ENERGY SECTOR RECOVERY PROJECT

Distribution Reinforcement And Upgrade, Environmental And Social Impact Assessment Study

Final Report

Volume II: Resettlement Policy Framework

February 2004
EXECUTIVE SUMMARY

The distribution component of the Power Sector Recovery Project is designed to reduce losses in the distribution system, improve quality of electricity supply and increase access to electricity, and has the objectives outlined below.

(i) Reduction of the non-technical losses at the annual rate of one percent through effective inspection, and targeted improvement in collection rates;

(ii) Increasing access to electricity by accelerating connection rates and introducing a customer-friendly connection policy;

(iii) Improving system reliability and performance by replacing obsolete protection gear, installing auto-reclosers and auto load-break switches and sectionalizers in the distribution system;

(iv) Installing metering systems to segregate transmission and distribution losses.

The project will mainly involve the construction of new and rehabilitation of existing substations and power lines. There are different sizes of substations that will be constructed or upgraded. These substations will require different land sizes and equipment. The land sizes required are:

- 132/33 kV substation - 2 acres
- 66/11 kV substation - 1 acre (minimum 0.5 acre)
- 33/11 kV substation - 0.5 acres

The land required for the low voltage overhead power lines (i.e. 11KV, 33KV and 66KV) is 5 meters on each side from the center of the poles. When clearing of land is required then a width of about 20 meters is required. Land required for the high voltage lines (i.e. 132KV and 220KV) is 20 meters from the center of the line. However, there is no construction of a high voltage line in this project.

The total length of lines to be constructed is 150.3 kilometers. This translates to 15 hectares or 37 acres. Approximately 80% of this land comprises of road reserves and public utility land.

The identified route lines and substation sites should not lead to either the physical displacement of people, loss of their shelter, loss of assets, loss of income sources or means of livelihood, or restriction of access to economic resources. If it happens then OP 4.12 is triggered and those affected must be compensated.

Some of the substation sites and power line routes have not yet been established. When KPLC eventually establishes this, land would be acquired or access to economic resources may be lost, denied or restricted and people may then be affected. At that stage, OP 4.12 calls for the preparation of individual Resettlement Plans that must be consistent with this RPF.
A major objective of this RPF is to ensure that affected individuals and households, and affected and/or displaced communities are meaningfully consulted, have participated in the planning process, are adequately compensated to the extent that at least their pre-displacement incomes have been restored and that the process has been a fair and transparent one. Though this document is to be disclosed separately, it is based on Volume I of the report.
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1.0 INTRODUCTION

1.1 Purpose

The purpose of this policy framework is to clarify resettlement principles, organizational arrangements, and design criteria to be applied to the Distribution Component of the Power Sector Recovery Project.

1.2 Objectives of the Project

The distribution component of the Power Sector Recovery Project is designed to reduce losses in the distribution system, improve quality of electricity supply and increase access to electricity, and has the objectives outlined below.

i) Reduction of the non-technical losses at the annual rate of one percent through effective inspection, and targeted improvement in collection rates;

ii) Increasing access to electricity by accelerating connection rates and introducing a customer-friendly connection policy;

iii) Improving system reliability and performance by replacing obsolete protection gear, installing auto-reclosers and auto load-break switches and sectionalizers in the distribution system;

iv) Installing metering systems to segregate transmission and distribution losses.

1.3 Description of the Proposed Component

KPLC’s Proposal has identified priority programs for the reinforcement and upgrade of the transmission and distribution systems. These are grouped as follows:

1.3.1 Nairobi Area.

Table 1: Description of Proposed Component in Nairobi

<table>
<thead>
<tr>
<th>Group</th>
<th>New Line Routes &amp; Substation Sites</th>
<th>Distribution Systems Reinforcement and Upgrade</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Location</td>
<td>Description</td>
</tr>
<tr>
<td></td>
<td>Nairobi North</td>
<td>- Construction of 75 km of 66 kV new line route from Nairobi North</td>
</tr>
<tr>
<td></td>
<td>Athi River Quarries</td>
<td>- Construction of 12.5 km of new lines</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Installing one (1). New 66/11 kV substation</td>
</tr>
<tr>
<td>Area</td>
<td>Task Description</td>
<td>Location</td>
</tr>
<tr>
<td>------------</td>
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</tr>
<tr>
<td>Ngong Road</td>
<td>Installing one (1). New 66/11 kV substation</td>
<td>Ruaraka</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Karen</td>
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<td>Karen</td>
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<td>Thika</td>
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<td></td>
<td></td>
<td>Limuru</td>
</tr>
<tr>
<td>Westlands</td>
<td>Installing one (1). new 66/11 kV substation</td>
<td>Athi</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Airport</td>
</tr>
<tr>
<td>Gigiri</td>
<td>Installing one (1). new 66/11 kV substation</td>
<td>Jeevanjee</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Donholm</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cathedral to Nairobi West</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastleigh Feeder from Parklands</td>
<td>Construct new 2.8 km 11 kV line and reconductor 3.1 km 11 kV</td>
<td>Cathedra to Nairobi West</td>
</tr>
<tr>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Embakasi Substation</td>
<td>Installing static var compensators</td>
<td>All Areas</td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td>Group</td>
<td>New Line Routes &amp; Substation Sites</td>
<td>Distribution Systems Reinforcement and Upgrade</td>
</tr>
<tr>
<td>-------</td>
<td>-----------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td><strong>Location</strong></td>
<td><strong>Description</strong></td>
<td><strong>Location</strong></td>
</tr>
<tr>
<td>Kanamai/Watamu</td>
<td>Installation of new 33/11 kV substations (1 x 7.5MVA) Construct 6km of 33kV overhead lines</td>
<td>Likoni</td>
</tr>
<tr>
<td>Island</td>
<td>Installing one (1). New 33/11 kV substation (1 x 23MVA)</td>
<td>New Bamburi</td>
</tr>
<tr>
<td>Kenya Petroleum Refineries (KPR)</td>
<td>Installing of 2 x 33kV circuit breakers Installing of 1 x 7.5MVA 33/11kV transformer</td>
<td>KPR</td>
</tr>
<tr>
<td>Mariakani</td>
<td>Installing one (1) new</td>
<td>Kipevu</td>
</tr>
</tbody>
</table>

