SUMMARY OF RESETTLEMENT ACTION PLAN, NaRSIP II

Project Title: Nairobi Rivers Basin Rehabilitation and Restoration Program: Sewerage Improvement Project Phase II

Project Number: P-KE-EB0-010
Country: KENYA
Division: AHSW2

Department: AHSW
Project Category: 1

1. Description of the project, project area and area of influence General description of the project and the area of influence.

The Government of Kenya in partnership with the African Development Bank (AfDB), through the Athi Water Services Board (AWSB) intends to implement the second phase of the Nairobi Sewerage Improvement Project (NaRSIP), with the extension and duplication of the existing sewerage system and construction of lateral sewers within Nairobi County. However, notwithstanding the positive benefits of the project, NaRSIP II project is expected to affect people’s assets and livelihoods specifically those operating within and along the route alignment for the main trunk sewers, site for the treatment works and reticulation sewers. To address this concern, a Resettlement Action Plan (RAP) has been prepared as required by national policy as well as by the African Development Bank Operational Safeguard 2 (OS2) on involuntary resettlement addressing situation involving land acquisition, population displacement and compensation.

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

2. Potential impacts

The full scope of the environmental and social impacts of the Nairobi Rivers Sewerage Improvement Project (NaRSIP) II have been addressed in a detailed environmental and social impact assessment (ESIA) conducted for the project and for which a separate ESIA summary has been prepared. Of direct relevance to this summary is the requirement under the AfDB’s Operational Safeguard 2 on involuntary resettlement: Land acquisition, population displacement and compensation which requires that whenever a project supported by the AfDB involves displacement of more than 200 people, a full RAP should be prepared. It is in this regard that this project which will displace more that this number of people had to prepare a full RAP which is the subject of this summary.

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

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

i. Roads for earth moving equipment will be constructed along the earmarked main canal and/or existing tracks to limit social disturbances and destruction of the environment.

ii. All those that shall be affected by the project will be fully compensated before project commencement.

iii. All PAPs shall be meaningfully consulted before commencement of construction activities.

Through the RAP process, the following key milestones have been accomplished:

i. The project affected persons (PAPs) and their assets along the sewerage system routes have been identified. The inventory has included identification of affected land, structures, trees and crops, livelihoods and cultural assets as well as temporary business structures. In effect therefore the RAP process took into consideration not only the physical displacement, but also economic and social considerations.

ii. Public consultations have been held with the PAPs and the community in general, stakeholders and members of the civil society have been consulted through assistance of the local administration especially the chiefs. Interviews were also conducted within the proposed project areas with the identified asset owners.

iii. Provisions of the Kenyan legal framework relevant to compensation as well as the relevant AfDB policies have been incorporated in the RAP process to ensure harmony in resettlement planning.

iv. The RAP process has also disaggregated the categories of PAPs into various groups, including:

- Those with formal legal rights to land or assets;
- displaced persons who have proof of entitlement under the country’s laws;
- displaced persons with no recognizable legal right or claim to the land they are occupying but will be entitled to compensation for assets lost and to resettlement assistance.

Overall, most of the affected assets identified were food crops, trees, residential and non-residential structures. Although a majority of the sewer lines will be laid on the riparian area and road reserves, as observed during survey and site visits, there is mass encroachment on this reserved area as well. Where the pipeline will be laid on peoples’ land, the project affected persons will be compensated adequately for the easement.

v. The compensation schedule and the resettlement plan have been prepared with the necessary budget to facilitate the implementation.

Under the Kenyan Regulations for survey, there should be no occupation of the 6 meters being targeted by the project as it is supposed to be government land. Most of the PAPs currently occupying this land targeted by this project are therefore categorized as displaced persons with no recognizable legal right or claim to the land they are occupying. However, all affected persons irrespective of their status or whether they have formal titles, legal rights or not, will be eligible for some kind of assistance if they occupied the land before the entitlement cut-off date as per the AfDB OS 2.
The socio-economic study of PAPs was undertaken between the month of September and December 2016 including public consultative meetings with different categories of PAPs. The socio-economic survey was done using a semi-structured household questionnaire. The questionnaire covered the households’ baseline information on incomes and expenditures, occupational and livelihood patterns, use of resources, arrangements for use of common property, social organization, leadership patterns, community organizations, and cultural parameters.

