases can be converted into freehold and the 99 years to 999. On conversion or expiry of lease the new grant may be issued under The Land Registration Act No. 3 of 2012. All un-alienated land other than community land and all reversion of government leases are vested in the government. Other land, whether held on freehold or leasehold, is vested in grantees as owners have the rights over them.

The power of the state to qualify (extinguish) property rights in the public interest is embodied in Section 75 of the Kenyan Constitution. The section however makes the exercise of that power subject to due process of law. Section 117 of the Constitution further provides that an Act of Parliament may empower a county government to set apart trust land for:

- a) The use and occupation of any public body or authority for public purposes; or
- b) Prospecting or mining purposes; or
- c) The use and occupation of any person or persons for a purpose that is likely to benefit the residents of the area.

Section 117 part 4 stipulates that the setting apart is void unless the law under which it is made makes provision for the prompt payment of full compensation.



Expropriation of Land for Development in Kenya

Expropriation in this context refers to the taking away of private land and landed property for public purpose by the government with or without the owners' consent subject to laws of eminent domain, which stipulates prompt and adequate compensation among other things. In Kenya "Compulsory acquisition" for all registered private lands are the terms commonly used. The detailed procedures for land acquisition are elaborated under the Land Act No. 3 of 2012. The Land Registration Act No.3 of 2012 and the National Land Commission Act No. 5 of 2012 and the Community Land Act, 2016.

The Land Registration Act No. 3 of 2012

Section 16. (1) The office or authority responsible for the survey of land may rectify the line or position of any boundary shown on the cadastral map based on an approved subdivision plan, and such correction shall not be affected except on the instructions of the Registrar, in writing, in the prescribed form, and in accordance with any law relating to subdivision of land that is for the time being in force. Section 21. (1) Any person who defaces, removes, injures or otherwise impairs a boundary feature or any part of it unless authorized to do so by the Registrar commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand shillings or to both. Section 26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; (b) where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme. (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original. Section 31. (1) If a certificate of title or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the certificate of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.

The Land Act No.6 of 2012

The act provides for compulsory acquisition of interests in Land. Section 110 (1) states that Land may be acquired compulsorily if the Commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for fulfilment of the stated public purpose. (2) If, after land has been compulsorily acquired the public purpose or interest justifying the compulsory acquisition fails or ceases, the Commission may offer the original owners or their successors in title pre-emptive rights to re-acquire the land, upon restitution to the



acquiring authority, the full amount paid as compensation. (3) If any plant or machinery is attached or permanently fastened to the land, the person interested in that plant or machinery may serve on the Commission a notice in writing that such person desires to sever and remove the plant or machinery, after receiving the notice of intention to acquire the land under section 107(5), and not later than fifteen days before the inquiry appointed under section 112 (1). Section 111 states that just compensation should be paid promptly and in full to all persons whose interest in the Land, that are to be compulsorily acquired, have been determined and the commission shall make rules to regulate assessment of just competition.

The National Land Commission Act No. 5 of 2012

The Act provided for the establishment of National Land Commission whose functions include: (a) to manage public land on behalf of the national and county governments; (b) to recommend a national land policy to the national government; (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya; (d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities; (e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress; (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts; (g) to assess tax on land and premiums on immovable property in any area designated by law; and (h) to monitor and have oversight responsibilities over land use planning throughout the country. (2) In addition to the functions set out in subsection (1), the Commission shall, in accordance with Article 67(3) of the Constitution— (a) on behalf of, and with the consent of the national and county governments, alienate public land; (b) monitor the registration of all rights and interests in land; (c) ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations; (d) develop and maintain an effective land information management system at national and county levels; (e) manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and (f) develop and encourage alternative dispute resolution mechanisms in land dispute handling and management. (3) Despite the provisions of this section, the Commission shall ensure that all unregistered land is registered within ten years from the commencement of this Act. (4) parliament may, after taking into consideration the progress of registration, extend the period set by the Commission under subsection (3). The National Land Commission guidelines requires that the acquiring agencies prepare resettlement action plans in accordance to Kenyan Law and international good practice.

The Community Land Act, 2016

This Act is most relevant to the KDEAP because most of the land in Northern Kenya where the project is located is community land. However, there are a minority of residents with private land especially in urban areas and established settlements. The Community Land Act applies as follows:

PART II-RECOGNITION, PROTECTION AND REGISTRATION OF COMMUNITY LAND RIGHTS



4. (1) Community land in Kenya shall vest in the Community.
- (3) Customary land rights, including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through allocation, registration or transfer.
- (4) Subject to Article 40 (3) of the Constitution and the Land Act, no interest in, or right over community land may be compulsorily acquired by the State except in accordance with the law, for a public purpose, and upon prompt payment of just compensation to the person or persons, in full or by negotiated settlement.
6. (1) County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.
- (2) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.
- (3) Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition.
- (4) Any such monies shall be deposited in a special interest earning account by the county government.

The Sub-project RAP preparation processes KDEAP should take cognizance of the foregoing legislative requirements and work closely with respective counties to determine compensation procedures and document them. Nonetheless, to the extent possible compensation should go to communities that have specific interest in acquired land unless they negotiate for in-kind compensation to their community without duress from any quarters.

Requirement of ESS 5 on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

ESS 5 requires adequate compensation be paid to all project affected persons, whether physically or economically, regardless of the number of people affected, the severity of impact and the legality of land holding. It further requires particular attention to be given to the needs of vulnerable groups especially those below the poverty line, the landless, the elderly, women and children, indigenous groups, ethnic minorities, orphans, and other disadvantaged persons.

ESS 5 requires that a resettlement action plan shall be prepared and cleared by the Bank prior to implementing resettlement activities. It is also required that provision of compensation and other assistance to Project Affected Persons, and the restoration of livelihoods when these are affected appreciably, shall be done prior to the displacement of people. In particular, the policy requires that possession of land for project activities may take place only after compensation has been paid. Resettlement sites, new homes and related infrastructure, public services and moving allowances must be provided to the affected persons in accordance with the provisions of the RAP. Where there are gaps between ESS 5, and Kenyan Laws, those of the Bank shall take precedence. Refer to Table 1 for a more detailed description of the relevant legislation.



Table 5 : Comparison of the Kenya Legal Framework with the ESS 5

	Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the KEAP	Identified Gaps
1	National Land Use Policy, 2017	The National Land Use Policy is important in addressing issues of optimal utilization of land and land related resources by providing principles and guidelines for proper management of land resources to promote public good and general welfare; land use planning to enhance sustainable development; anchoring land development initiatives; mitigating problems associated with poor land use; and promoting environmental conservation and preservation; among others. The Policy outlines the Government's thematic commitments including provision of a clear legal framework within the physical planning law for effective coordination and enforcement of development control; Incorporate multi stakeholder participation in afforestation programmes; The policy recognizes the need to address challenges related to climate and obligates the government to, among others: (i) identify and map climate disaster prone areas; (ii) promote the use of NEMA Guidelines on Hazardous and Disaster Management; (iii) Strengthen capacity of institutions involved in climate change trends analysis and mitigation; (iv) promote land use practices that increase climate resiliency and reduce effects on climate change; and, (ix)	The Policy aligns well with the ESF requirements for environmental and social sustainability and climate change adaptation. The KDEAP will enhance social inclusion through inclusive service provision for all. The project will ensure that government services are accessible to all including the population living in marginalized areas of Kenya.	The World Bank ESF requires inclusive development. The project will be guided by the Environment and Social Standards and ESF.



Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the KEAP	Identified Gaps
	develop disaster awareness programs that sensitize the communities on best land use practices that incorporate disaster mitigation and incorporate climate change, adaptation and preparedness.		
Land Act, 2012	The Act gives effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land-based resources, and for connected purposes. The Act applies to all land declared as (a) public land under Article 62 of the Constitution; (b) private land under Article 64 of the Constitution; and (c) community land under Article 63 of the Constitution and any other written law relating to community land. Section 148 of the act provides for Compensation in respect of public right of way, including the wayleave land and anything on the land including trees and crops, and obligates the applicant to promptly comply with the payment for the wayleave acquisition. It also mandates a person dissatisfied with compensation amounts, process, or timeframe to seek the intervention of a court of law. In the following subsections, the act states that: 148(1) Subject to the provisions of this section, compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a	The Land Act is aligned to the ESS5 requirements for compensation for land, trees and crops, but no compensation for encroachers of public land is envisaged. It is anticipated that the KDEAP project will result to physical and economic displacement for businesses or persons settlement on the road reserve/ROW.	The Land Act and other legal frameworks related to land does not envisage compensation of encroachers on public land or right of way, including wayleave trace encroachers. Instead, the law requires encroachers to only be given notice to vacate, contrary to ESS 5 which requires that economic and social impacts caused by land acquisition or loss of access to natural resources, including those affecting encroachers and people without full legal rights to resources they use or occupy are identified and addressed. Also, the Land Act and other legal frameworks on land matters do not explicitly outline provisions for livelihoods restoration. Instead, compensation is focused on land/assets replacement and relocation. Timely cash or in-kind compensation will be provided to all the project affected persons.



Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the KEAP	Identified Gaps
	wayleave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified valuer; 148(3) damage caused as a result of the creation of a wayleave shall include any preliminary work undertaken in connection with surveying or determining the route of that wayleave, and whether the trees, crops or buildings so damaged were included in the route of the wayleave as delineated in the order of the Cabinet Secretary; 148(4) the duty to pay compensation payable under this section shall lie with the State Department, county government, public authority or corporate body that applied for the public right of way and that duty shall be complied with promptly; 148(5) If the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken to pay compensation, to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation; 148(6) mandates the Commission to make Regulations		



Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the KEAP	Identified Gaps
	prescribing the criteria to be applied in the payment of compensation under this section and to give effect to this section. In 2017, the National land Commission made the regulations as demanded by the Act. Section 152(4) on rights of entry provides that <i>“If any person authorized under this section causes any damage to land or anything on the land during an entry and inspection, the Commission, shall forthwith appoint a person to assess the damage and pay promptly compensation based on that assessment to the person whose land or thing on the land have been damage”</i>		
Community Land Act, 2016	The Act gives effect to Article 63 (5) of the Constitution; to provide for the recognition, protection, and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes. Community land maybe held as (a) communal land; (b) family or clan land; (c) reserve land; or (d) in any other category of land recognized under this Act or other written law. The Act provides guidance for the ownership and tenure system; the protection of community land rights; the role of county governments; the procedure for registration of communities, recognition, and adjudication of community land; registration of community land; functions and powers of the	The provisions of this Act shall be considered together with the provisions of the Land Act 2012 (as amended in 2019) in the event that some of the proposed Program’s activities requiring land will be implemented in the areas of Kenya in which this Act applies	The Community Land act only permits transactions over community land by registered community members. In spite of the provisions of the Act, community land in the ASAL counties of Kenya remain unregistered, making it difficult to acquire and compensate for land in those counties In-kind compensation will be encouraged in areas where community land is not yet registered.



Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the KEAP	Identified Gaps
	community land management committee; and use and development planning of community land. The Act also provides guidance on transaction over community land and how unregistered community land may be acquired, which is mainly through either compulsory acquisition or through conversion. The Act mandates county governments to hold community land in trust for the concerned communities, until such a time that the community has been registered. It however prohibits the county government from transacting on, or otherwise disposing of community land. The Act further provides for compensation of compulsorily acquired community land to be deposited in an interest-bearing account held by the county government until such a time that the community has been registered, after which the compensation amount, together with interest earned, is transferred to the community account.		
The Land Laws (amendment) Act, 2016	The Act applies the effect to Articles 68(c)(i) and 67(2)(e) of the Constitution, to provide for procedures on evictions from land, and for connected purposes. The Act provides amendments to the Land Registration Act, the National Land Commission Act, and the Land Act, 2012.	KDEAP will be implemented on the Right of Way (ROW). Includes procedures during eviction include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly and persons with disabilities.	The ESS 5 conditions for forced evictions will apply for the project. ESS 5 discourages forced evictions under the project.



Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the KEAP	Identified Gaps
The National Land Commission Act, 2012	The Act makes provisions to the functions and powers of the National Land Commission, qualifications, and procedures for appointments to the Commission; to give effect to the objects and principles of devolved government in land management and administration and for connected purposes. The Act provides: (a) for the management and administration of land in accordance with the principles of land policy set out in Article 60 of the Constitution and the national land policy; (b) for the operations, powers, responsibilities and additional functions of the Commission pursuant to Article 67(3) of the Constitution; (c) a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission pursuant to Article 250(2) and (12)(a) of the Constitution; and (d) for a linkage between the Commission, county governments and other institutions dealing with land and land related resources.	The National Land Commission is a key agency as it undertakes public participation and sensitization, inspects land and collects related data, conducts field inspections for valuation purposes, conducts hearing inquiries, and is involved in land allocation. The commission shall be engaged on land related matters in the Project.	ICTA Authority will apply both ESS 5 provisions and NLC Act in any process on land acquisition. ICTA will be responsible for any livelihood restoration measures under the project.
Land Registration Act, 2012	The Act gives provisions to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes. The Act applies to: a) registration of interests in all public land as declared by Article 62 of the Constitution; (b) registration of interests in all private land as	Although there will be no land acquisition this Act shall be considered on land registration related matters.	Both ESS 5 and the Land Registration Act will apply.



Policy/ Legislations /Guidelines	Provisions as Written	Relevance to the KEAP	Identified Gaps
	declared by Article 64 of the Constitution; and (c) registration and recording of community interests in land.		
Environment and Land Court Act, 2011	The Act gives effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes. The principal objective of the Act is to enable the Court to facilitate the just, expeditious, proportionate, and accessible resolution of disputes.	The Environment and Land Court, in applicable cases, shall be engaged in disputes relating to the environment, use, displacement, and occupation.	All matters/issues/grievance if not resolved at project level will be eligible to be escalated to the Environment and Land Court.



7.4 Institutional Framework under the Project

Table below provides a summary of the relevant functions of institutions that have mandates for land use and involuntary resettlement.

Table 6 : Institutional Mandates on Land Use and Land Acquisition

State Institutions	Functions
Ministry of Lands and Physical Planning	Formulation of land policy; implementation of systems for land transactions and registration; land survey and mapping; land adjudication; settlement matters; and land and property valuation services. (Mandates conferred by <u>Executive Order No. 1 of 2020</u> (Revised) on Organization of the Government of the Republic of Kenya [page 58]; and itemized on the ministry's/department's <u>website</u>)
County Governments Department responsible for matters relating to Land	Holding public land in trust for citizens; holding unregistered community land in trust for communities; implementation of laws and policies relating to land in so far as they touch on public land and unregistered community land. (Functions conferred by [Chapter 11, Part 3]; Art. 183, 186 and 187; Fourth Schedule, Part 2 [particularly <i>Item 8</i>] of the <u>Constitution of Kenya, 2010</u>; Sec. 5 of <u>County Governments Act, 2012</u> [No 17 of 2012])
National Land Commission (NLC)	Evaluation and determination of cases of compulsory acquisition of land; Oversight on matters of land use and land planning; advising the national government on land policy; advising the national government on land registration matters; conducting research on land related matters; and investigating complaints into present and past historical injustices. (Functions conferred by Art. 67(2) and Art. 252 of the <u>Constitution of Kenya, 2010</u>; Part II (particularly, Sec. 5) of <u>National Land Commission Act, 2012</u> [No 5 of 2012]; the mandates and functions are itemized on The Commission's <u>website</u>)
Environment and Land Court	Hearing and deciding land related matters. (Established, Composition, powers & functions by Art. 162(2)(b) of the <u>Constitution of Kenya, 2010</u>; as read with the <u>Environment and Land Court Act, 2011</u> [No 19 of 2011]; especially, Part II, on the court's establishment & constitution and Part III, (Sec. 13), on the court's jurisdiction. Also, on the court's jurisdiction see Sec. 3 and 130 of the <u>EMCA, 1999</u>, [No 8 of 1999])
National Environment Tribunal	Hearing appeals from decisions of NEMA. (Tribunals constitutionally-allowed by Art. 162(4) and 169(1)(d) of the <u>Constitution of Kenya, 2010</u>; as read with Part XII of the <u>EMCA 1999</u>, [No 8 of 1999])
Land Acquisition Tribunal	Hearing appeals from the NLC on cases of compulsory acquisition. (Tribunals constitutionally-allowed by Art. 162(4) and 169(1)(d) of the <u>Constitution of Kenya, 2010</u>; as read with Part VIIIA (i.e. Sections 133A – 133D) of the <u>Land Act, 2012</u> [No 6 of 2012])



State Institutions	Functions
	2012] (on the Land Acquisition Tribunal) that has provision on establishment, composition, powers and functions)
Ministry of Information Communication Technology and Digital Economy (MICT&DE)	Overall responsible for supervision of activities related to land acquisition and resettlement. Providing budgets to ICTA for compensation of project affected persons. Disclosure of resettlement action plans and related documentation. Continuous audits of the process of implementation of resettlement action plans. Supporting resolution of grievances related to land acquisition and resettlement activities.
ICTA Authority	Hiring a qualified social specialist for the project. Hiring qualified resettlement action planning firm. Review and clearance of resettlement action plans. Implementation of resettlement action plan. Liaison with all other government institutions and agencies on land acquisition and resettlement matters and issues. Management of the project grievance redress mechanism that will address all issues, concerns and grievances related to resettlement planning. Overall project communication and stakeholder engagement related to land acquisition and resettlement planning.



8 METHODS OF VALUING AFFECTED ASSETS

8.1 Types of Compensation

Compensation for all land use and assets in kind or cash will be required for the following:

- Land that is permanently or temporarily owned
- Loss of access to land and/or land-based resources.
- residential buildings, structures and fixtures including those for business.
- cultivated crops (both cash and food crops) and trees; and
- loss of livelihoods including businesses
- loss of employment

Although the type of compensation will be the individual PAP's choice, compensation in kind is preferred as cash payments raises issues regarding inflation and security. In addition, provision of cash does not ensure that the PAP's income will be restored. For payment of compensation in-kind, the timing and alternative locations will have to be decided and agreed upon by each recipient, in consultation with the Subproject RAP Committees.

8.2 Valuation of Assets and National Law

According to Kenya's Expropriation Law, any expropriated assets are to be 'justly' compensated using current market rates as assessed by a qualified valuer as described in law under the valuers Act Cap 533.

8.2.1 Valuation Procedure

Use of Standard Valuation Rates

Due to the nature of most sub-project interventions, it is anticipated that a relatively large number of small-scale asset valuations will need to be carried out during the course of the project. The PIU will hire a resettlement consultant who will provide a valuation expert to develop a standardized procedure for asset valuation. This standardized procedure would include a series of reference tables for estimating asset value by type according to the approximate size and condition

of the existing asset. The reference tables will incorporate values for trees and crops from the Kenya Forest Service (KFS) and Ministry of Agriculture respectively.

The reference tables would be developed using legally acceptable valuation procedures accepted by both the Government of Kenya and World Bank to ensure fairness and consistency. The valuation approach will consider replacement costs as well as types and levels of compensation under the Kenya law. Valuation of lost assets will be made at their replacement cost.



Preparation of Asset Inventory

To prepare an inventory of assets for a sub-project, a field team will visit the affected area to carry out an asset valuation survey. The team will be led by a project representative and will include the Local Authorities at the various levels, a representative of the PAPs, and KDEAP.

During the survey, each asset will be enumerated and inscribed on an inventory in the presence of the PAP and a valuation of the asset carried out using the approach described above. The values of each asset will then be recorded in a register and shown to the affected person for agreement. The register will be signed, and a copy given on the spot to the affected person. The document will

indicate when the affected person will be notified, and that the inventory will not be official until a second signed copy, verified by project supervisory staff, is returned to the affected person. At this time, a copy of the grievance procedure will also be availed to the affected person as stated in the grievance redress mechanism.

Methods of Compensation

Individual and household compensation will be made in cash, in kind, and/or through assistance. The type of compensation will be an individual choice although every effort will be made to instil the importance and preference of accepting in kind compensation if the loss amounts to more than 20% of the total loss of subsistence assets. Table below describes the forms of compensation.

Table 7 : Forms of Compensation

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

While making compensation estimates, issues regarding inflation, security and timing ought to be considered. One purpose of providing in-kind compensation is to reduce inflationary pressure on the cost of goods and services. Local inflation may still occur and thus market prices will be monitored within the time period that compensation is being made to allow for adjustments in compensation values. The issue of security, especially for people who will be receiving cash compensation payments should be addressed by the local administration.



The time and place for in-kind compensation payments will be decided upon by each recipient in consultation with KDEAP environment, social and resettlement team and the County and local administrations. Monetary payments should be paid at a time in relation to the seasonal calendar. Local Banks and micro-finance institutions shall work closely with the local administration at this level to encourage the use of their facilities in receiving and cashing the compensation for the affected persons, where the case arises, which will positively impact the growth of the local economies.

Basis of Valuation and Methodology

Basis of Valuation:

Market Value (MV):

An opinion of the best price at which the sale of an interest in property would have been completed unconditionally for cash consideration on the date of valuation, assuming:

- i. a willing buyer and a willing seller
- ii. that, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, for the agreement of price and terms and for the completion of the sale
- iii. that, the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the date of valuation
- iv. that, no account is taken of any additional bid by a prospective purchaser with a special interest; and
- v. that, both parties to the transaction had acted knowledgeably, prudently and without compulsion.