### 1.3.2 Coastal Area

Table 2: Description of Proposed Component in Coast Region
<table>
<thead>
<tr>
<th></th>
<th>Location</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2B</td>
<td>Diani</td>
<td>Upgrade 33/11kV substation from 15MVA to 23MVA</td>
</tr>
<tr>
<td></td>
<td>Voi</td>
<td>Upgrading 132/33 kV substation from 5MVA to 10 MVA</td>
</tr>
<tr>
<td>3</td>
<td>Rabai Substation</td>
<td>Installing static var compensators</td>
</tr>
<tr>
<td></td>
<td>All Areas</td>
<td>- Installation of energy meters on 11 kV and 33 kV distribution feeders</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Replacement of 5,000 electromechanical 3 phase energy meters with electronic ones</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Installation of Disaster Recovery Server</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Replacement of 33 kV oil circuit breakers with SF6 units</td>
</tr>
<tr>
<td></td>
<td>Kiembeni</td>
<td>Installing a new 33/11kV substation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Recondotor a total of 8km 33kV line to 300AAA conductor</td>
</tr>
<tr>
<td></td>
<td>Galu</td>
<td>Upgrade 33/11kV to 1 x 1.75MVA</td>
</tr>
<tr>
<td>4</td>
<td>All Areas</td>
<td>- Upgrade the SCADA system and replace related old and obsolete equipment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Carry out reinforcement of the Low Voltage Network by reconductoring and installing additional distribution transformers as required for the rationalization of the network supply coverage</td>
</tr>
<tr>
<td></td>
<td>All Areas</td>
<td>Replace existing 11kV metalclad indoor oil circuit breakers (35 incomers, 17 bussections, 142 feeders and 93 metering) with more reliable vacuum or SF6 units</td>
</tr>
<tr>
<td>5</td>
<td>Malindi</td>
<td>Recondotor 15km overhead line feeders</td>
</tr>
<tr>
<td></td>
<td>Bamburi</td>
<td>Recondotor 6km overhead line feeders</td>
</tr>
</tbody>
</table>
### 1.3.3 Western Area

**Table 3: Description of Proposed Component in Western Region**

<table>
<thead>
<tr>
<th>Group</th>
<th>New Line Routes &amp; Substation Sites</th>
<th>Distribution Systems Reinforcement and Upgrade</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Location</td>
<td>Description</td>
</tr>
<tr>
<td>2B</td>
<td>Naivasha &amp; Lanet</td>
<td>Rehabilitate the substations by installing 8 No. 132kV circuit breakers (4 No. each station)</td>
</tr>
</tbody>
</table>
| 3     | Butere | Establish a new 2.5MVA, 33/11kV substation and Construct 10km of 33kV overhead lines | All Areas | - Installation of energy meters on 11 kV and 33 kV distribution feeders  
- Replacement of 5,000 electromechanical 3 phase energy meters with electronic ones  
- Installation of Disaster Recovery Server  
- Replacement of 33 kV oil circuit breakers with SF6 units |
<p>|       | Lessos | - Uprate 132/33kV substation by replacing existing unit with 23MVA unit and installing additional 23MVA unit | | |</p>
<table>
<thead>
<tr>
<th>All Areas</th>
<th>All Areas</th>
<th>All Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>4</strong></td>
<td><strong>4</strong></td>
<td><strong>4</strong></td>
</tr>
<tr>
<td>Upgrade the SCADA system and replace related old and obsolete equipment</td>
<td>Upgrade the SCADA system and replace related old and obsolete equipment</td>
<td>Upgrade the SCADA system and replace related old and obsolete equipment</td>
</tr>
<tr>
<td>- Carry out reinforcement of the Low Voltage Network by reconductoring and installing additional distribution transformers as required for the rationalization of the network supply coverage</td>
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</tr>
<tr>
<td>聂osos</td>
<td>Establishment of a new 23MVA 132/33kV substation</td>
<td>Uprate 33/11 kV substations by installing additional 2.5MVA transformer</td>
</tr>
<tr>
<td>Cherangani</td>
<td>Establishment of a new 2.5MVA 33/11kV substation</td>
<td>Sondu</td>
</tr>
<tr>
<td>Sondu</td>
<td>Establishment of a new 2.5MVA 33/11kV substation</td>
<td>Sondu</td>
</tr>
<tr>
<td>Nakuru, Naivasha, Kisii, Sondu, Bondo</td>
<td>Establishment of a new 2.5MVA 33/11kV substation</td>
<td>Sondu</td>
</tr>
<tr>
<td>Establishment of a new 2.5MVA 33/11kV substation</td>
<td>Establishment of a new 2.5MVA 33/11kV substation</td>
<td>Sondu</td>
</tr>
<tr>
<td>Nakuru, Miwani, Naivasha, Njoro/Molo</td>
<td>Establishment of a new 2.5MVA 33/11kV substation</td>
<td>Sondu</td>
</tr>
<tr>
<td>Sondu, Cherangani, Eldama Ravine</td>
<td>Establishment of a new 2.5MVA 33/11kV substation</td>
<td>Sondu</td>
</tr>
<tr>
<td>Construction of 26km 33kV overhead lines</td>
<td>Construction of 26km 33kV overhead lines</td>
<td>Sondu</td>
</tr>
<tr>
<td>Replacing 22 No. unserviceable autoreclosers</td>
<td>Replacing 22 No. unserviceable autoreclosers</td>
<td>Sondu</td>
</tr>
<tr>
<td>Various substations</td>
<td>Install 34MVA, 11kV shunt capacitors</td>
<td>Sondu</td>
</tr>
</tbody>
</table>
### 1.3.4 Mt Kenya Region