Through the RAP process, different categories of PAPs will arise as a consequence of different losses, including:

2.1 Impacts on Land

The proposed extension and duplication of the sewerage systems will largely be confined within the existing road corridor and riparian reserves unless where it is not feasible land will be acquired through easement. During the field survey and public consultation meetings it was evident that most of the riparian reserve areas are highly encroached by squatters, farmers and even legal landholders. It is also worth noting that even the land set aside for expansion of the treatment works has also been acquired by squatters who claim legal ownership contrary to the statement by the Nairobi City County that the said land is for public utility. The RAP recommends adequate compensation for land to be affected by the project where legal ownership entails. Informal occupants will also be compensated to the value of their assets and affected livelihoods.

2.2 Impact on Residential and Commercial Structures

The proposed project will affect more than 400 residential structures some of which are permanent and temporary structures during construction of the trunk line. This has been attributed to the population influx in urban areas and mushrooming of informal settlements. Demand for housing in the area is increasing rapidly and this has triggered unplanned construction on certain project areas such as Dandora, City Carton, Korogocho, Kariobangi, Njiru (Chokaa Area), Umoja 111, Mowlem, Eastleigh among others even within the riparian reserve.

Ancillary structures including masonry fences, live fences, and barbered wire fences, pit latrines which have very high probability of being affected and which fall under non-residential structures will also be compensated.

2.3 Impact on Crops and Trees

Various crops and trees are grown within the riparian reserve where the laying of the trunk lines is envisaged. The crops vary from fruits, vegetables, cereals and variety of tree species as shown on Plate 1 below. The valuation of trees and crops is a specialist area with guidelines being given by the agriculture expert and the forester on trees. The factors considered in the valuation of the trees is its commercial value and whether is mature (fruit bearing or not). Valuation for crops takes into account the acreage of the crop and the yield per acre in the general area.
2.4 Impact on Public and Community Infrastructure

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

Water supply in the sewerage treatment plants areas and along the sewerage trunk lines are from both modern and traditional sources. There are some drilled wells and boreholes observed in the project affected areas. Piped water supply is more evident within the project areas as the area is more of urban setting. Water service lines run the risk of water contamination should the water lines be broken during construction exposing the water to pathogens. Affected power lines pose a danger to the people working on the project and those living nearby thus the relocation of the power lines should be carried solely by Kenya Power.

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

2.5 Impact on Businesses

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

2.6 Impact on Cultural Sites: There are no cultural sites like shrines in the proposed project area.

The Total number of affected households is estimated at 835 which translates to 3114 project affected persons (PAPs). However, this figure may increase or decrease upon conducting of final asset verification by the land Commission and due to possible re-alignment of the sewer line routing.
3. **Organizational responsibility**

The project will be implemented using existing organizational structures incorporating lessons and experiences gained under NaRSIP I. The Government of the Republic of Kenya will be the borrower of the loan(s) which will be transferred to Athi Water Services Board on a subsidy financing agreement acceptable to the lender(s).

Athi Water Services Board will establish a Project Implementing team (PIT) consisting of a Project coordinator, Project Engineer, Procurement Officer, Environment Officer, Social/Community development Officer, Project Accountant and M&E officer. NCWSC and NCG will co-opt representatives to be involved in the implementation of the project. A steering committee chaired by the Permanent Secretary, Ministry of Water and Sanitation and representatives of key agencies will be constituted. Members of the steering committee will include; Chief Executive Officer AWSB, Managing Director Nairobi Water and Sewerage Company, CEC Environment, Water and Energy Nairobi County Government, Head planning and Engineering AWSB. The steering committee will monitor and guide the project implementation during quarterly coordination meetings.

The Athi Water Services Board’s implementation team will be in-charge of the project implementation. AWSB shall be responsible for overall coordination of the project and reporting obligations to donors.

A project implementation team will be constituted and staffed by seconded adequately skilled personnel including environmental and social experts who will be responsible for tracking implementation of environmental and social management plans (ESMPs) and RAP.

With the mechanisms already established by the Stakeholder Engagement Plan developed under NaRSIP I, it is expected that the RAP implementation process will establish and sue community level structures such as community committees as entry points for engaging with PAPs during RAP implementation.

