

Identifying the Gaps between Kenya Laws and International Safeguard Policies on Involuntary Resettlement

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Abstract

Implementation of public projects often gives rise to impoverishment risks, including physical and economic displacements, and loss of livelihoods on affected households and populations. To mitigate the negative impacts associated with resettlements, most governments in developing countries, and international funding agencies, have developed safeguard policies and laws to guide the resettlement process and ensure that the affected households are not severely impacted by the projects. The overall aim of safeguard policies and laws is to avoid, or minimize, project risks and ensure that the affected persons participate and enjoy the project benefits. This paper aims to examine the resettlement laws in Kenya to identify the gaps that exist between the Kenyan laws and the international safeguard policies on involuntary resettlement. The methodology employed is a desktop review of texts and policy documents prepared for project implementation in Kenya, as well as a review of existing Kenya and international laws and regulations on resettlement. Key informant interviews (KIIs) with purposively selected resettlement experts in Kenya were undertaken to deepen knowledge and understanding of the resettlement process, laws, and regulations. Data are analysed and presented in tables. Findings reveal minimal gaps between Kenya laws and international safeguard policies. Overall, Kenya's resettlement laws and regulations are fairly robust, and if properly implemented, can substantially improve resettlement outcomes in large-scale development projects.

Keywords: Development projects, International funding agencies, Involuntary resettlement, Kenya, Laws and regulations, Safeguard policies.

INTRODUCTION

A major consequence of public projects implementation, such as large-scale mining, oil and gas exploration, sports stadia, roads, and dam construction, is the need to resettle large numbers of people. For instance, the Three Gorges Dam in China is said to have displaced over 1.4 million people; the Volta Dam in Ghana displaced over 78,000 people; and the Aswan Dam in Egypt displaced about 120,000 people (Appiah-Opoku, 2015). In Kenya, the Thika Dam, a component of the Third Nairobi Water Supply Project in Ndaka-ini, Murang'a County, displaced approximately 300 households (Olima and K'Akumu, 1999), and the Kiambere Hydroelectric Power Dam displaced 737 families. According to a Resettlement Action Plan (RAP) prepared at the project's feasibility study, the proposed Mombasa Gate Bridge Project (MGB) is expected to displace about 4,000 people (Republic of Kenya (ROK), 2019).

The displacements of people have often resulted in negative economic, environmental, and social impacts, including; land access loss, joblessness, homelessness, education loss, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property, and psychological and socio-cultural stress (ROK, 2017). The government of Kenya and international funding agencies have developed laws and policies to minimize the risks emanating from project implementation. The Constitution of Kenya, for instance, protects the rights of property owners from unlawful deprivation of ownership and use of a property (ROK, 2010). Section 40 under the Bill of Rights guarantees protection of the right to property, and requires prompt and just compensation to a person who has been deprived of his or her interest in a property. The Land Act 2012 has robust provisions that protect the rights of project-affected persons (PAPs) and households (ROK, 2012). Under Sections 107, 110 and 111 of

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the Act, land can only be compulsorily acquired if the National or County government, as well as the National Land Commission (NLC), are satisfied that the land is required for a public purpose, or in the public interest, and, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.

International funding agencies, on the other hand, have policies and guidelines to manage resettlement. The World Bank (WB), which is a major financier of public projects in Kenya, has ten Environmental and Social Safeguard Policies. The relevant policy is the OP/BP 4.12 on involuntary resettlement. The guiding principle in this policy is avoidance of displacement, but where avoidance is unfeasible, minimization of resettlement impacts. The World Bank OP/BP 4.12 has since been replaced by the Environmental and Social Standard (ESS 5) on Land Acquisition, Restriction on Land Use, and Involuntary Resettlement under the World Bank's new Environmental and Social Framework (E&SF). The African Development Bank (AfDB) policy on involuntary resettlement also emphasizes avoidance or minimization of displacement impacts.

While both local and international policies strive to achieve high resettlement standards to safeguard lives, property rights, and interests of project-affected persons, there are gaps between the local laws and international policies concerning the expected resettlement standard. This paper identifies the gaps and makes a recommendation for implementation in the planning and management of resettlement programs for large-scale public projects in Kenya.

THEORY

Compulsory land acquisition, valuation for compensation and involuntary resettlement are based on the theory of social justice (Bala, 2008; Museleku, 2021). This theory requires equity, fairness and just terms of compensation to be observed (Rawls, 1971). According to Museleku (2021), many financiers, including the World Bank Group, the Asian Development Bank, the African Development Bank, among others, have developed resettlement policy guidelines which promote social justice and development in their funded projects. These guidelines

are meant to minimize project induced impacts, impoverishment of the project affected persons, and generally to improve the developmental impact of the projects they finance. The principle of equity, fairness and just terms of compensation is also supported by other theories, including the Equity and Equivalence Theory, and the Takers' Gain Theory (Kabanga & Mooya, 2018). The Equity and Equivalence Theory was developed in the United Kingdom through the Lands Clauses Act of 1845 (Denyer-Green, 2013).