Methodology:

a) Summation (Contractors' Approach)

Summation involves the assessment of the value of the land (based on direct comparison of sales of vacant land/development sites), and the addition of the 'added value' of the improvements (buildings etc) on the land. The added value of the improvements is assessed based on analysis of having regard to market evidence, often on a rate per area basis (eg Kshs. psm) as obtained from recent contractor's estimates within the area and rates as published by IQSK, or Ministry of Public Works.

b) Direct Comparison (Comparable Sales Method)

This method involves comparison of the property to be valued (professionally referred to as 'the subject property') with transactions of similar properties. Comparisons can be made in many forms including straight comparison, or analysis on a rate per area basis (such as rate per square



metre (psm), or rate per hectare of land). Recent sales in the areas that we deem similar in important respects to the subject property being valued are analyzed.

The sales price and the physical, functional and location attributes of each of the properties are compared to the property under consideration to arrive at an estimate of value. After the analysis of the differences between the subject property and the comparable properties that sold, a market value for the subject property is then determined.

For this project, all affected assets will be compensated against the full replacement value, that utilizes the concept of the market value of a similar asset without considering depreciation, and factoring all relocation costs to a new site, while maintaining a similar level of services. It will also include all the transaction cost associated with the land acquisition. Any salvaged materials belong to the PAP and are not factored into the replacement cost.

8.2.3 Calculation of Compensation by Assets

Compensation for land is aimed at providing a PAP whose land is acquired and used for project purposes, with compensation for land labor and crop loss. For this reason, and for transparency, land is defined as an area or homestead (i) in cultivation, (ii) being prepared for cultivation, (iii) undeveloped, or (iv) cultivated during the last agricultural season.

However, most of the project traverse is predominantly under pastoralist farming. The following methods of calculation should be adopted for the preparation of the aforementioned standardized asset valuation tables and/or the application of specific case by case valuations in the case of projects that have significant impacts.

Compensation for Land

The first premise is of provision of replacement land of an equivalent parcel is issued to the affected person and an allowance to redevelop the land to the current or better level, and will include any transactional costs and paperwork for awarding a legal title of land to the beneficiary.

In the case where there is no alternative land available, cash compensation at full replacement value should be provided. This should be valued based on the prevailing market value in the locality to purchase an equally productive plot of land in the same locality. In addition, any associated costs of purchasing the land i.e., taxes, registration fees will need to be included in the compensation.

In addition, the PAPs will be compensated for any permanent improvements made to the land (for instance crops, houses and sheds). This will be calculated based on the full replacement value of making the permanent improvement at current prevailing market rates for labour, equipment and materials, at a new site and replacing the service level as of current or better.



Where land lost is only a small proportion of total land owned by the PAP, but renders the remaining land as unusable, the compensation provided should be calculated based on the total land affected (i.e., the actual land lost plus the remaining unusable land).

Land Measurement

For purposes of measuring land, the unit of measurement would be that which is used and understood by the affected farmers and if a traditional unit of measure exists in the rural areas, that unit should be used. If a traditional unit of measurement does not exist in a particular area then it is recommended that land should be measured in metres or any other internationally accepted unit of measurement. In Kenya, acres or hectares are predominantly used in registration of titles and as a measure of area.

However, in such an event, the unit that is being used must be explained to the affected persons/users and must somehow be related to easily recognizable land features that the communities are familiar with, such as using location of trees, stumps, etc as immovable pegs. The most important concern of this exercise is to ensure that the affected person is able to verify using his/her own standards/units of measurement, the size of land that is being lost. This will ensure transparency in the system and will thus avoid subsequent accusations of wrong measurements or miscalculation of areas. An affected person should know how much land he/she is losing, in terms of size and the replacement land must be at least of that same size and comparable value as land lost.

Calculation of Crops (Cash/ Subsistence Crops) Compensation Rate

The current prices for cash crops will be determined and all crops will be valued using a unitary rate. This rate incorporates the value of crops and the value of the labour invested in preparing new land.

Crop values will be determined on:

- a) A combination of staple foods and cash crops. The 80/20 ratio (or any other ratio as may be determined by the local Ministry of Agriculture) of land that a farmer typically has in food crops and cash crops is used to determine the chances that s/he would lose food crop rather than a cash crop income.
- b) The value of staple crops to be taken as the highest market price (over 3 years) reached during the year, in recognition of the following factors:
 - Although most farmers grow staple crops mainly for home consumption, they always have the option of selling these crops to take advantage of the market.
 - Farmers most often purchase cereals when they have run out, during drought when prices are high. Compensating at a lower value might put the individual or household at risk.



- On average, the highest price of staple food yields a high per hectare value reimburses for the vegetables and other foods that are commonly inter-cropped with staples, but are almost impossible to measure for compensation.
- c) The labour cost for preparing replacement land is calculated on what it would cost a farmer to create a replacement land. This value is found by adding together the average costs of clearing, ploughing, sowing, weeding twice, and harvesting the crop.

Compensation for Buildings and Structures

Compensation will be paid by replacing structures (huts, houses, outbuildings, latrines, storage facilities and fences etc.) to improved quality where possible. Where structures are dwellings, the replaced structure should provide improved living conditions. The other compensation option will be provision of cash compensation at full replacement value. Compensation will be made for structures that are affected adversely because of relocation or resettlement of an individual or household, or directly damaged by subproject activities.

Replacement values will be based on:

- Measurements of structures and detail of materials used;
- Average replacement costs of different types of household buildings and structures based on collection of information on the numbers and types of materials used to construct different types of structures (e.g. poles, bricks, rafters, bundles of straw, corrugated iron sheets, doors etc.).
- Average prices of these items collected in different local markets;
- Costs for transportation and delivery of these items to acquired/ replacement building site preparation
- Estimates of construction of new buildings including labor required;
- Any associated taxes, registration fees, keeping in mind that any salvaged materials are not factored into the established of compensation values.

Compensation for Community Assets

Compensation will be provided for community assets identified through the socioeconomic survey. In all cases these will be provided in kind and new facilities will be provided even if there are existing facilities at the new location that will be augmented to replace the loss.

Compensation for Sacred Sites

This policy does not permit the use of land that is defined to be cultural property by the World Bank ESS 8 on Cultural Heritage. It includes other such sites or places/features that are accepted by local laws (including customary), practice, tradition and culture as sacred. To avoid any possible conflicts between individuals and/or communities/homesteads/chiefdoms the use of



sacred sites including graves for any project activity, is not permitted under this project. Sub-project RAP reports will be informed by this principle. However, if there are any shrines or graves to be relocated, the project shall fund any accompanying traditional ceremonies while relocating them to a site mutually identified with affected communities.

Compensation for Loss of Businesses

Any structures will be replaced in an appropriate location as outlined above. In addition, compensation will be paid for the lost income and production during the transition period (time lag between losing the business and re-establishment). This will be estimated based on the daily or monthly income of the affected parties.

Compensation for Beehives

Beehives are placed in various locations in the bush by individuals specializing in honey gathering. If such hives will be disturbed by the project activities, or access to hives is denied, beekeepers will be free to move them, and hopefully the bees will adapt to the new locations. Beekeepers will be compensated by the value of one season's production costs of honey for each hive that is moved, and any reasonable costs associated with moving the hive.

Compensation for Horticultural, Floricultural and Fruit Trees

Banana and Mango trees are featured here below as two examples of the set of primary fruit trees that are likely to be found in project targeted area and are estimated to account for a significant amount of all fruit bearing trees. They are primarily important as a source of:

- Subsistence food for families
- Cash produce that contributes to the export economy
- Petty market income in some areas, and
- Shade (in the case of mango trees).

Compensation will be made for the estimated value of the trees as established from the County Agricultural Office (CAO) and following rates established by Kenya Forest Services for trees but also considering the age and girth of the trees, annual productivity index as established by CAO will be considered.

Other Domestic Fruit and Shade Trees

individuals will be compensated for wild trees which are located in their land. Wild productive trees belong to the community when they occur in the bush as opposed to fallow land. These trees will be compensated for under the umbrella of community compensation.



No compensation will be paid for minor pruning of trees. Compensation for removal of limbs will be prorated on the basis of the number of square metres of surface area removed. The total surface area of the tree will be calculated using the following formula: $(\frac{1}{2} \text{ diameter of canopy})^2 \times 3.14$.

Additional Assistance to Vulnerable Groups

These vulnerable groups will be entitled to compensation for their loss as described above and additional assistance during resettlement. This will include assistance in rebuilding their homes, assistance in moving their structures and belongings, or carrying out any such tasks or to access any such services and infrastructure as will be necessary and specified in RAP reports. Additionally, a one-off vulnerability allowance as may be determined by the project based on local economic conditions, will be paid to vulnerable families to secure their incomes during the transition.

8.6 Restoration of Livelihood

This will be guided by ESS 5, Guidance Note 35.2 that provides design measure to improve or restore livelihoods that are land-based, wage-based, and enterprise-based:

(a) Land-based livelihoods:

Paragraph 35 provides that where feasible, economically displaced persons with land-based livelihoods will be offered replacement land with a combination of productive potential, location advantages, and other factors at least equivalent to that being lost.

Depending on the context and the nature of the affected livelihoods, other factors may include the legal status of the land, access to grazing land, fallow land, forest, fuel, and water. In addition, depending on the type of economic displacement and/or the site to which project-affected persons are relocated, they may benefit from: (a) physical preparation of farmland (for example, clearing, leveling, access routes, and soil stabilization or enrichment); (b) fencing for pastureland or cropland; (c) agricultural inputs (such as seeds, seedlings, fertilizer, irrigation); (d) veterinary care; (e) small-scale credit, including seed banks, cattle banks, and cash loans; (f) access to markets (for example, through transportation means, improved access to information about market opportunities and organizational support; and (g) training (including individual or household-based counselling on the livelihood risks and opportunities of compensation and investment opportunities). Where land-based livelihood of small-scale subsistence farming is severely affected by substantial loss of productive land, particular attention needs to be paid to fragility, including food security risks for affected households. Additional fragility factors such as erosion and climate risks (drought, floods, climate change trends, and so forth) should be taken into account in assessing livelihood risks and developing additional support measures.



(b) Wage-based livelihoods: Wage earners in the affected households and communities may benefit from skills training and job placement, provisions made in contracts with project contractors for temporary or longer-term employment of local workers, and small-scale credit to finance startup enterprises. Wage earners whose income is interrupted during physical displacement receive resettlement assistance that covers these and related costs. Affected persons are given equal opportunities to benefit from such provisions. The location of resettlement housing, in the case of physically displaced persons, can be a significant contributing factor toward socioeconomic stability. Consideration should be given to the ability of wage earners to continue to access their place(s) of work during and after resettlement; if this ability is impaired, then mitigation measures are implemented to ensure continuity and avoid a net loss in welfare for affected households and communities.

(c) Enterprise-based livelihoods: Established and startup entrepreneurs and artisans may benefit from credit or training (such as business planning, marketing, inventory, and quality control) to expand their businesses and generate local employment.