4. **Community participation**

Public Participation and consultation was important for soliciting the opinions of the project affected peoples about the project impacts and compensation needs. Consultations with stakeholders were initiated with preliminary meetings with the County Government leadership and other stakeholders within the project area. The consultants conducted series of meaningful consultations with a broad range of stakeholders, including state and county authorities, local administration, non-Governmental organizations, Community Based Organizations, youth organizations, and market associations in the project areas. The consultations were aimed at identifying the best ways to mitigate the impacts the project is likely to have on the affected people. In each area, the RAP consultants and the valuation experts conducted open forums with the PAPs to inform them about the sewerage project and the need for some of them to either shift or get relocated away from the way leave.

Transect walks, where possible, were conducted and observations were made on physical and environmental conditions of the proposed project areas. The Consultants were very consistent with this approach to ensure that all stakeholders are adequately briefed about the project and their suggestions and inputs are included in the RAP. This approach will further strengthen the sustainability of the project.

During consultation meetings, the PAPs recognized that they have encroached on the public way leaves such as road reserve, Government land, riparian and are willing to remove their structures and crops to pave way for the project. They recognize the benefits that the Sewerage Project will have on their communities.
However they felt that they will be losing parts of their structures and crops that they spent money on and loss of business premises hence loss of livelihood.

As indicated in Section 2 above, a socio-economic study of PAPs was undertaken between the month of September and December 2016 including public consultative meetings with different categories of PAPs. Comprehensive consultations were undertaken with various stakeholders and the PAPs from the reconnaissance stage through the public consultations, the project affected persons census within the project areas; a socio-economic survey and an assets inventory. The consultations held within the proposed routes were aimed at seeking views of the local communities along the project on various aspects of the design.

Public forums were also held to create awareness to the local community and particularly the potential project affected persons on how the project would impact on their daily lives during and after the interventions. The communities were encouraged to form project committees inclusive of the potential project affected persons, the youth and women in consultation with the Chiefs of their areas to engage in internalizing the proposed project.

Prior to the socio-economic survey, meetings were held with the government officials and other opinion leaders among the community to sensitize them on the project and its benefits as well as possible effects on the socio-economic aspects of the community. Because of the complex nature of the city environment and the wide geographical spread of the project in the city, public consultations were held at various locations as determined by administrative boundaries for ease of administration and management of the stakeholder composition and record keeping for future reference and analysis. The list of local administrative and county officers to be involved in the process was exhaustively compiled.

The table below shows a summary of some of the views expressed by communities consulted:

**Table 1: Summary of concerns from PAPs arising from consultations**

<table>
<thead>
<tr>
<th>No</th>
<th>Issues</th>
<th>Response and Discussions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Most of the PAPs wanted to know the expected date the project will commence</td>
<td>RAP team responded that the project will commence immediately after all the preliminary surveys and consultations have been finalized. It is expected that the project will commence next year depending on availability of funds.</td>
</tr>
<tr>
<td>2.</td>
<td>Compensation as most of the affected PAPs have crops and structures within the proposed route.</td>
<td>The team advised the PAPs that the trunk lines will use riparian reserve which of most cases it was observed that it was heavily encroached. Hence valuation of the assets will be done and notifications will be given for all encroachers and squatters to vacate the demarcated area before construction starts.</td>
</tr>
<tr>
<td>3.</td>
<td>Employment</td>
<td>Most PAPs were of the opinion the contractor to employ the youth and women in the area as casuals instead of sourcing them elsewhere.</td>
</tr>
<tr>
<td>4.</td>
<td>Connection to the sewers</td>
<td>Some areas such as Njiru, Marurui, have no connection to the sewer hence they were informed there were proposed reticulations in the NARSIP 11 project which will serve their area.</td>
</tr>
<tr>
<td>5.</td>
<td>(Way leave)Residents wanted to know the exact places the</td>
<td>Residents were informed that the main trunks will be on the riparian and road reserve areas; Hence if the reserved area is</td>
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trunk sewer will be constructed and also areas that will be given lateral lines for connection to the main trunk sewer. Not adequate to lay the lines the project will acquire land through easement.

6. Water Supply

PAPs were concerned that some areas have inadequate supply of water hence they needed it more such areas as Karen. The PAPs were informed that currently the NaRSIP project deals with improvement of sewerage system in the county and that water component will be discussed with the client.