**Table 4: Description of Proposed Component in Mt. Kenya region**

<table>
<thead>
<tr>
<th>Group</th>
<th>New Line Routes &amp; Substation Sites</th>
<th>Distribution Systems Reinforcement and Upgrade</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Location</td>
<td>Location Description</td>
</tr>
<tr>
<td>All Areas</td>
<td>- Installation of energy meters on 11 kV and 33 kV distribution feeders</td>
<td></td>
</tr>
<tr>
<td>Kamburu</td>
<td>Uprate 132/33kV substation to 23MVA</td>
<td></td>
</tr>
<tr>
<td>Embori</td>
<td>Uprate 33/11kV substation to 205MVA</td>
<td></td>
</tr>
<tr>
<td>Whole region</td>
<td>Install radio system replacing the existing old and obsolete system</td>
<td></td>
</tr>
<tr>
<td>All Areas</td>
<td>- Upgrade the SCADA system and replace related old and obsolete equipment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Carry out reinforcement of the Low Voltage Network by reconductoring and installing additional distribution transformers as required for the rationalization of the network supply coverage</td>
<td></td>
</tr>
<tr>
<td>All Areas</td>
<td>Replace existing 11kV metalclad indoor oil circuit breakers (35 incomers, 17 bussections, 142 feeders and 93 metering) with more reliable vacuum or SF6 units</td>
<td></td>
</tr>
<tr>
<td>Makuyu, Chinga</td>
<td>Reconduct 66km of 11kV overhead lines</td>
<td></td>
</tr>
<tr>
<td>Tana Embu area</td>
<td>Reconduct 30km of 33kV overhead lines</td>
<td></td>
</tr>
</tbody>
</table>
1.4 Components Involving Land Acquisition and Resettlement

1.4.1 Substations

There are different sizes of substations that will be constructed or upgraded. These substations will require different land sizes and equipment. The land sizes required are:

- 132/33 kV substation - 2 acres
- 66/11 kV substation - 1 acre (minimum 0.5 acre)
- 33/11 kV substation - 0.5 acres

The equipment in the substation will include transformers, bus bars, circuit breakers, isolators and switchgears. The work in new substations will include the civil works namely the removal of the topsoil and filling with hardcore material before preparing the transformer plinth and the foundation for equipment bases. The fencing is usually done to secure the compound prior to the commencement of the construction works.

1.4.2 Power Lines

The land required for the low voltage overhead power lines (i.e. 11KV, 33KV and 66KV) is 5 meters on each side from the center of the poles. When clearing of land is required then a width of about 20 meters is required. Land required for the high voltage lines (i.e. 132KV and 220KV) is 20 meters from the center of the line. However, there is no construction of a high voltage line in this project. Most of the overhead power networks at 11KV, 33KV and 66KV are constructed on treated wooden poles. The poles are treated with creosote, which is a petrol-chemical product.

The total length of lines to be constructed is 150.3 kilometers. This translates to 15 hectares or 37 acres. Approximately 80% of this land comprises of road reserves and public utility land.

1.4.3 KPLC Land Acquisition Procedure

Substations

The KPLC identifies the areas and the individual registered landowner whom they approach and negotiate the land price based on the existing market value. If the plot belongs to the City Council or is public land (government), the KPLC makes a formal request and the former does the allotment while the latter grants the land through the Commissioner of Lands, as the case may be. KPLC also approaches its sister companies (parastatals) for land. This is only done on a willing seller basis.

The owner of the land and the one utilizing it are each compensated if they are two separate entities. The assessment team would value the property on the land i.e. buildings and crops, as well as the land itself.

Low Voltage Lines

A reconnaissance survey is first done to search for the best possible route. It is KPLC policy to avoid existing structures as much as possible. Once the best route has been
established, a meeting between the KPLC staff, the locals and the local administration is arranged. During this meeting KPLC formally requests for permission to survey the area. Once this is agreed upon, the surveyor moves to site and takes detailed profiles of the area and also places pegs where the poles are to be located. The surveyor then prepares a cadastral map of the area showing the plot numbers and the route of the power lines as well as the position of the poles.

The Wayleaves section of the KPLC then prepares a wayleaves agreement showing the specific affected plot and the proposed route. The individual owner is then approached with this proposal and his consent is requested. If the owner agrees, she/he is not offered any compensation for the land but also does not surrender the title to the land. However, the owner is not allowed to grow anything higher than 12 feet within five meters of the poles or line. If the owner refuses to consent to this proposal an alternative route is sought.

KPLC also consult with other relevant institutions such as Telkom Kenya, County Councils, Airport Authorities, Kenya Pipeline Company, Kenya Ports Authority, Department of Defence, Kenya Wildlife Service, Conservatoire of Forests and Ministry of Public Works and Housing to ensure that their proposal is in harmony with other proposed developments.

*High Voltage Lines*

A similar procedure is undertaken in assessing the best route as in the case for the low voltage lines. The land required is of 40 meters width. Once the best route is established the landowner is approached and an offer is made based on the prevailing market rates. The owner is also compensated for buildings or crops that are on the land. Resettlement of those affected is undertaken when the situation is warranted.