8.7 Timeframes

The following key timeframes shall apply in cases of any RAP implementation related to this project:

- stakeholders engagement shall continue throughout project implementation period.
- asset inventory shall be completed at most four months prior to the commencement of work to provide ample opportunity for the RAP report approval and implementation.
- Resettlement Plan shall be submitted to the World Bank approval immediately after completion of asset inventory.
- The approved resettlement plan shall be implemented including full compensation and addressing related grievances.
- Civil works shall commence after compensation or resettlement activities have been affected.
- Adequate time and attention shall be allowed for consultation of affected parties.
- The actual length of time will depend on the extent of the resettlement and compensation and will have to be agreed upon by all parties.
- A grievance redress mechanism shall be available for all project affected persons during the RAP implementation period.

8.8 Linking Resettlement Implementation to Civil Works Project Affected Persons

PAPs will need to be compensated, in accordance with this Resettlement Policy Framework and subsequent Resettlement and Compensation Plan, before civil works on that road segment or site can begin. For activities involving land acquisition or loss, denial or restriction to access of resources, it is required that provisions be made, for compensation and for other assistance



required for relocation, prior to displacement. The assistance includes provision and preparation of resettlement sites with adequate facilities.

In particular, land and related assets may be taken away only after compensation has been paid and resettlement sites and moving allowances have been provided to PAPs. For project activities requiring relocation or resulting in loss of shelter, the resettlement policy further requires that measures to assist the project affected persons are implemented in accordance with the individual RAPs. In the Implementation Schedule of each RAP, details on resettlement and compensation must be provided. The schedule for the implementation of activities, as agreed between the Project Planning teams and PAPs must include:

- target dates for start and completion of civil works,
- timetables for transfers of completed civil works to PAPs,
- the link between RAP activities to the implementation of the project.



9 GUIDING PRINCIPLES FOR LAND ACQUISITION AND COMPENSATION

While project infrastructure will mainly be laid along reserves of existing highways and transmission sites setup in government entities, it is envisaged that cases of land acquisition may not arise during project implementation. The applicability of ESS 5 will be established during the environmental and social assessment. The ESS 5 under the KDEP project will apply to permanent and temporary physical and economic displacement resulting from the following types of land acquisition or restrictions on land use undertaken or imposed in connection with project implementation:

- a) Land rights or land use rights acquired or restricted through expropriation or other compulsory procedures in accordance with national laws;
- b) Land rights or land use rights acquired or restricted through negotiated settlements with property owners or those with legal rights to the land, if failure to reach settlement would have resulted in expropriation or other compulsory procedures;
- c) Restrictions on land use and access to natural resources that cause a community or groups with a community to lose access to resource usage where they have traditional or customary tenure, or recognizable usage rights. This may include situations where legally designated protected areas, forests, biodiversity areas or buffer zones are established in connection with the project;
- d) Relocation of people without formal, traditional or recognizable usage rights who are occupying or utilizing land prior to a project-specific cut-off date;
- e) Displacement of people as a result of project impacts that render their land unusable or inaccessible;
- f) Restriction on access to land or use of other resources including communal property and natural resources such as marine and aquatic resources, timber and non timber forest products, fresh water, medicinal plants, hunting and gathering grounds and grazing and cropping areas;
- g) Land rights or claims to land or resources relinquished by individuals or communities without full payment of compensation and
- h) Land acquisition or land use restrictions occurring prior to the project but which were undertaken or initiated in anticipation of or in preparation for the project.

However, if these cases arise, the following principles will guide land acquisition.

9.1 Land Acquisition Procedure

Ideally project implementation will seek to utilize land in road reserves hence minimize land take but where acquisition of land is required, the project will either undertake an abbreviated RAP to provide guidance on full compensation of affected assets. In the case of customary land, county governments, the community leaders such as chiefs and community, including youths and women should be party to any consensus to acquisition of land and the modalities envisaged.



The RAP will document:

- i. Size of land to be acquired.
- ii. names of owners and occupiers of that land as far as they can be ascertained; or in the case of customary land the name of the landowner who is the holder of the right over the land as ascertained by the community.
- iii. local community leaders/representatives to assist in the process of land acquisition.
- iv. magnitude of impacts relative to the need for resettlement and/or compensation and valuation of assets to be compensated for.
- v. financial records showing the costs of relocation and compensation, the beneficiaries and indicating how these costs were arrived at.
- vi. information on households or individuals eligible for relocation to their socioeconomic standing
- vii. (incomes, production material assets, debts etc.).
- viii. details of resettlement after-care and assistance, where appropriate and.

Note: Preparation and implementation of the RAP and compensation will be undertaken prior to the start of any civil works on the subproject begins.

9.2 Voluntary Land Donations

ESS 5 is applicable as per clause 4 (g) where land rights or claims to land, or resources relinquished by individuals or communities without full payment of compensation. ESS 5 footnote 10 defines voluntary land donation as the ceding or a property by an owner who is: (a) appropriately informed; and (b) can exercise free will, that is, can refuse to donate. There are situations in which people are willing to donate a portion of their land for project purposes for no compensation or reduced compensation. Voluntary land donations may involve some monetary or non-monetary benefits or incentives provide to the land donor by the project or by community members benefiting from a project. both can be broadly classified as a voluntary land donation because the transfer of assets takes place without payment of compensation at replacement value. Appropriately informed in this case means that the owner has all available information regarding the proposed activity and its impacts, its land requirements, and its alternative activity sites, as well as his or her rights to compensation. The owner has also been provided with sufficient time to consider his or her disposition of property and has knowingly rejected the right to renege on his or her decision. Free will means that the owner can reject the proposal to give up his or her land, because for example there are viable alternatives available to the project or where viable alternatives are available, the donation is to benefit the owner.

Footnote 10 notes that in some circumstances, it may be proposed that part or all of the land to be used by the project is donated on a voluntary basis without payment of full compensation. Subject to prior Bank approval, this may be acceptable providing the Borrower demonstrates that:

- a) the potential donor or donors have been appropriately informed and consulted about the project and the choices available to them;



- b) potential donors are aware that refusal is an option, and have confirmed in writing their willingness to proceed with the donation;
- c) the amount of land being donated is minor and will not reduce the donor's remaining land area below that required to maintain the donor's livelihood at current levels;
- d) no household relocation is involved;
- e) the donor is expected to benefit directly from the project and
- f) for community or collective land, donation can only occur with the consent of all individuals using or occupying the land.
- g) the Borrower will maintain a transparent record of all consultations and agreement reached.

In some cases, however, donations may be induced through informal pressure or, in extreme cases coercion. In other cases, people may agree to donate land because they are not aware that they are entitled to compensation and they have not been given sufficient information to make an informed choice. To address these risks, it is important to conduct due diligence as described above.

It is important to confirm that the donated land is free of occupancy or use by people other than the donor. Where land is donated by the owner, other users and occupiers of the land beyond the legal owner who will be physically or economically displaced as a result of the donation should equally be consulted and impacts on them will be addressed in accordance with ESS 5.

Documentation of voluntary land donation includes:

- a) written notification indicating the location and amount of land that is sought and its intended use.
- b) a formal statement of donation signed by each owner or user involved, establishing informed consent and confirming that there is no disputed ownership and that there are no claims by renters, users, squatters or encroachers. Any taxes or fees owned for processing or registration of the land transfer, if applicable, are paid in full by the Borrower, who maintains the records of donations, including documentation. Documentation is made available for review in any grievance that may arise. Ensuring transparency with regard to voluntary land donations may benefit from the independent third-party review.

Voluntary Land donations refer to cases where individuals or community landowners agree to provide land to the project for free or for a reduced compensation sum. Voluntary land donation will apply under KDEP where all the above conditions are met. There should be no coercion and sufficient information on the project impacts, land needs, alternative sites and compensation options should have been provided to inform the donor's choice. To avoid impoverishment of vulnerable PAPs as a result of voluntary donations, due diligences should be done by the project implementers.

9.3 Involuntary Acquisition of Land

Involuntary acquisition of land will be avoided or minimized to the greatest extent possible. The displaced persons will participate throughout the various stages of the planning and



implementation of land acquisition, compensation and resettlement plans and processes. Prior to preparation of Resettlement Action Plans, persons to be displaced will be informed of provisions of this framework and their entitlements at public meetings and throughout the stakeholder engagement process.

9.4 Eligibility Criteria for Compensation

The Bank's ESS 5 states that affected persons may be classified as persons:

- a) who have formal legal rights to land or assets
- b) who do not have formal legal rights to land or assets but have a claim to the land or assets that is recognized or recognizable under the national law, or
- c) who have no recognizable legal right or claim to the land or assets they occupy or use

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

Therefore, all affected persons irrespective of their status or whether they have formal titles, legal rights or not, are eligible for some kind of assistance if they occupied the land before the entitlement cut-off date. The entitlement cut-off date refers to the time when the census of persons and their property in the area is carried out, i.e., the time when the project area has been identified and when the socio-economic study is taking place. Thereafter, no new cases of affected people will be considered. Persons who encroach the area after the socio-economic study (census and valuation) are not eligible for compensation or any form of resettlement assistance.

9.5 Procedures for Payment of Compensation

Compensation payment will be made in the following ways:

- (a) By agreement between the ICTA and the PAPs or entities (individuals /households /communities):
 - ICTA will offer such sums deemed adequate as compensation to the entity who may accept that amount as compensation payable to him or her and
 - Such sums will be disbursed directly to the beneficiary entity's bank accounts with the relevant records of payments (land acquisition mechanism) consigned to the RAPs and the records of the appropriate county government. Where PAPs require assistance to open bank accounts the project shall render such support.
- (b) In case of grievances, by court order on the amount of compensation where this has been the subject of litigation between ICTA and the affected entity.



10 GRIEVANCE MANAGEMENT MECHANISM

10.1 Background of the GRM

The main objective of a Grievance Redress Mechanism (GRM) is to assist ICTA to receive and resolve complaints and grievances in a timely, effective, and efficient manner that satisfies all parties involved. The GRM is an integral part of the SEP and helps to create avenues for receiving and responding to stakeholder concerns and complaints about issues related to the project. Further, it provides a transparent and credible process for fair, effective and lasting outcomes. It also builds trust and cooperation as an integral component of broader community/citizen engagement that facilitates corrective actions.

The project GRM will:

- a) provides affected people with avenues for making a complaint or resolving any dispute that may arise during the implementation of the projects;
- b) ensures that appropriate, timely and mutually acceptable redress actions are identified and implemented to the satisfaction of complainants; and
- c) avoids the need to resort to judicial proceedings.

Having multiple stakeholders and implementing agencies on board the project could lead to complaints, misunderstandings, conflicts and disputes. The project will provide a grievance redress mechanism that will provide all direct and indirect beneficiaries, service providers and other stakeholders the opportunity to raise their concerns and/or ask for information. Stakeholders will be informed of the grievance redress mechanism in place, as well as the measures put in place to protect them against any reprisal for its use. This will be done during sensitization activities and other interactions with stakeholders.

10.2 Proposed Grievance Redress Mechanism

Grievances arising with the implementation of the project could typically include access and quality of services, issues about targeting for services and availability of facilities and resources. Grievances may also relate to expansion of infrastructural activities with some physical footprints in the later stages of project implementation.