7. Notification and communication

Notification to be done through the Chief’s Offices three months prior to the start of Construction.

8. Allotment letters and Documents

Some PAPs in areas such as Dandora, City Carton, Njiru, DESTP claim to have legal allotment documents from the county offices that they are legal owners of land in the riparian reserve this may cause conflict during implementation. The Consultant informed them that all riparian reserves are government land and it’s the mandate of WRMA to demarcate the areas.

5. Integration with host communities

Considering that the project will be implemented in a complex urban environment where land is very expensive, it is not anticipated that the RAP implementation process will secure any one discrete relocation area for affected PAPs. In view of this, the concept of host communities will most probably not apply as the affected PAPs will either remain where they are if only parts of their properties will be affected or will relocate to different areas after compensation and not to any one specific locality. In any case the RAP process largely established that the PAPs prefer cash compensation as first preference.

6. Socio-economic studies

The information for formulation of the Resettlement Action Plan was based on primary and secondary data sources. The secondary data came from official records and past reports available at Nairobi City Water and Sewerage Company Limited (NCWSCo) and Athi Water Services Board (AWSB) and other relevant documents associated with the proposed project.

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

i. Analyzing the secondary data information contained in official reports;

ii. Conducting surveys on the socio-economic status of the project affected people within the sewerage network system. A structured questionnaire on socio-economic aspects of the PAPs was conducted by trained assistants.

iii. Observations within the project areas for empirical evidence on characteristics of the communities to be potentially affected by the extension and duplication of the existing sewerage system.
iv. Census and inventory was conducted to get information required to identify the PAPs and the impacts on affected assets in the proposed project areas.

v. Public consultation and participation conducted in various sites with various stakeholders and community members of the proposed project areas in order to solicit the opinions and views of the project affected persons about the project impacts and compensation.

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

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

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

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

The existing sewer network on the other hand comprises a trunk sewer system that has a total length of about 162.7 km and covers an area of about 208 km² which essentially covers only 40% of the city area served with water. The main problems identified in the system are non-functional sewers due to washed away sections, accidental breakages or deliberate vandalism of manhole covers, blockages due to deliberate dumping of solid waste or accidental entry of stones and boulders into open manholes and also blockage of sewer lines by urban farmers to catch sewage for irrigation and overflowing of sewers due to insufficient capacity.

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

Recent surveys indicate that most of the sewage treatment plants are operating at very low efficiency despite the fact that they receive flows below their design capacity. It has been suggested that this may be attributed to poor maintenance, high organic loading and influence of industrial discharges. A survey was carried out to determine the nature and extent of pollution of the major rivers in Nairobi thus Nairobi, Mathare and
Ngong rivers. The surveys indicate that the rivers are highly polluted and concrete mitigation measures need to be taken.

It was also recorded that 47% of the households in the project utilize flush toilets while those with 40% utilize pit latrines mostly in the informal settlement areas. The PAPs in the proposed project area have confirmed they needed a sewerage system due to population growth and proposed rehabilitation and reconstruction of the collapsed trunk sewers will solve such issues.

7. Legal framework, including mechanisms for conflict resolution and appeal

One of the principles of the Resettlement Action Plan (RAP) is that resettlement planning should adhere to national policies and legislation, and international best practices. Among the key pieces of legislation relevant to resettlement planning and implementation in Kenya are the following:


The Constitution of Kenya, 2010, protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except in accordance with law. Article 40(3) states: “The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that;

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

The Constitution empowers the state to exercise the authority of compulsory acquisition, although this is not anticipated in this project. Land Act 2012 (LA) designates the National Land Commission (NLC) as the agency empowered to compulsorily acquire land. Article 40 of the Constitution provides that the state may deprive owners of property only if the deprivation is "for a public purpose or in the public interest," which includes public buildings, roads, wayleaves, drainage, irrigation canals among others. The state's exercise of this power is left at the discretion of NLC, and requires the state to make full and prompt payment of "just compensation" and an opportunity for appeal to court.

7.2 The Land Act, 2012

The Land Act 29(“LA”) is the Kenya’s framework legislation regulating compulsory acquisition of land (i.e. land, houses, easements etc.). The LA was adopted on 2nd May 2012 and provides for sustainable administration and management of land and land based resources including compulsory acquisition. The land Acquisition Process as spelt out in the Land Act involves the following steps: a. Proof that compulsory possession is for public good It is very explicit in the Land Act, 2012, Section 107, that whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110 of Land Act 2012, the possession of the land must be necessary for public purpose or public interest, such as, in the interests of public defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit.