Once an agreement is reached between KPLC and the landowner, the latter is paid 70% of the agreed sum in advance. She/he is then issued with a 6-month notice to quit the land on receipt of the payment. The remaining 30% is paid after the landowner has moved.

1.5 Justification for Resettlement Policy Framework

The identified route lines and substation sites should not lead to either the physical displacement of people, loss of their shelter, loss of assets, loss of income sources or means of livelihood, or restriction of access to economic resources. If it happens then OP 4.12 is triggered and those affected must be compensated.

Some of the substation sites and power line routes have not yet been established. When KPLC eventually establishes this, land would be acquired or access to economic resources may be lost, denied or restricted and people may then be affected. At that stage, OP 4.12 calls for the preparation of individual Resettlement Plans that must be consistent with this RPF.
2.0 POLICY FRAMEWORK

2.1 Principles and Objectives Governing Resettlement Preparation and Implementation

The impacts due to involuntary resettlement from development projects, if left unmitigated, often give rise to severe economic, social and environmental risks. These may result in production systems being dismantled, people facing impoverishment when their productive skills may be less applicable and the competition for resources greater; community institutions and social networks being weakened; kin groups being dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. The resettlement policy, in most cases, is not triggered because people are not being affected by physical displacement. It is triggered because the project activity may cause land acquisition, whereby a physical piece of land is needed and people may be affected because they are cultivating on that land, they may have buildings on the land, they may use the land for water and grazing of animals or they may otherwise access the land economically, spiritually or any other way which may not be possible during and after the project is implemented. Therefore, affected people in most cases have to be compensated for their loss (of land, property or access) either in kind or in cash of which the former is preferred.

Affected people, according to the Bank policy, refers to people who are directly affected socially and economically by the Bank-assisted investment projects.

In the preparation of the project the affected people should:

- be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
- be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or levels prevailing prior to the beginning of project implementation, whichever is higher.

2.2 Process Description for Resettlement Plans Preparation and Approval

Resettlement plans should be built around development strategy and packages aimed at improving or at least restoring the economic base for those relocated. Experience indicates that cash compensation alone is normally inadequate. Preference should be given to land-based resettlement strategies for people dislocated from agricultural settings. If suitable land is unavailable, non-land-based strategies built around opportunities for employment or self-employment may be used.

2.2.1 Socioeconomic Survey

At project launching, an assessment of the social impacts of each subproject will be conducted. The assessment will help to :(i) determine which mitigation measures to be taken;(ii) establish whether or not detailed resettlement action plans with timetables and budgets should be prepared.
Issues to be addressed by the Social Impact Assessment (SIA) will include: demography; land tenure; socioeconomic structures, consultations with local authorities and with the Project Affected Persons (PAPs). A key task to be conducted under this process is a household survey describing the extent of the social impacts. The social survey should contain general household data such as: family size, gender and age information; education; occupation; land ownership, tenure arrangements and so forth.

Resettlement plans should be based on recent information about the scale and impact of resettlement on the displaced population. In addition to describing standard household characteristics, socio-economic surveys should describe:

(a) The magnitude of displacement;
(b) Information on the full resource base of the affected community;
(c) The extent to which the groups will experience total or partial loss of assets;
(d) Public infrastructure and social services that will be affected;
(e) Formal and informal institutions (such as community organizations, ritual groups etc.) that can assist with designing and implementing the resettlement programs; and
(f) Attitudes on resettlement options.

Socio-economic surveys, recording the names of affected families, should be conducted as early as possible to curtail inflows of populations ineligible for compensation.

The survey would estimate the extent to which the affected families will experience loss of assets, including control over resources, as well as infrastructure and social services available. The survey should further describe local organizations and institutions, village councils, religious groups etc., which could later participate in planning and implementation of the resettlement options. Expected changes in demography and health impacts should also be addressed. At this stage, all PAPs will be listed in order to avoid an influx of people trying to take advantage of the compensation and rehabilitation. A cut off date will also be proclaimed. That means, a date from which eligibility for compensation will be terminated. New inhabitants coming to the project affected areas will not be considered for compensation.

Closely linked to land acquisition is involuntary resettlement. The loss of land often implies that those who lived on the land need to be relocated or resettled. A critical task of the SIA will be to identify new land for those PAPs who will lose their land.

The principles of compensation/rehabilitation will be triggered wherever there will be land acquisition and adverse social impacts. However, should the SIA findings reveal that more than 200 people are affected by a subproject, a Resettlement Action Plan (RAP) will have to be prepared.

2.2.2 Alternative Sites and Selection

The identification of several possible relocation sites and the demarcation of selected sites is a critical step for both rural and urban resettlement. For land-based resettlement, the new site’s productive potential and location advantages should be at least equivalent to those of the old site. The World Bank encourages “land for land” as long as the replacement land is of equal quality to the lost land. In selecting the new relocation site, it is also important that the sources of other income generating to complement farm income
are made accessible. The new site should provide comparable access to employment opportunities, infrastructure, services and production opportunities.

2.2.3 Access to training, employment, and credit

Normally, general economic growth cannot be relied upon to protect the welfare of the project-affected population. Thus, alternative employment strategies are needed for non-agricultural displaced farmers. Where feasible, new economic activities made possible by main investment requiring the displacement, vocational training, employment counseling, transportation, employment in the main investment project or in resettlement activities, establishment of industries, incentives for firms to locate in the area, credit and extension for small businesses or reservoir aquaculture, and preference in public sector employment are all considered in the areas where applicable.