10.3 Grievance Redress Mechanism Levels

Table 9 : Grievance Redress Mechanism Levels

Level 1-Project level	1. Receive grievance 2. Acknowledge grievance 3. Register/Log 4. Screen 5. Investigate 6. Resolution
-----------------------	--



	7. Provide feedback
Level 2 -	Grievance Redress Committee
Level 3	Mediation
Level 4	Court of Law-Refer to the Environment and Land Courts

First Level of Grievance Redress:

The project institutions within which project activities are carried out are the first level of grievance redress. Each institution (ICTA), MICDE, MDA, counties, design engineers, supervision engineers, contractors) where project activities are undertaken will use existing grievance mechanisms to receive, review and address grievances.

The first level of grievances will be handled at the community level. There will be various challenges for receiving grievances under the project. The contractors, supervising engineers, community representatives such as elders and women leaders, and the PIU will be responsible for this stage.

Grievances from the project dedicated complainant box will be collected and reviewed by the institution's grievance committee on a weekly basis. Grievances can be received in person, verbally via phone, in writing or via e mail, fax, text message or any other media. Grievances submitted anonymously could be submitted through the complainant box. All grievances will be acknowledged by telephone or in writing by the grievance body of the institution within 48 hours of receipt and the complainant informed of the approximate timeline for addressing the complaint, if it can't be addressed immediately. The grievance body will work to ensure the speedy resolution of the grievance. If the complaint cannot be resolved at this level it is taken to the next level.

The point of receipt of complaints is listed below:

Register/Log Grievance: After receiving and recording the grievance, it will be accepted and registered for review.

Screen: The complaint will be forwarded to the grievance structure that is responsible for investigating the claim and liaising with the aggrieved in order to come to an acceptable resolution. Meetings with the grievant/complainant will be held, if necessary, to resolve the matter.

Investigate: The investigation by the grievance committee will include, but not limited to, meetings with the grievant/complainant, site visits, meetings/interviews with project staff and collection of relevant documentation and other forms of evidence.

Resolution: The resolution at the first tier should normally be completed within 15 working days of receipt of the grievance and notified to the concerned party. If the grievance is not resolved



within this period, it can be referred to the next level of the Grievance Redressal system. However, once it is determined that progress is being made towards a resolution, the grievance will be retained at this first level. The complainant will be informed of this decision and an estimated time for the resolution of the matter will be given either verbally or in writing. If the issue cannot be resolved within 25 working days, it will be transferred to the next level.

Once a resolution has been agreed and accepted, the complainant's acceptance will be obtained. If the proposed resolution is not accepted the grievance will be escalated to level 2.

Second level of Grievance Redress:

A Grievance Redress Committee (GRC) will be formed at the PIU comprised of key stakeholders including the country representative and the deputy county commissioner. The GRC will be called into place when a first-tier resolution is not found, but it could also meet on a quarterly basis to evaluate the performance of the project level GRM.

This committee will be chaired by the deputy county commissioner. The implementing partner ministries/agencies will assign representatives to the GRC. The functions of the GRC are as follows:

- a. provide relief and support to the affected persons in a timely manner;
- b. prioritize grievances and resolve them at the earliest reasonable time;
- c. provide information to PIU on serious cases at the earliest plausible time;
- d. coordinate the process of the affected persons getting proper and timely information on the solution worked out for his/her grievance;
- e. study the normally occurring grievances and advise the PIU as to their scale and scope.

The project coordinator at the PIU will coordinate the convening of the meetings of the GRC. He/She is also responsible for briefing the GRC on the deliberations of the first level of Redressal. The GRC will hold the necessary meetings with the affected party/complainant and the concerned officers and attempt to find a solution acceptable at all levels. GRC will record the minutes of the meeting.

The decisions of the GRC will be communicated to the complainant formally and if she/he accepts the resolutions, the complainant's acceptance will be obtained. If the complainant does not accept the solution offered by the GRC, then the complaint is passed on to the next level/or the complainant can activate the next level. It is expected that the complaint will be resolved at this level within 30 working days of receipt of the original complaint. However, if both parties agree that meaningful progress is being made to resolve the matter may be retained at this level for a maximum of 60 working days.

Third Level of Grievance Redress:



Failure to resolve the complaint at the 2nd level will require a mediation by a group or an individual mediator agreed to by both parties. The officer in-charge of grievance redress at the PIU will trigger the resolution process at this level. It is expected that the complaint is resolved within Ten (10) working days upon the receipt of complaint. The decision rendered in the mediation shall constitute final resolution of the dispute at this level.

Fourth Level of Grievance Redress:

If the affected party/complainant does not agree with the resolution at the 3rd level, or there is a time delay of more than 60 working days in resolving the issue, the complainant can opt to consider taking it to the fourth level. This level involves the complainant taking legal recourse within the local courts.

10.4 Building Grievance Redress Mechanism Awareness

In compliance with the World Bank's ESS10 requirement, a specific grievance mechanism will be set-up for the project. Dedicated communication materials (GRM pamphlets, posters) will be created to help local residents and communities familiarize themselves with the grievance redress channels and procedures. A GRM guidebook/manual will also be developed, and suggestion boxes installed in each affected villages and government offices. In order to capture and track grievances received under the project, a dedicated GRM focal person within MICDE and ICTA.

GRM committees at subcounty level will benefit from training on how to receive, respond to, address and close grievances in line with best international practices. Internal GRM training will also take place for MICDE, ICTA, supervising engineers and contractor staff. The MICDE and ICTA website will include clear information on how feedback, questions, comments, concerns and grievances can be submitted by any stakeholder and will include the possibility to submit grievances electronically. It will also provide information on the way the GRM committee works, both in terms of process and deadlines.

The GRM will also be published on the MICDE and ICTA website and those of the implementing partners and the project website or Facebook page if there is one. A project notice board will be erected on the sites of sub-projects indicating the existence of the mechanism and a phone number, email and address for further information. The GRM will be translated into local languages if needed.

10.5 Recommended Grievance Redress Time Frame

Table below presents the recommended time frames for addressing grievance or disputes related to resettlement and compensation. It is anticipated that resettlement/compensation disputes could be resolved at the community or regional levels.

Table 10 : Proposed GRM Time Frame

Step	Process	Time frame
------	---------	------------



1	Receive and register grievances	within 24 hours
2	Acknowledge	within 24 hours
3	Assess grievance	within 2 days
4	Assign responsibility	within 2 days
5	Development of response	within 21 days
6	Implementation of response in agreement is reached	within 21 days
7	Close grievance	within 30 days
8	Initiate grievance review process if no agreement is reached at the first instance	within 30 days
9	Implement review recommendation and close grievance	within 30 days
10	Mediation	within 10 days
11	Court process	As per country systems

10.6 Grievance Documentation and Reporting

Resolved and escalated grievances/cases would be documented daily into the centralized GRM system by the assigned grievance managers at the PIU. The Environmental and Social Specialists would exercise oversight over the system and track the resolution of all grievances/cases. Monthly case/grievance reports will be generated from the system by the Environmental and Social Specialists at the PIU and report to the Project Coordinator to inform management decisions.

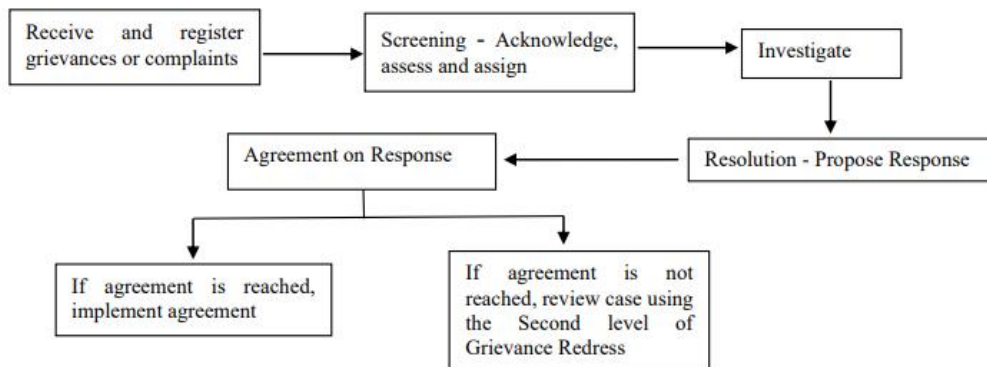
Quarterly reports will also be generated and reported to the MICDE as part of the Project's Progress Reporting to the World Bank. Periodic reports will also be generated within a reasonable time frame for stakeholders upon request irrespective of the period (e.g. bi-annual, annual etc.).

The following indicators could be used as monitoring purposes:

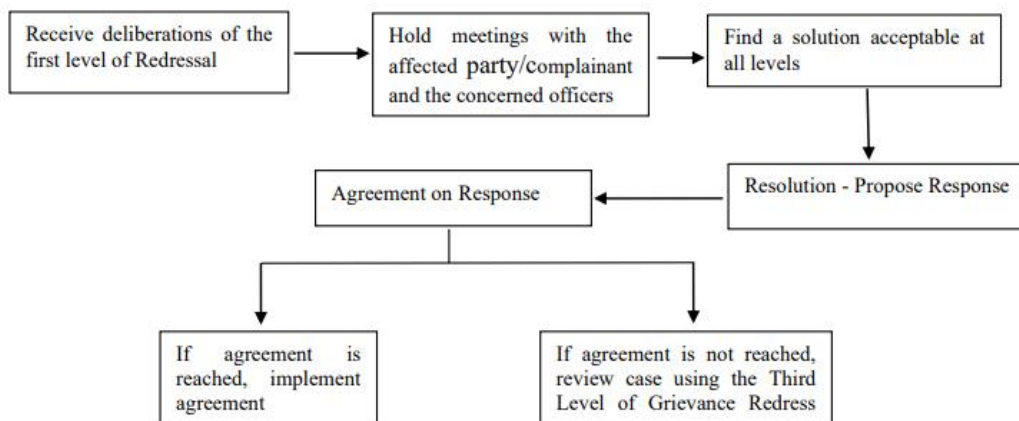
- number of active project complaints and appeals recorded and reported in each institution
- 90 percent of grievance redressed claims settled within the specified period
- 10 percent of unresolved complaints or disputes during the monitoring period
- comments received by government authorities, women & youth, family, community leaders and other parties and passed to the Project.



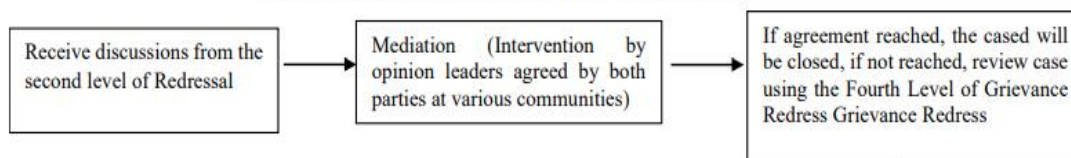
First Level of Grievance Redress – PIU, MIEDC and Implementing Partners



Second level of Grievance Redress - Grievance Redressal Committee



Third level of Grievance Redress - Mediation



Fourth level of Grievance Redress – Court

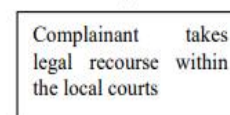


Figure 1 : Grievance Redress Mechanism Structure



11 ORGANIZATIONAL ELEMENTS PROCEDURE FOR DELIVERY OF COMPENSATION

Compensation and resettlement will be affected by ICTA in conformity with the RAPs prepared for the project. The following broad principles will be followed in delivery of the RAP.