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

7.3 The Valuers Act

Valuation of land is a critical aspect of compulsory acquisition practice and compensation. The National Land Commission based on land valuation determined by registered valuers will make compensation awards. Besides, the Valuers Act establishes the Valuers Registration Board, which regulates the activities and practice of registered valuers. All valuers must be registered with the Board to practice in Kenya. The Board shall keep and maintain the names of registered valuers, which shall include the date of entry in the register; the address of the person registered the qualification of the person and any other relevant particular that the Board may find necessary. The RAP study has made use of the services of registered valuers who are approved by Valuers Registration Board.

Under the Valuers Act, professional misconduct of registered valuer will include:-

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

It is thus expected that the valuation process will be conducted in a fair manner so that the affected PAPs receive fair value for their lost properties.

7.4 Kenya Roads Act, 2007 (No. 201 of 2007)

Because a large part of the sewer lines will be laid along road reserves, the Roads Act will be applicable to this project. Section 49 of the Kenya Roads Act, 2007 (No. 201 of 2007) prohibits erection of structures on a road reserve without permission from the Roads’ Authority. Where a person, without the required permission, erects constructs or establishes a structure or other thing, or makes a structural alteration or addition to a structure, the Authority may by notice in writing direct that person to remove the unauthorized structure. If the person to whom a notice has been issued fails to remove the structure, alteration or addition mentioned in the notice, within the period stated, such item may be removed by the Authority itself and the Authority can recover the cost of the removal from that person. It is anticipated that a proper consultation process will enable effective engagement with persons located in the affected road reserves before the RAP census cut off dates.

7.5 Environment and Land Court Act (2011)

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

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

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

(b) Compulsory acquisition of land;
Land administration and management;

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

Any other dispute relating to environment and land.

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

In addition to the Country’s legislation, the RAP process will be implemented in line with the AfDB policies, and in particular the policies applying to involuntary resettlement.

**AfDB Involuntary Resettlement Policy, 2003.**

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

i. To avoid involuntary resettlement where feasible, or minimize resettlement impacts where population displacement is unavoidable, exploring all viable project designs. Particular attention must be given to socio-culture consideration such as culture or religious significance of land, the vulnerability of affected population, or the availability of in-kind replacement for assets, especially when they have important intangible implication. When a large number of people or a significant portion of the affected population would be subject to relocate or would suffer from the impacts that are difficult to quantify and to compensate, the alternative of not going ahead with the project should be give serious consideration;

ii. To ensure that the displaced people receive resettlement assistance, preferably under the project, so that their standards of living, income earning capacity, and production levels are improved;

iii. To provide explicit guidance to Bank staff and to the borrowers on the conditions that need to be met regarding involuntary resettlement issues in Bank operations in order to mitigate the negative impacts of displacement and resettlement and establish sustainable economy and society; and

iv. To set up a mechanism for monitoring the performance of involuntary resettlement programs in Bank operations and remedying problems as they arise so as to safeguard against ill-prepared and poorly implemented resettlement plans.

**8. Institutional framework**

The project will be implemented using existing organizational structures incorporating lessons and experiences gained with the other similar operations. The Government of the Republic of Kenya will be the borrower of the loan(s) which will be transferred to Athi Water Services Board on a subsidy financing agreement acceptable to the lender(s).

Athi Water Services Board will establish a Project Implementing team (PIT) consisting of a Project coordinator, Project Engineer, Procurement Officer, Environment Officer, Social/Community development Officer, Project Accountant and M&E officer. NCWSC and NCG will co-opt representatives to be involved in the implementation of the project. A steering committee chaired by the Permanent Secretary, Ministry of Water and Sanitation and representatives of key agencies will be constituted. Members of the steering committee will include; Chief Executive Officer AWSB, Managing Director Nairobi Water and Sewerage
Company, CEC Environment, Water and Energy Nairobi County Government, Head planning and Engineering AWSB. The steering committee will monitor and guide the project implementation during quarterly coordination meetings.