To address the impacts under this policy, resettlement plans must include measures to ensure that the affected and/or displaced persons are:

a. Informed about their options and rights pertaining to resettlement.

b. Consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives.

c. And provided prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project.

2.3 Estimated Population and Likely Categories of Displaced Persons

The socioeconomic survey will determine the total estimated population that would be affected by the project.

The likely affected and/or displaced persons can be categorized into the following 2 groups:

a. **Affected Individual** - An individual who suffers loss of assets or investments, land and property and/or access to natural and/or economical resources as a result of the project activities and to whom compensation is due. For example, an affected individual is a person who farms a land, pastoralists whose routes have been altered, who conducts street vending, or a person who has built a structure on land that has been demarcated and is now required by the project.

b. **Affected Household** - a household is affected if one or more of its members is affected by project activities, either by loss of property, land, loss of access or otherwise affected in any way by project activities.

2.4 Eligibility Criteria for Compensation

There is need to carry out a census to identify the persons who will be affected by the project to determine who is eligible for assistance and benefits, and to discourage inflow of ineligible people. The consultant will assess the level of asset loss as either temporary or
permanent and assign economic values to them. To effectively do this the survey will undertake asset inventory survey for PAPs.

This will be done through interviews, group discussions and review of existing documentary evidence (such as permits and licenses) for assets to be lost in the project. There will be a review of whether the asset is individually owned or belongs to a group. The involuntary taking of land results in: Relocation or loss of shelter, loss of assets or access to assets or loss of income sources or means of livelihood, whether or not the PAPs must move to another location or not. Therefore meaningful consultations with the affected persons (directly and through representatives), local authorities and appropriate NGOs allows for establishing the criteria by which displaced persons will be deemed eligible for compensation and other resettlement assistance.

Eligibility criteria will also be determined by the status of development up to when the study starts and will further be determined by other development approval as issued by both central and local government offices. The key local authorities to be interviewed by the consultants will include District, Divisional and location government officials such as the District/divisional agricultural officer, the District officers, chiefs and sub-chiefs. Other persons include: identified large and small-scale farmers, businessmen and businesswomen, women leaders and other leaders of social groups.

Displaced persons may be classified in one of the following three groups:

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

b. Those who do not have formal legal rights to land at the time the census begins but have a claims to such land or assets- provided that such claims are recognized under the laws of the country or become recognized through an identified process.

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

The process will involve review of tenure documents owned by occupants, interviews with households and groups in the affected area. Local authorities and Ministry of Lands and Settlement, which is concerned with land ownership and management will also hold discussions with the consultant.

Persons covered in a) and b) are provided compensation for the land they lose, and other assistance ensuring that they are:

i. Informed about their options and rights pertaining to resettlement.

ii. Consulted on, or offered choices, and provided with technically and economically feasible resettlement options.

iii. Provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project.
Persons covered under c) are provided resettlement assistance in lieu of compensation for the land they occupy, and other assistance, as necessary, to achieve the policy objectives, if they occupy the project area prior to the cut off date. Persons who encroach on the area after the cut off date are not entitled to compensation or any other form of resettlement assistance. All persons affected by the project are provided compensation for loss of assets other than land.

There will therefore be a package of compensation and other resettlement measures to assist each category of eligible displaced persons to achieve the objectives of the policy.

Eligibility will also be assessed using the following information:

1. **Loss of property**: This includes loss of: houses, crops and trees, structures, fixed improvements, businesses which should be compensated at market valuation, negotiated settlements, productivity valuation, material and labor valuation. In cases where the loss is partial then disposition of salvage material will be exercised. Cash payments may also be made if a small fraction of property is lost instead of replacing the whole property, but if the partial loss results in the PAPs not being economically viable then the property is replaced. Those who loose houses will also be assisted with temporary residence (if necessary).

2. **Loss of wages and income**: These are persons who will lose their income due to the project. Workers losing employment in the process of relocation should be entitled to transitional income support. Compensation equivalent to lost income required for the duration of impact should be paid to the latter.

In addition, PAPs will be entitled to transitional assistance, which include moving expenses, temporary residence (if necessary), and employment in the project while waiting employment. In difficult cases, local authorities such as chiefs may be used to judge eligibility as well as village committees.

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.

It is also important to note that the eligibility may be claimed collectively e.g., as a community or religious group and does not necessarily have to be individuals or families.

**2.5 Legal Framework**

We have in Kenya a plethora of enactments all governing land and transactions in land\(^1\). Thus the substantive land law is to be found in two different statutes while the adjectival land law is to be found in five different statutes not forgetting the customary land law of the various tribes in Kenya.

There are two systems of substantive land law, three systems of conveyancing and five systems of registration. The two systems of substantive law are under:

1. **The Indian Transfer of Property Act 1882** as amended by 1959 Amendment Act

2 The Registered Land Act

The three systems of conveyancing are those applicable to land registered under:

2. Registration of Titles Act

2.5.1 Registration Systems

The five registration systems are those under:

1. The Government Lands Act (G.L.A)
2. Registration of Titles Act (R.T.A)
3. The Land Titles Act (L.T.A)
5. The Registered Land Act (R.L.A)

The Registration of Documents Act is not peculiar to land law as documents completely unrelated to land are registrable under it.

2.5.2 Ownership

Absolute or complete ownership can be said to be in the state. Under G.L.A 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 R.T.A or R.L.A.

All unalienated land other than trust land and all reversion of government leases are vested in the government. Others whether held on freehold or leasehold are vested in grantees as owners having 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 council 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 which 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. The Trust Land Act, in Sub-sections 7 to 13, makes provision for the setting apart of land and payment of
compensation with regard thereto.