11.1 The Procedure

The compensation process will involve several steps and would be in accordance with the individual project resettlement and compensation plans, significantly.

- a) Public Participation with the local communities would initiate the compensation process as part of an ongoing process that would have started at the land selection/screening stage and at the time the socio-economic assessment is being carried. This would ensure that no affected individual/household is simply “notified” one day that they are affected in this way. Instead, this process seeks their involvement and wishes to inform communities in a participatory approach with the project, from the beginning.
- b) Notification of land resource holders/project affected persons – the respective local heads involved in identifying the land will notify the ward, county, village and affected persons who will help to identify and locate the property users. The users will be informed through both a formal notification in writing and, as many people are illiterate, by verbal notification delivered in the presence of the chief or deputy chiefs or his representative. Those who hold title deed to the land will be informed about the compensation process and requirements needed to evince ownership. Where there are clearly no identified owners or users, ICTA, the respective local government administrations, lands offices and traditional leaders will be solicited to help identify owners or users and sensitize them on the program and its implications. It is hoped, however that the media publications would be sufficient to avoid such eventuality. Results of the census surveys, including:
- c) Documentation of affected structures and assets – NLC representatives, ICTA representatives, chiefs will arrange meetings with affected individuals and/or households to discuss the compensation process. For each individual or household affected, the RAP Consultants completes a compensation dossier containing necessary personal information on the affected party and those that s/he claims as household members, dependents, total landholdings, inventory of assets affected, and information for monitoring their future situation. This information is confirmed and witnessed by local elders. Dossiers will be kept current and will include documentation of all assets surrendered and/or impacted. Each individual will be provided a copy of the dossier at the time of negotiations. This is necessary because it is one way in which individuals and households can be monitored over time. All claims and assets will be documented in writing.
- d) Agreement on Compensation and Preparation of Awards– All types of compensation are clearly explained to the individual or household. The Technical Planning Team draws up a contract, listing all property and land being surrendered and/or assets impacted, and the types of compensation (cash and/or in-kind) selected. A person selecting in-kind compensation has an order form, which is signed and witnessed. The compensation contract is read aloud in the



presence of the affected party and the respective Technical Planning Team, Village officials and other village leaders or translated prior to signing.

- e) Compensation Payments – All handing over of property such as land and buildings and compensation payments will be made in the presence of the affected party and the village officials after compensation has been paid.

11.2 Information, Communication and Technology Authority's Capacity

ICTA has experience in implementation of two World Bank financed projects which are ongoing. The project for the KDEAP will built in house capacity to implement social risks and impacts requirements associated with resettlement undertaking of the proposed project. ICTA will have support from the Social Risk Management Unit within the Department of Social Protection and the National Land Commission.

Two options are recommended for this gap, as indicated below:

- Recruitment of a resettlement action plan consultancy. Where appropriate this should be the consultancy firm to implement the respective RAPs.
- Recruitment of environment and social specialist for the KDEAP under ICTA supervise the RAP preparation and implementation process.

The capacity for implementation and mainstreaming of social issues in KDEAP programs and this project requires a social scientist with a good understanding of the World Bank Environmental and social standards and issues of vulnerability and special interest groups. A single staff may not have adequate technical capacity to manage both social and environmental aspects of the project, hence the need for additional environment and social specialist for the project.

In during project implementation ICT will also require adequate resources to effectively manage social and environmental risks and impacts aspects of the project. Therefore, ICTA Social and Environment Specialist will work with the Counties, officers from Ministry of Lands, officers from National Land Commission, social development officers and other relevance government and not government agencies. ICT will take the key responsibility in this case will be to orient and train these officers in roles expected of them to ensure effective precipitation in managing and monitoring applicable impacts during project implementation.



12 IMPLEMENTATION COSTS FOR THE RPF

At this stage, it is not possible to estimate the likely number of people who will be affected by the proposed project. In cases where resettlement cost is to be determined, key entries in table below will be sentential.

Table 11 : Framework for Estimate of Costs for RAP implementation

Asset acquisition	Amount or number	Total estimated cost	Agency responsible
Land			
Structure			
Crops and economic tree			
Community infrastructure			
Land Acquisition and Preparation			
Land			
Structure			
Crops and economic tree			
Community infrastructure			
Economic Rehabilitation			
Training/sensitization sessions			
Capital Investments			
Technical Assistance			
Monitoring			

Item	Cost	Assumption
Compensation for loss of Land	Per acre	For land acquisition purposes, based on Kenya average market cost, or from similar projects.
Compensation for loss of Crops	Per acre of farm lost	Includes costs of labor invested and average of highest price of staple food crops and Kenyan market prices.
Compensation for Buildings and Structures	Where applicable	This compensation may be in-kind or cash. Costs



			for basic housing needs should include ventilated pit latrines, outside kitchen, and storage. 4 Compensation for Trees Per year/tree Includes costs of labor invested
	Cost of Income Restoration		For affected businesses, income getting asset owners.
	Contingency		



13 MONITORING AND EVALUATION PLAN

In order to assess whether the goals of the resettlement and compensation plan are being met, a monitoring plan will be required. This monitoring plan will indicate parameters to be monitored, institute monitoring milestones and provide resources including responsible persons or institutions to carry out the monitoring activities. The arrangements for monitoring the resettlement and compensation activities will fit the overall monitoring programme of the entire project, which will fall under the overall responsibility of the different executing agencies.

The executing agencies, with support from the Resettlement Specialist, will institute an administrative reporting system that:

- a) alerts project authorities on the necessity and procedures for land acquisition for the project activities and the need to incorporate land acquisition, resettlement, loss of assets and impact on livelihood provisions in the design technical specifications and budgets;
- b) provides timely information about the asset valuation and negotiation process,
- c) maintains records of any grievances that require resolution, and c) documents timely completion of project resettlement obligations (i.e., payment of the agreed-upon sums, construction of new structures, etc.) for all permanent and temporary losses, as well as unanticipated,
- d) additional construction damage. e) updates the database with respect to changes that occur on the ground as resettlement and compensation activities are being implemented. Periodic evaluations will be made in order to determine whether the PAPs have been paid in full and before implementation of the sub project activities; and whether the PAPs enjoy the same or higher standard of living than before.

This framework is suggesting that where appropriate and where it is determined to be cost effective, NLC will carry out monitoring and evaluation component of the project. This will take the form of giving the counties the mandate to carry out independent monitoring of the implementation of the resettlement and compensation plans at periodic intervals of quarterly or half yearly (as circumstances dictate) during the program life. The objective will be to make a final evaluation in order to determine:

- a) if affected people have been paid in full and before implementation of the subproject, and
- b) if the people who were affected by the subproject have been affected in such a way that they are now living a higher standard than before, living at the same standard as before, or they are they are poorer than before.



13.1 Monitoring indicators

A number of objectively verifiable indicators shall be used to monitor the impacts of the compensation and resettlement activities. These indicators will be targeted at quantitatively measuring the physical and socio-economic status of the PAPs, to determine and guide improvement in their social wellbeing. Therefore, monitoring indicators to be used for the RAP will have to be developed to respond to specific site conditions. As a general guide, the following indicators should be utilized during monitoring.

- i. Number and place of public consultation meetings held with PAPs and local authorities in preparation of, or during RAP implementation
- ii. Number of PAPs effectively compensated and aggregated amount disbursed compensation (actual versus planned)
- iii. Number of people resettled or provided with new business premises (whatever is applicable);
- iv. Number of complaints: - Total received; total justified; total non-justified. This should include the subject matter for all complaints an explanation for non-justified complaints - Total resolved at various levels including the type of agreement reached - Total referred to the legal system/ Courts of Law, including a clarification on who initiated (local leaders, PAP or project implementing agency) the referral and the subject matter.

13.1.1 Performance/Evaluation Indicators

Suggested performance/evaluation indicators include:

- i) Total nature and level of all complaints received, resolved;
- ii) Completion of payment within, or after 2 months of estimated completion date indicated in the RAP
- iii) implementation plan;
- iv) Completion of demolition of structures (if any) or crops/trees in the project area within 3 months after the notice to demolish/ vacate; v) Revival of affected businesses /farming activities within 4 months after the compensation payment;
- v) Submission of monitoring reports at the frequency indicated in the M/E of the RAP implementation report or quarterly.

13.1.2 Indicators to Measure RAP Performance

In terms of the resettlement process, the following indicators could be used to understand the success of the measures identified and the working of the relevant parties in implementation the RAP:

- i) Percentage of individuals selecting cash or a combination of cash and in-kind Compensation
- ii) The number of contentious cases as a percentage of the total cases
- iii) The number of grievances and time and quality of resolution
- iv) The ability of individuals and families to re-establish their pre-displacement activities



- v) Number of impacted locals employed by the civil works contractors
- vi) General relations between the project and the local communities.

These will be determined through the following activities:

- i) Questionnaire data will be entered into a database for comparative analysis
- ii) Each individual will have a compensation dossier recording his or her initial situation, all subsequent project use of assets/improvements, and compensation agreed upon and received
- iii) ICTA will maintain a complete database on every individual impacted by the subproject land use requirements including iv) Relocation/resettlement and compensation, land impacts or damages; and ICTA should prepare Resettlement Completion Reports for each RAP, in addition to other regular monitoring reports.

13.1.3 Indicators to Monitor and Evaluate Implementation of RAPs

Financial records will be maintained by the Local Governments and the executing agencies to permit calculation of the final cost of resettlement and compensation per individual or household.

Each individual receiving compensation will have a record containing:

- Individual bio-data information,
- Number of people s/he claims as household dependents • Amount of land available to the individual or household when the dossier is opened. Additional information will be acquired for individuals eligible for resettlement/compensation:
- Level of income and of production
- Inventory of material assets and improvements in land, and • Debts.

13.1.4 RAP Implementation Completion Report

RAP Implementation Completion Report should be prepared and submitted to the Bank 6 months after the end of compensation payment by project implementing agency or before the Implementation Completion Report by the Bank, whichever comes first.

The RAP implementation report should include (but not be limited to) the following information:

- i) Background of the RAP preparation including a description of the project activities, scope of impacts, number of affected persons, and estimate budget.
- ii) Update of its implementation with actual numbers of displaced persons by segments, compensation paid, issues/complaints raised, and solutions provided
 - i. Complains status
 - ii. Early assessment of the impacts of resettlement and compensation on affected categories at the time of the report production.
 - iii. Total sum disbursed
 - iv. Lessons learned from the RAP implementation
 - v. Suggested annex:



13.2 External Monitoring Process

External monitoring will be conducted by external agency e.g. independent entity/consultant. The program management structure will be envisaged to enable effective communication and distribution of responsibilities amongst different participants of the project at all different levels. The external evaluation process will be informed by internal monitoring reports.