The Athi Water Services Board’s implementation team will be in-charge of the project implementation. AWSB shall be responsible for overall coordination of the project and reporting obligations to donors. A project implementation team will be constituted and staffed by seconded adequately skilled personnel including environmental and social experts who will be responsible for tracking implementation of environmental and social management plans (ESMPs) and RAP.

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

i. Gathering and sharing information and avoiding potential problems;

ii. Mobilization and motivation to PAPs to form community based organizations;

iii. Planning and implementing income-generating schemes for the PAPs;

iv. Developing information campaigns and community participation;

v. Strengthening local institutions and community self-reliance; and

vi. Delivering services to communities in a more efficient and cost effective manner.

Once the Resettlement Plan obtains approval from the Government/Funding body and the Implementation Budget is secured, implementation of the RAP can proceed.

9. **Eligibility**

All assets, including housing and business structures and farmlands that were surveyed in the project affected area by the Cut-Off Date are eligible for compensation. People residing in the Project-Affected Area by the Cut-Off Date are eligible for compensation even if they have no legal tenure (encroachers, squatters, sharecroppers).

Part of the process to establish eligibility involved verification of affected assets, a process that will involve the PAPs and their leaders and/or representatives. This process will further identify and validate all PAPs and check records of addresses, type of property, estimation of type and level of losses. The procedure should also include consultations for explaining the entitlement framework to the PAPs, methods of payment of compensation, assistance entitlements, grievance procedures and participation in implementation as well as the scope of their eligibility depending on nature of assets affected.

For the proposed NaRSIP 11 Project the following groups are entitled to compensation and/or assistance under the project:

i. Those who have formal legal rights to land or other assets recognized under the laws of the country concerned. This category generally includes people who are physically residing at the project site and those who will be displaced or may lose access or suffer a loss in their livelihood as a result of project activities.
ii. Those that may not have formal legal rights to land or other assets at the time of the census/evaluation but can prove that they have a claim that would be recognized under the customary laws of the country. This category may include people who may not be physically residing at the project site or persons who may not have any assets or direct sources of livelihood derived from the project site, but who have spiritual and/or ancestral ties with the land and are locally recognized by communities as customary inheritors. Depending on the country’s customary land use rights, they may also be considered to have a claim if they are sharecroppers, tenant farmers, and seasonal migrants or nomadic families losing user rights.

iii. Those who have no recognizable legal right or claim to the land they are occupying in the project area of influence and who do not fall into either of the two categories described above, if, they themselves or witnesses can, demonstrate that they occupied, the project area of influence for at-least six months prior to a cut-off date established by the borrower or client and acceptable to the Bank. These groups may be entitled to resettlement assistance other than compensation for land to improve their former living standards (compensation for loss of livelihood activities, common property resources, structures and crops, etc.).

9.1 Compensation and resettlement allowances

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

The RAP has prepared a grievance redress mechanism (GRM) to address cases where individual PAPs may not be happy with the compensation offered. This mechanism shall include representatives of the PAPs and their local leaders.

9.1.1 Conditions of Eligibility for Compensation

• Preferred mode of compensation

One of the major concerns of the PAPs was whether there would be compensation for assets such as structures and crops by the project. Majority of the PAPs who have structures, crops and businesses within/along the way leave area preferred cash compensation as the preferred mode of compensation.

• Cut-Off Date

The Cut-Off date for eligibility for compensation was deemed to be the date at which all the census of all affected people and assets was completed that is 30th November 2016. It was clearly stated to the PAPs during the public consultation meetings that no structure or field established after the project affected area after the cutoff date will be eligible for compensation it is worth noting that thereafter the social economic conditions keep changing with time even during implementation.

• Database

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

The Entitlement Matrix describes compensation and related assistance for each category of affected PAP. For NaRSIP II an entitlement matrix has been developed as follows:

Table 3: Entitlement Matrix

<table>
<thead>
<tr>
<th>TYPE OF LOSSES</th>
<th>CATEGORIES OF PAPS</th>
<th>ENTITLEMENT</th>
</tr>
</thead>
</table>
| Loss of Agricultural land beyond riparian | All types of affected persons | • Replacement of lost land by agricultural land of similar potential under similar tenure arrangements with formal registration in replacement land with the relevant land authorities.  
• Cash compensation for land or non-cash compensation of land (land for land).  
• Cash compensation of all immoveable developments on the affected land, such as structures, wells, |
| Loss of Residential land | All types of affected persons | • Replacement of lost residential land by resettlement residential land of similar size with formal recognition of ownership of the resettlement plot by the relevant administrative authorities.  
• Cash compensation for land or non-cash compensation of land (land for land).  
• Cash compensation of all immoveable developments on the affected land, such as structures, wells, |
| Loss of Structures on public land (Road reserve, river riparian) | All types of affected persons | • No cash compensation or land replacement for loss of land. This is because public right of way is public property and the PAPs are considered as encroachers or squatters. But affected persons will be compensated for the loss of structures and livelihood.  
• Movement allowance to cover the cost of moving structures (transport plus loading/unloading) shall be compensated.  
• Cost of labour for dismantling and reconstruction will also be provided.  
• Owners of affected structures will be allowed to take/reuse all the salvageable materials for rebuilding/rehabilitation of the structure. |
| Loss of Crops and structures within the riparian area | All types of affected persons | • Cash compensation of all immoveable developments on the affected land, such as structures  
• Cash compensation of standing crops and trees |

10. Valuation of, and compensation for losses

Census and inventory was conducted to get information required to identify the PAPs and the impacts on affected assets in the project areas. The process of census entailed enumeration of all households which will be or might be affected by the project. The process was facilitated by the chiefs, local village elders and consultants team in respective areas.

The proposed project will use the allocated government riparian land and way leave hence displacement of PAPS permanently on private land will be minimally envisaged at this level only 4% of the PAPS felt there
land will be affected. 16% of the PAPS felt that the project will interrupt their businesses especially the ones on road reserve due to construction activities. Some of the structures that will be affected by the construction of the project which are at 28% are masonry walls, fences, semi-permanent iron-sheet roofed (mabati) houses and sheds.

Fig. 1: Distribution of categories of affected properties

11.0 Implementation schedules

For proper planning of RAP implementation, an implementation schedule covering all resettlement activities from preparation through implementation, including target dates for achievement of expected benefits to resettlers should be prepared. For the NaRSIP II RAP, the schedule for each of the above activities shall be guided by the RAP Implementation Schedule as contained in the RAP.

Fig: 2: Proposed RAP Implementation key steps.

12.0 Costs and budget

The Estimated Budget for resettlement compensation is Kshs 537,917,613.85 only, including disturbance allowance at 15% of each of the total assets lost, including a 10% contingency item. In addition a 20% each for administration cost for the RAP implementation, financial management training, monitoring and evaluation has been considered. PAPs will be paid their resettlement and compensation entitlements prior to the project works being carried out in the affected project sites. The source of funding for the RAP is counterpart funding from the Government of Kenya.
13.0 Monitoring and evaluation

Monitoring the RAP implementation process (part of the role of the AWSB internal Resettlement Implementation Unit (RIU). Arrangements for monitoring of resettlement activities by the implementing agency; supplemented by independent monitors as appropriate, to ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; evaluation of the impacts of resettlement for a reasonable period of time after the resettlement activities have been completed.

13.1 External monitoring of RAP implementation

It is planned that the Project Implementation Team will hire a suitably qualified external social auditor with significant experience in resettlement to carry out two reviews annually with reviews focusing on the assessment of compliance with social commitments contained in Kenyan legislation, in the AfDB Principles, in this Resettlement Action Plan(s), in the ESIA and its action plans, and in the environmental and social management plan.

Objectives of the external monitoring will include:

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

13.0 Conclusion

The relevant ESIA and RAP studies for the project have been conducted by the AWSB and the NCWSC. Despite the implementation of NARSIP I, further reduction of pollution from domestic waste effluent to Nairobi rivers and Athi river basin water system is required, hence the phase two proposal.

The ESIA and RAP done for the various components of NaRSIP II have proposed a range of mitigation measures for the anticipated impacts and these, if implemented should be able to support environmentally and socially sound implementation of the project. It is expected that in addition to the ESIA and RAP, further complementary environmental and social management measures will be developed by contractors and overseen by supervising consultants who will be responsible for day-to-day environmental oversight on the project.

15.0 References and Contacts

This ESIA/RAP summary was prepared based on information contained in the detailed project ESIA and RAP documents provided by the client, AWSB.

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