All land in urban areas of Kenya and much of the land in rural areas has a registered title. The title to land is either freehold or leasehold. The development and use of freehold title is controlled by land planning regulations which are administered by both the Central Government and the Local Authority in which the land is situated. (A Local Authority is either a County Council or a Municipal Council whose activities are established and controlled by Local Government Legislation).

Leasehold land is held on leases from the Central Government or, less frequently, from the Local Authority and such leases will contain provisions governing the development of the land and the use to which the land can be put. The leases frequently contain provisions against any dealing with the land without the consent of the landlord.

The Central Government administers its land through a Department of Lands which is headed by a Commissioner of Lands.

2.5.3 Expropriation of Land for Development in Kenya

In Kenya expropriation is provided for in the Constitution under section 75 for private land and sections 117 and 118 for unregistered Trust Land. But the constitution only gives general guidelines. The detailed procedures for acquisition are elaborated under the "Land acquisition Act" in chapter 295 for private land and chapter 288 for unregistered Trust Lands. "Trust Land" refers to that land that is still held under African customary tenure. The title to this land is said to vest in the County Council in trust for its inhabitants, hence the term "Trust".

Procedures under Chapter 295 of the "Land Acquisition Act"

In short, a formal request should be submitted to the "Commissioner of Lands" by the benefiting authority, e.g. a municipal council in case of urban areas. Any other public body or Government may request for acquisition this way. The Commissioner will then forward the application to the Minister in charge of lands. If the minister is convinced that the land is required for public purpose, he writes to the commissioner to that effect, and directs him to acquire the land (Section 6(1)). The Commissioner will then give "Notice of Intention" to acquire the land (section 6(2)) in the "Kenya Gazette" side by side with the "Notice of Inquiry". The "Notice of Intention" must mention the public body or the public purpose for which the land is to be acquired. The "Notice of Inquiry" mentions places and fixed dates when persons interested in the subject land are to submit their claims to the Commissioner of Lands or his appointee (a "Valuation Officer" also known as "Collector of compensation") according to Section 9. Meanwhile the Collector of Compensation is supposed to inspect the said land and value it for compensation. After the inquiry the Collector will issue and award depending on his own assessment and the representations of interested parties as submitted at the inquiry (Section 10 and 11).

The award is issued in a prescribed form, together with a statement form. The former indicates the amount of compensation awarded while the latter gives the landowners option of acceptance or rejection of the award. If the landowner accepts the award, the
collector will issue a cheque in settlement together with a formal “Notice of Taking Possession and Vesting” (section 19). The notice instructs the landowner to take his title for amendment or cancellation. It is copied to the Government surveyor and the land registrar to make necessary changes to the affected deed. On the other hand if the owner rejects the award, the collector deposits the money in court pending the former's appeal. Compensation is based on open market value.

Procedures under Chapter 288 of the “Land Acquisition Act”

“Setting apart” carried out at the instance of the state will involve the following procedure. The President will write to the local authority in charge of the said Trust Land informing the Council that the land is required for public purpose by a public body. The Council is supposed to deliberate the matter at a full council meeting and give consent. The “District Commissioner” in charge of the affected area will then proceed to ascertain interests, determine areas and assess compensation for the land after which he is to issue an award. In case of acquisition at the instance of the County Council itself, the whole process is repeated except that this time the President is not involved in giving directions. It starts with a full council meeting.

2.6 Methods of Valuing Affected Assets

Legally acceptable valuation procedures that are accepted by both the Government of Kenya and World Bank, will be applied for purposes of fairness and consistency. This 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. The approach involves direct replacement of expropriated assets and covers an amount that is sufficient for asset replacement net depreciation, moving expenses and other transaction costs. This minimum value is then compared to the cost of new measures. This is arrived at, by analyzing current costs of land, crops, construction and materials.

The estimate of these costs of these new measures can be obtained through the following:

- **Rates quoted by contractors for similar structures in other construction projects/programs:** When rate schedules do not exist or are out of date, recent quotations by contractors for similar types of construction in the vicinity of the project can be used for calculating replacement costs. In projects offering the options of cash compensation or alternative accommodation, the construction cost estimates for alternative accommodation could be used for calculating cash compensation payable.

- **Schedule of rates obtained from the Chief Valuer, Commissioner of Lands Office, Ministry of Lands and Settlement:** The Materials departments have a schedule of rates for preparing estimates for construction projects, which the consultant can use to assess costs for construction materials and labor. When applied to calculation of replacement cost, rates current for the period of actual replacement must be used.

An inventory of each asset belonging to the PAP will be taken in his/her presence. Values of each asset will be pre-printed, shown to the affected person, and set against the type and number of such losses that the individual will be shown, and the total of all losses as well.
The inventory and evaluation will be signed and a copy given on the spot to the affected person. The form will say, and the affected person will be notified, 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 given to the affected person.

Compensation for loss of property

Compensation will be facilitated by (a) paying special attention to the adequacy of the legal arrangements, concerning land title, registration, site occupation (b) publicizing among people to be displaced the laws and regulations on valuation and compensation (c) establishing criteria for determining the resettlement eligibility of affected households, e.g., households that have only partially lost their assets but are no longer economically viable.

Compensation for land, structures, business, fixed improvements and other temporary assets will be based upon market valuation, disposition for salvage materials and other fees paid. Lack of title, license or permit will not bar compensation because even squatters have construction costs relative to design, materials employed, workmanship and final finish. The assessment will be undertaken in consultation with affected communities (by use of interviews, representatives) and relevant (central and local) government agencies.

The Kenyan law recognizes compensation for loss of property due to implementation of development projects. The law includes houses, crops and trees.