13.2.1 Responsibility of the Authorities

The role of the implementing authorities is critical in the operationalization of the Resettlement Policy Framework. The following are important points to observe:

- i) Ensure that there is trust between the PAPs and the authorities throughout the process by being transparent in every action and sharing information.
- ii) Being realistic with time frames and sequencing of related activities:
 - when registration will be completed,
 - when assessment will be completed,
 - when computation of entitlements will be carried out,
 - when payments will be made by whom and where,
 - when the acquired land will be vacated and when the contractor will move on site.
- iii) Adhering to the agreed and publicized timetable of delivery of compensation is critical. This calls for a deliberate effort to ensure funds for compensation are ready set aside and accessible when payment commences.

Table 12 : Institutions to be Involved in Project Monitoring

Institution	Monitoring role
ICTA	Preparation and Implementation of the RAP
Ministry of Information Communication Technology and Digital Economy (MICT&DE)	Review of RAP monitoring report and ensure that the implementation meeting World Bank ESF and ESSs
National Land Commission	Support the RAP Implementation Process Support in the dispute resolving mechanism
Kenya Human Rights Commission	Support in the monitoring of resolution of grievances
Ministry of Land	Provide information on land ownership Provide documentation on land ownership
National Environment and Management Authority	Monitoring environmental compliance during project implementation
Grievance Committee	Resolution of grievances
Representative of PAPs	Monitoring how PAPs grievances are effectiveness addressed
County government	Stakeholders engagement and payment of compensation



World Bank	Mission visits to the project sites where resettlement activities are being implemented to ensure that the project is adhering to the ESSs and ESF
------------	--

13.2.2 Indicators to Determine Status of Affected People

These indicators are most important with respect to the RPF policy on resettlement and compensation. They will be informed by the baseline survey and will provide the council and the World Bank data and trends for refocusing the project and for improving delivery as a whole. The following will be considered:

- i) Affected individuals, households, and communities are able to maintain or improve their pre project livelihood standards
- ii) standard of living, and even improve on it; and
- iii) The local communities remain supportive of the project.
- iv) Specific indicators may include the following, which would indicate a change in:
 - v) quality of, and access to services, number of people employed
 - vi) number of people engaged in income-generating activities
 - vii) number of vulnerable people
 - viii) sources of income
 - ix) expenditure pattern.

13.2.3 Annual Audit

The annual audit of RPF implementation, and as applicable RAP implementation in sub-project(s), includes:

- (i) a summary of RAP performance of each sub-project;
- (ii) a compliance review of RAP implementation process; and
- (iii) a progress report on the quality of RAP implementation in terms of application of guidelines provided in this RPF.

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

13.2.4 Socio-Economic Monitoring

This will entail monitoring project impacts on trading and business activities in the project sites utilizing indicators such as complaints or reported weekly losses occasioned by project activities.



13.2.5 Reporting and Documentation

Reporting should entail documentation of mid-term and end term RAP evaluation of the implementation process including enforcement of cut-off dates and these reports should be shared with World Bank. Where RAPs are undertaken for given project components, completion reports should be undertaken and shared with World Bank.



Annexes

Annex 1: Stakeholder Engagement Record

KDEAP Safeguard Instruments Stakeholder Consultative Workshop - 15th December 2022

No.	Name	Organization
1	Ambaya John	Environmental Consultant
2	Arnold Muchiri	Embu County
3	Basele Stephen	Marsabit County
4	Ben Kosgei	Elgeyo Marakwet County
5	Benard Kinyua	Nyandarua County
6	Benard Matu	Laikipia County
7	Collins Taipau	Kajiado County
8	Elvis O Otieno	Kisumu County
9	Emilio M. Kathuri	Embu County
10	Emmanuel Athoo	Homa Bay County
11	Ephantus Maina	DOSHS
12	Eric Kimutai	ICTA
13	Evalyne Oloo	World Bank Group
14	Felix Muriuki	Kiambu County
15	Frankline Limo	Nandi County
16	Gibran Mwadime	Taita Taveta County
17	Gideon Tirok	Baringo County
18	Isaac Ereyae	Turkana County
19	Jacqueline Macharia	ICTA
20	James Gatuna	Muranga County
21	James Koech	ICTA
22	James Mukoma	Garissa County
23	Josa Garote	Wajir County
24	Linus Nairimo	Narok County
25	Lovinter Onyango	Homa Bay County
26	Luther Odongo Olonde	ICTA
27	Martha Nadupoi	Narok County
28	Martin Lottee	West Pokot County
29	Mary W Kamande	Nyandarua
30	Mathew Chemwei	ICTA
31	Maurine Limashap	Baringo County
32	Migot Nicholas	Kisumu County
33	Millah Were	ICTA
34	Mohabed Shahid	Wajir County



35	Moses Maina	ICTA
36	Okimain Thomas	Samburu County
37	Oliver Pyoko	ICTA
38	Patrick Masika	ICTA
39	Paul Mwero	Kwale County
40	Paul Rono	Baringo County
41	Penina Sarisar	Narok County
42	Philip Irode	ICTA
43	Robert Kivutha	Machakos County
44	Rotich Kamatia	West Pokot County
45	Saitoti Ntiyani	Narok County
46	Sammy Unyasi	Siaya County
47	Tim Kelly	World Bank Group
48	Titus Kimaiyo	Uasin Gishu County
49	Vainusa Yussuf	Mandera County
50	Rael Awuor	ICTA
51	Scholastica Kamanthe Mutuku	ICTA
52	Daniel Kilonzo Mutinda	ICTA
53	Moses Kijugu	ICTA
54	Dan Kimutai	ICTA
55	Rachael Keteko	Kajiado County
56	Truphena Ogonda	Nairobi County
57	Elly Wafula	Garissa County
58	Umuro O. Hassan	Isiolo County
59	Anthony Kuria	Muranga County
60	Sammy Linus	Laikipia County
61	Charles Muiruri	Laikipia County
62	Thomas Odhiambo	ICTA

No.	Name	Organization
1	James Mukoma	Garissa County
2	Patrick Masika	ICTA
3	Maurine Limashap	Baringo County
4	Ephantus Maina	DOSHS
5	Ambaya John	Environmental Consultant
6	Tim Kelly	World Bank Group
7	Evalyne Oloo	World Bank Group
8	Vincent Kaweru	ICTA



9	Martha Nadupoi	Narok County
10	Penina Sarisar	Narok County
11	Gibran Mwadime	Taita Taveta County
12	Linus Nairimo	Narok County
13	Ben Kosgei	Elgeyo Marakwet County
14	Josa Garote	Wajir County
15	James Wafula	ICTA
16	Emmanuel Athoo	Homa Bay County
17	Emilio M. Kathuri	Embu County
18	Okimain Thomas	Samburu County
19	Anthony Wamalwa	KETRACO
20	Jacqueline Macharia	ICTA
21	Isaac Ereyae	Turkana County
22	Paul Mwero	Kwale County
23	Mary W Kamande	Nyandarua
24	Saitoti Ntiyani	Narok County
25	Sammy Unyasi	Siaya County
26	Rotich Kamatia	West Pokot County
27	Martin Lottee	West Pokot County
28	Victor Ouya	Migori County
29	Mohabed Shahid	Wajir County
30	Arnold Muchiri	Embu County
31	Oliver Pyoko	ICTA
32	Philip Irode	ICTA
33	Mary Kerema	ICTA
34	Benard Kinyua	Nyandarua County
35	Gideon Tirok	Baringo County
36	Frankline Limo	Nandi County
37	Titus Kimaiyo	Uasin Gishu County
38	Monica Kaithiori	Meru County
39	Benard Matu	Laikipia County
40	James Gatuna	Muranga County
41	Diana Nyabuto	ICTA
42	James Koech	ICTA
43	Moses Maina	ICTA
44	Eric Kimutai	ICTA
45	Felix Muriuki	Kiambu County



46	Collins Taipau	Kajiado County
46	Mathew Chemwei	ICTA
47	Millah Were	ICTA
48	Anthony Lenaiyara	ICTA
49	Alex Njihia	ICTA
50	Ron Henry	ICTA
51	Lovinter Onyango	Homa Bay County
52	Luther Odongo Olonde	ICTA
53	Vainusa Yussuf	Mandera County
54	Robert Kivutha	Machakos County
55	Basele Stephen	Marsabit County
56	Migot Nicholas	Kisumu County
57	Elvis O Otieno	Kisumu County
58	Paul Rono	Baringo County

No.	Name	Organization
1	Otieno Vinicent Odhiambo	Sapashe Group
2	Tim Kelly	World Bank Group
3	Tomno Sylas	ICTA
4	Moses Kijugu	ICTA
5	James Wafula	ICTA
6	Ambuya John	World Bank Group Consultant
7	Salma N. Sheba	World Bank Group Consultant
8	Vincent Kaweru	ICTA
9	Koech Jairus	ICTA
10	Edward Ontita	Consultant
11	Victor Ngandi	ICTA
12	Ephantus Maina	DOSHS
13	Kibet Langat	JKUAT -IP
14	Patrick Masika	ICTA
15	Oliver Pyoko	ICTA
16	Daniel Kiniti	KPLC
17	Alex Njihia	ICTA
18	Anthony Wamalwa	KETRACO
19	Ashush Malhotra	Airtel
20	Mathew Chemwei	ICTA
21	Kebay Wang	Huawei
22	Albert Plung	Airtel



23	Samel Andati	CA
24	Kenneth Matiba	Huawei
25	Philip Irode	ICTA
26	Sostanis Okoth	ICTA
27	Benjamin Langa	MIST - Mozambique
28	Octavio Zefanias	APIEX
29	Olive J Jerotich	JTL
30	Samuel Kiacilo	PCK
31	Judah Opuck	KENET
32	Joyce Komen	Moi University
33	Andrew Amutalla	ICTA
34	Pius M Kaua	MICDE
35	Anthony Kyengo	Safaricom
36	Jacquiline Macharia	ICTA
37	Stanely Kamanguya	ICTA
38	Thomas Odhiambo	ICTA
39	Karimi Ruria	Safaricom
40	Evelyne A Oloo	World Bank Group
41	Daniel Gichumbi	NGEC
42	Happi Adan	NGEC
43	Sydney Baraza	NGEC
44	Stephen Wachira	KeNHA
45	Eng. Joseph Kivanguli	KURA
46	Joan Mburu	Airtel
46	Philip Ogola	Distil (Media)
47	Millah Were	ICTA