It also recommends a fair compensation for loss of property. The government has established a compensation principle, and that is, compensation for loss of property is paid at market value. Property loss falls under four categories namely:

- Property owners
- Business tenants
- Residential tenant
- Encroachers (using land)
- Squatters

a) Property owners
The property owner is to be compensated by land replacement at new site and paid for the crops and trees at market price. Where he has lost structures (business or residential), compensation is at full value and not depreciated. For loss of rental income, a lump some cash payment of 6 months rent per tenant is to be paid, as well a disturbance fee of $ 100. Fences made of wood or wire is to be compensated at $ 3 per meter and for hand-dug wells the property owner is to be compensated at $ 200.

b) Business tenants.
Payment of half of turnover for 6 months is to be paid and replacement cost for assets that cannot be moved

c) Residential tenant
He/she is to be paid 6 months rent equivalent for disturbance. He is also to be compensated for the assets that cannot be moved.
d) **Encroachers**
These are compensated by relocating to site of choice with payment of rental fee for land. For crops, fences and wells they are to be paid as mentioned above.

e) **Squatters**
For compensation the squatters are to be compensated at full replacement value for structures, relocation to resettlement site with payment for site rent. There will also be payment of lieu wages while rebuilding and a disturbance cost of $100.

The “Land for land” compensation will be applied to PAPs who might lose their land. The following are taken into account:

i. The legal status of the land to be compensated;
ii. The quality of land as regards its utilization and
iii. The size of land and the number of people using it as their main source of income.

The Kenya community law states that all land belongs to the Government and in case of expropriation the land is to be compensated at market price. Private professional agencies such as private and independent real estate agencies, banks or mortgage firms are engaged in determining market values for land, or to evaluate the adequacy of administratively set compensation. The local governments through purchase will acquire the land required. The Collector of Compensation or valuation expert in consultation with field Valuation Officers at the Ministry of Lands will establish the value of the land. PAPs, who will lose their titles, will be provided new land with titles. Those without titles will also be provided land in accordance to the legal status of the land previously cultivated or exploited. Economically marginalized PAPs with reduced access to land will be given particular attention by providing them with more land in order to enhance the sources of livelihood.

**Replacement cost for other assets:**

For public infrastructure: - In-kind replacement within an agreed time schedule, or full compensation to the agency replacing the service is required e.g., public phone booths.

For cultural property and community-owned facilities: In-kind replacement or compensation at replacement cost for land and structures (e.g., religious churches, mosques, private or community-operated schools, village meeting houses, local libraries)

For cash crops: Arrangements should be made to allow for harvest or market value should be paid for lost cash crops. The annual market value of crops for the previous 3 years is deemed appropriate as crop compensation.

Other assets: Tube wells, graves, fishponds, poultry houses, fences and other tangible assets should be replaced in kind (or with functional equivalents), relocated or be compensated at replacement cost.

The consultants together with the Ministry of Roads, Public Works and Housing, Ministry of Finance and local government agencies will conduct the execution of the
expropriation/compensation operations. PAPs will be consulted about compensation arrangements prepared. Cash compensation amount and size of land offered for compensation will be presented to each eligible PAP for consideration and endorsement before cash payment for land can be affected. It should be noted that costs of construction vary from one locality to another.

In the valuation of farmland, due consideration will be given to labour and crop loss in addition to the land value. The biggest investment a farmer makes in producing a crop is his or her labour. A farmer works on his/her land most of the months of the year. The major input for producing a crop is not seed or fertilizer, but the significant labour put into the land each year by the farmer. As a result, compensation relating to land will cover the market price of labour invested as well as the market price of the crop lost.

It is difficult to forecast when during the growing season a farmer might need to give up his/her land. Thus, the land compensation covers all investments that a farmer will make. In certain cases, assistance may be provided to land users in addition to compensation payments, for example, if the farmer is notified that his/her land is needed at an agriculturally critical date, when s/he will no longer have enough time to prepare another land without help. Assistance will be provided so as to ensure that replacement land will be ready by the sowing dates. The farmer will still continue to receive his/her cash compensation so that s/he can pay for sowing, weeding and harvesting.

2.7 Organizational Procedures for the Delivery of Entitlements

The project is under the administrative authority of the Ministry of Energy. Policy and strategic decisions involve the following Ministries:

- Ministry of Finance
- Ministry of Environment and Natural Resources
- Ministry of Lands and Settlement (Physical Planning Department)
- Ministry of Roads, Public Works and Housing
- Ministry of Agriculture
- Ministry of Local Government.

The Local Authorities in the respective project regions will also be involved. Some of them are listed below.

- Nairobi City Council
- Mombasa City Council
- Kisumu City Council
- Kilifi County Council
- Kwale County Council
- Nakuru County Council
- Nakuru Municipal Council
- Molo Town Council
- Nyando County Council
- Ahero Town Council

These make decisions about the policy direction of the project and subprojects. The execution of the project is delegated to the project coordination office constituting of
sector specialties such as the Department of Physical Planning and supported by a technical advisory body made up of the experts. The members of the advisory body are composed of directors of relevant ministries. Project operations regarding resettlement/rehabilitation will be coordinated and monitored by the coordination office.

2.8 The Implementation Process

Target dates for achievements of expected benefits to PAPs and hosts are to be set. Disseminating various forms of assistance to them will be done. Planning and coordination of the tasks of the various actors is key to successful implementation. To achieve this goal, workshops will be organized with the stakeholders and other relevant government agencies, at project launching and at the commencement of every subproject identified to have adverse social impacts.

The stakeholders will be requested to participate in the decision making process and provide inputs in the area of their expertise in order to establish a coherent work plan or schedule. PAPs will also be consulted with the aim of obtaining their positions on issues at stake. The requirements of their work/programs/business activities will be incorporated in the expropriation/compensatory plans.

The workshops will focus on:

- Taking stock of the legal framework for compensation.
- Settling institutional arrangements and mechanisms for payment of compensation.
- Defining tasks and responsibilities of each stakeholder and
- Establishing a work plan.

The implementation will follow the work plan and periodic review meetings will be held. This way, they will be able to feed back on the implementation process, any curative measures or improvements.

2.9 Grievance Redress Mechanisms

Grievances may arise from members of communities who are dissatisfied with the eligibility criteria, community planning measures, or actual implementation. Compensation committees including representatives of PAPs will establish the compensation rates. During the initial stages of the valuation process, the affected persons are given copies of grievance procedures as a guide on how to handle the grievances. The process of grievance redress will start with registration of the grievances to be addressed for reference, and to enable progress updates of the cases.

The project will use a local mechanism, which includes peers and local leaders of the affected people. These will ensure equity across cases; they eliminate nuisance claims and satisfy legitimate claimants at low cost. The response time will depend on the issue to be addressed but it should be addressed with efficiency. Compensation will be paid to individual PAPs only after a written consent of the PAPs, including both husband and wife. Should a PAP refuse the compensation suggested, he/she could appeal to the County Councils. A technical committee of regional development at the district level will first
revise his/her case. Then the committee will draft its inclusions and submit them to the District board for deliberation in the aim of settling the differences. And when these have failed the individual PAP has the right to take his case to the civil courts for litigation.

2.10 Arrangements for Funding Resettlement and Compensation

The estimate of the overall cost of resettlement and compensation would be determined during the socio-economic study. In collaboration with the Local Authorities and the PAPs, the KPLC through its Project Management team, will finance the preparation of the resettlement and compensation plan.

At this stage, it is not possible to estimate the likely number of people who may be affected since some of the route lines and substation sites have not yet been identified. When these locations are known, and after the conclusion of the site specific socio-economic study, information on specific impacts, individual and household incomes and numbers of affected people and other demographic data would be available, thus facilitating the preparation of a detailed and accurate budget for resettlement and compensation. All the stakeholders will review this budget. Contingency measures will be put in place based on the information gathered in the survey.

The budget in the resettlement and compensation plans will be subject to the approval of the World Bank.

2.11 Mechanisms for Consultations

To obtain cooperation, participation, and feedback, the affected hosts and resetlers need to be systematically informed and consulted during preparation of the resettlement plan about their options and rights. They will also be able to choose from a number of acceptable resettlement alternatives. Particular attention must be given to vulnerable groups such as indigenous people, ethnic minorities, the landless, and women to ensure that they are represented adequately in such arrangements.

Successful resettlement requires a timely transfer of responsibility from settlement agencies to the resetlers themselves. Otherwise, a dependency relationship may arise, and agency resources may become tied up in a limited number of continually supervised schemes. Local leadership must be encouraged to assume responsibility for environmental management and infrastructure maintenance.

Relocating or compensating people implies communication or dialogue with the stakeholders. The consultation and participation process will include

- Data collection
- Implementation
- Monitoring and evaluation.

Data collecting phase

All the actors will constitute the main taskforce in the collecting phase. PAPs will be consulted to participate in the data-collecting phase by providing socio-economic information about their livelihoods. This could be done through use of forms,
questionnaires and interviews. Persons or groups of persons at the corridor sections, location, village levels, or household levels to be interviewed will also be identified and selected through stratified random sampling.

The PAPs will be consulted through meetings at the municipalities and other local government facilities to share information about the project, discuss social impacts of project operations and the mitigation measures suggested. The contribution of the PAPs will be integrated into the subproject implementation process, from planning to evaluation. Furthermore, data about socio-impacts of the subprojects and the mitigation measures suggested will be provided to local newspapers and radio stations.

The data collected will serve as instruments for the monitoring of the social mitigation measures.

Implementation

During implementation, the PAPs will need to be informed about their rights and options, at which point they will have their say and discuss matters that need clarification. Cash compensation amount and size of land offered for compensation will be presented to each eligible PAP (husband and wife) for consideration and endorsement before cash payment or land compensation can be effected. A committee of peers will be set up for grievance redress.

Monitoring and evaluation phase

The PAPs representatives will participate in the project completion workshops, to give their evaluation of the impacts of the effects of the project. They are also to suggest corrective measures, which may be used to improve implementation of other subprojects. After completion of all expropriation/compensation operations, the PAPs will be consulted in a household survey.

2.12 Arrangements for Monitoring

The resettlement and compensation plans will indicate parameters to be monitored, institute monitoring milestones and provide resources necessary to carry out the monitoring activities. The objective will be to make a final evaluation in order to determine:

i The affected people have been paid in full and before implementation of the subproject.
ii If the people who were affected by the project 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 actually poorer than before.

A number of indicators would be used in order to determine the status of affected people (land being used compared to before, standard of house compared to before, level of participation in project activities compared to before, extent of businesses interrupted and the return to normalcy, how many homes and social facilities electrified compared to before, health standards, etc).
External monitoring will be conducted through the World Bank supervision missions. Classic supervision mission (twice a year) will, however, not be sufficient to monitor progress in the mitigation of adverse social impacts. Supervision missions should be coupled with capacity building inputs from resettlement experts. This would ensure documentation of: progress made; local analytical capacity building and proper documentation of operations executed and the progress made.

Before closure of the mitigation of adverse social impacts, the project will engage Consultants to conduct an evaluation of the mitigation measures executed. The evaluation report will be used as a planning instrument to correct pending issues.