National Legislations

- The Constitution of Kenya 2010
- The National Land Commission Act 2012 (Revised 2016)
- The Land Act 2012 (Revised 2019)
- The Land Regulations 2017
- The Land Registration Act 2012
- The Land Value Amendment Act 2019
- The Land Assessment of Just Compensation Rules 2017
- The Environmental Management Coordination Act- Legal Notice No. 31 2019
- NEMA Legal Notice 31



- The Prevention, Protection, and Assistance to Internally Displaced Persons and Affected Communities Act, 2012

International Standards

- The World Bank Environmental and Social Framework

National Documents

- NLC-Compulsory Land Acquisition Processes and Procedures Manual Consolidated Draft 1 Amended January 2021
- Analysis of International Land Acquisition and Resettlement Policies and Practices - Kenya and Uganda TA (1)
- Kenya Water Security and Climate Resilience Project Phase 1. FINAL RAP III Report-Irrigation canals-Nzoia Primary and Secondary Canals-2018
- Kenya Informal Settlement Improvement Program (KISIP): Social Management Plan and Resettlement Policy Framework



Annex 2: Elements of a Resettlement Plan

1. Description of the project. General description of the project and identification of the project area.
2. Potential impacts. Identification of: (a) The project components or activities that give rise to displacement, explaining why the selected land must be acquired for use within the time frame of the project; (b) The zone of impact of such components or activities; (c) The scope and scale of land acquisition and impacts on structures and other fixed assets; (d) Any project-imposed restrictions on use of, or access to, land or natural resources; (e) Alternatives considered to avoid or minimize displacement and why those were rejected; and (f) The mechanisms established to minimize displacement, to the extent possible, during project implementation.
3. Objectives. The main objectives of the resettlement program
4. Census survey and baseline socioeconomic studies. The findings of a household-level census identifying and enumerating affected persons, and, with the involvement of affected persons, surveying land, structures, and other fixed assets to be affected by the project. The census survey also serves other essential functions: (a) Identifying characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (including, as relevant, production levels and income derived from both formal and informal economic activities) and standards of living (including health status) of the displaced population; (b) Information on vulnerable groups or persons for whom special provisions may have to be made; (c) Identifying public or community infrastructure, property or services that may be affected; (d) Providing a basis for the design of, and budgeting for, the resettlement program; (e) In conjunction with establishment of a cut-off date, providing a basis for excluding ineligible people from compensation and resettlement assistance; and (f) Establishing baseline conditions for monitoring and evaluation purposes. As the Bank may deem relevant, additional studies on the following subjects may be required to supplement or inform the census survey: (g) Land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, nontitle-based usufruct systems (including fishing, grazing, or use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area; (h) The patterns of social interaction in the affected communities, including social networks and social support systems, and how they will be affected by the project; and (i) Social and cultural characteristics of displaced communities, including a description of formal and informal institutions (e.g., community organizations, ritual groups, nongovernmental organizations (NGOs)) that may be relevant to the consultation strategy and to designing and implementing the resettlement activities.



5. Legal framework. The findings of an analysis of the legal framework, covering: (a) The scope of the power of compulsory acquisition and imposition of land use restriction and the nature of compensation associated with it, in terms of both the valuation methodology and the timing of payment; (b) The applicable legal and administrative procedures, including a description of the remedies available to displaced persons in the judicial process and the normal time frame for such procedures, and any available grievance redress mechanisms that may be relevant to the project; (c) Laws and regulations relating to the agencies responsible for implementing resettlement activities; and (d) Gaps, if any, between local laws and practices covering compulsory acquisition, imposition of land use restrictions and provision of resettlement measures and ESS5, and the mechanisms to bridge such gaps.
6. Institutional framework. The findings of an analysis of the institutional framework covering: (a) The identification of agencies responsible for resettlement activities and NGOs/CSOs that may have a role in project implementation, including providing support for displaced persons; (b) An assessment of the institutional capacity of such agencies and NGOs/CSOs; and (c) Any steps that are proposed to enhance the institutional capacity of agencies and NGOs/CSOs responsible for resettlement implementation.
7. Eligibility. Definition of displaced persons and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates.
8. Valuation of and compensation for losses. The methodology to be used in valuing losses to determine their replacement cost; and a description of the proposed types and levels of compensation for land, natural resources, and other assets under local law and such supplementary measures as are necessary to achieve replacement cost for them.
9. Community participation. Involvement of displaced persons (including host communities, where relevant): (a) A description of the strategy for consultation with, and participation of, displaced persons in the design and implementation of the resettlement activities; (b) A summary of the views expressed and how these views were taken into account in preparing the resettlement plan; (c) A review of the resettlement alternatives presented and the choices made by displaced persons regarding options available to them; and (d) Institutionalized arrangements by which displaced people can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that such vulnerable groups as Indigenous Peoples, ethnic minorities, the landless, and women are adequately represented.
10. Implementation schedule. An implementation schedule providing anticipated dates for displacement, and estimated initiation and completion dates for all resettlement plan activities. The schedule should indicate how the resettlement activities are linked to the implementation of the overall project.
11. Costs and budget. Tables showing categorized cost estimates for all resettlement activities, including allowances for inflation, population growth, and other contingencies; timetables for



expenditures; sources of funds; and arrangements for timely flow of funds, and funding for resettlement, if any, in areas outside the jurisdiction of the implementing agencies.

12. Grievance redress mechanism. The plan describes affordable and accessible procedures for third-party settlement of disputes arising from displacement or resettlement; such grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms.
13. Monitoring and evaluation. Arrangements for monitoring of displacement and resettlement activities by the implementing agency, supplemented by third-party monitors as considered appropriate by the Bank, to ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; involvement of the displaced persons in the monitoring process; evaluation of results for a reasonable period after all resettlement activities have been completed; using the results of resettlement monitoring to guide subsequent implementation.
14. Arrangements for adaptive management. The plan should include provisions for adapting resettlement implementation in response to unanticipated changes in project conditions, or unanticipated obstacles to achieving satisfactory resettlement outcomes.



Annex 3: Entitlement Matrix

An entitlement matrix with respect to both temporary and permanent displacement is important, and it identifies:

- all categories of affected people, including property owners and land right holders, tenants, squatters, sharecroppers, grazers, pastoralists and other natural resource users, shopkeepers, vendors and other service providers, communities, and vulnerable groups;
- all types of loss associated with each category, including loss of physical assets; loss of access to physical assets; loss of wages, rent, or sales earnings; loss of public infrastructure and elements of cultural significance (as identified in the inventory of losses); and,
- all types of compensation and assistance to which each category is entitled, including compensation for or replacement of land and natural resources; compensation for structures, assets, wages, rent, or sales earnings; moving assistance and post-resettlement support (such as technical assistance, extension and skills training, and access to credit).



Table 8 : Entitlement Matrix

Category of PAP	Type of Loss	Entitlements					
		Compensation for land	Compensation for loss of structures	Compensation for loss of Assets	Compensation for loss of Income	Moving Allowance	Other Assistance
Land Owner	Partial Loss of Land but residual is viable	Cash compensation for lost land at market value	Cash compensation for loss of structures.	The right to salvage all materials	Cash compensation for loss of income.	Transitional allowance	Yes
	Entire loss of land	Cash compensation for lost land at market value	Cash compensation for loss of structures.	The right to salvage all materials	Cash compensation for loss of income.	Transitional allowance	yes
Tenants/Lease Holder	Entire Loss of Land	Cash compensation for unexpired portion of lease period				Transitional allowance equivalent to 3 months rental allowance ¹ and assistance in finding alternative land.	
	Loss of structure		-Housing allowance for three-month equivalent rental value -Right to alternative accommodation	Right to salvage materials		-A onetime shifting allowance as agreed	
Squatters	Full loss of land		-Housing allowance for three-month equivalent rental value -Right to alternative	Right to salvage materials		Transitional allowance and assistance in finding	2 months advance notice to vacate land

¹ 3 months' rent should be further discussed as the Kenyan situation calls for a tenant to have 2 months' rent deposit. This can be debated to have it to 5 months.



Category of PAP	Type of Loss	Entitlements					
		Compensation for land	Compensation for loss of structures	Compensation for loss of Assets	Compensation for loss of Income	Moving Allowance	Other Assistance
						alternative residence in a formal setting.	
	Partial Loss of land but residual is viable		-Housing allowance for three-month equivalent rental value -Right to alternative accommodation for a vulnerable households and other affected households as may be needed.	Right to salvage materials		Transitional allowance	2 months advance notice to vacate land
	Partial Loss of structure but residual viable		-Cash compensation at replacement cost at market value -Repair costs for unaffected structure at of compensation;	Right to salvage materials		Transitional allowance	
	Partial Loss of structure and the remaining is non- viable		- Alternative accommodation where possible or Developed plot plus cash compensation as agreed, -Cash compensation at replacement cost		-Subsistence allowance equivalent to six months or minimum wages for unskilled labour	Transitional allowance	
Households	Loss of permanent		-Subsistence allowance equivalent			Transitional allowance	



Category of PAP	Type of Loss	Entitlements					
		Compensation for land	Compensation for loss of structures	Compensation for loss of Assets	Compensation for loss of Income	Moving Allowance	Other Assistance
	source of Income		to 3 months minimum wages for unskilled agriculture workers. -A lump sum payment to be agreed) to help recreate a viable livelihood. -Skills development for PAPs in this category.				
Building Owner	Loss of rental income				Subsistence allowance equivalent to 6 months rental income.		
Legal owner of structure	Partial Loss of Structure	-Cash compensation at replacement cost for affected portion calculated on market value		Right to salvage material		Transitional allowance	
Owner of Business	Loss of business income				Cash grant equivalent to one-year minimum wages based on local labour	Transitional allowance	
Employees in a	Loss of income				Lump sum	Transitional	



Category of PAP	Type of Loss	Entitlements					
		Compensation for land	Compensation for loss of structures	Compensation for loss of Assets	Compensation for loss of Income	Moving Allowance	Other Assistance
business					maintenance allowance equivalent to 3 months of minimum wages as per local guidelines.	allowance	
Hawkers/temporary structures	Loss of income				Relocation to other site where possible	Transitional allowance	
Owner of Land/structure without title	Partial loss of structure but residual viable		-Cash compensation at replacement cost for affected portion calculated on market value	Right to salvage materials			-Repair costs where applicable
	Partial loss but remaining not viable		-Alternative accommodation where possible or Developed plot plus cash compensation at an agreed rate	Right to salvage materials		A one-off shifting allowance to be agreed	
Vulnerable groups ²		-Priority for space allocation -Additional cash support for first three months; -Support to assist in overcoming the respective vulnerability.					

² Particular attention will be paid to the needs of vulnerable groups among those economically and/or physically displaced especially those below the poverty line, the landless, youth, the elderly, women and children, indigenous groups, ethnic minorities and other historically disadvantaged groups or other economically and/or physically displaced persons.



Category of PAP	Type of Loss	Entitlements					
		Compensation for land	Compensation for loss of structures	Compensation for loss of Assets	Compensation for loss of Income	Moving Allowance	Other Assistance
		-Transitional allowance					