According to Keith et al. (2008) and Food and Agriculture Organization (FAO) of the United Nations (2009), the theory of Equity and Equivalence is based on the principle that project affected persons and occupants should neither be enriched nor impoverished as a result of the compulsory acquisition of their property. The main objective of this theory is to place the affected person in the same position as he/she was before the property was compulsorily acquired (Lekgori et al., 2020). In other words, no one is supposed to benefit from the government's quest to take property for public benefit, but at the same time, no private individual should be disadvantaged or impoverished simply because the government needs their property for the intended public purpose. In effect, the theory of Equity and Equivalence is aimed at providing displaced persons with adequate compensation by compensating for, not only tangible losses, but also intangible losses, which include; disturbance, solatium, severance and injurious affection (Pai, 2019).

The Taker's Gain Theory has also been advanced as a foundation for compensation in compulsory land acquisition programs in some jurisdictions (Mugisha, 2015). This theory is based on the principle that payment of any claims which are not gained by the acquiring authority drains public resources. Under this theory, the acquiring authority is supposed to pay for what it gained from the affected person, which is land, and therefore, compensation should be for the taken land and not the intangible losses, as it is, with the Equity and Equivalence Theory (Ambaye, 2013).

In furtherance of social justice, equity and fairness in land acquisition and involuntary resettlement, it is important to identify, document and estimate the

economic values of all the affected assets in a given land acquisition project, both tangible and intangible ones, hence the popularity of the Equity and Equivalence Theory in compulsory land acquisition. According to the World Bank (2016), the principles of land acquisition provide for value to the owner, just and reasonable compensation. The value to the owner accounts for socio-economic considerations, which may include value of land and improvements, both tangible and intangible assets associated with the land. Likewise, FAO (2009) and Keith et al. (2008), advocate for equity and equivalence, that the affected project persons should not be enriched, nor impoverished, as a result of compulsory land acquisition projects. Other principles promoted by the FAO include; flexibility, balance of interests between the projected affected persons and the public, fairness and transparency.

The principles of full, prompt and just terms of compensation are encapsulated in the resettlement safeguard policies of international funding agencies, as well as the Kenyan policy and legal frameworks for land acquisition and involuntary resettlement, as described in the sections that follow:

Review of International Safeguard Policies on Involuntary Resettlement

Several international agencies fund development projects in Kenya and other developing countries, including; the World Bank Group (WBG), African Development Bank (AfDB), Japan International Cooperation Agency (JICA), the European Union (EU), United Nations (UN) and its agencies, among others. The agencies have safeguard policies to: guide the planning and management of projects in developing countries; avoid or minimize project risks and enhance the developmental impacts of projects; and, improve the living standards of affected people. Safeguard policies protect project-affected persons (PAPs) from impacts and actions of Bank-financed projects. Without safeguard policies, land acquisition and involuntary resettlement may result in long-term hardships for affected people, and environmental damage to the locations in which they are resettled (World Bank, 2004). The focus of this section is to examine the resettlement safeguard policies and guidelines of the World Bank Group, including the International Finance Cooperation (IFC), African Development Bank, and Japan International

Cooperation Agency, since the three agencies are the major financiers of development projects in Kenya.

World Bank Environmental and Social Safeguards Policy

The World Bank has a set of ten Environmental and Social Safeguard Policies; the relevant policy is Operational Policy OP/BP. 4.12 on 'Involuntary Resettlement', which call for a clear plan for resettlement, including preparation of Resettlement Action Plans (RAPs) and Livelihood Restoration Plans (LRPs) for bank-financed projects likely to cause displacements. A Resettlement Action Plan (RAP) is a document in which the project proponents specify the procedures and actions to mitigate adverse effects, compensate losses, and provide development benefits to people affected by the involuntary resettlement caused by the project (World Bank, 2004). The content of the RAP will depend on the magnitude of the intended project and anticipated impacts, and includes: the identification of the full range of persons affected by the project; their socio-economic characteristics- assets they own individually and communally, and livelihood practices; potential benefits of the projects, and risks and measures put in place to mitigate those risks; compensation and assets valuation principles and processes; entitlements and cut off dates; legislations; and, institutions for resettlement including; grievance redress measures, monitoring, evaluation of resettlement activities, and public disclosure procedures. The RAP is the project proponent's commitment to the government, the project funder, and to the affected people, that it will meet its obligations towards involuntary resettlement (World Bank, 2004). As per OP 4.12, preparation of RAP is mandatory for a project that causes large-scale involuntary resettlement. In a case where over 200 people are displaced, but minimal impacts are envisaged, an Abbreviated Resettlement Action Plan (ARAP) is instead prepared to guide the resettlement process. Further, where a project has several components and sub-projects which have not been conceived, or are yet to be identified, the World Bank Safeguard Policy requires the preparation of a Resettlement Policy Framework (RPF), to among other things, identify their potential benefits and impacts, including mitigation measures and, provide a clear road map for preparation of specific RAPs targeting the yet to be conceived project components and sub-projects.

Overall, the World Bank's policy objectives on involuntary resettlement are as follows:

Involuntary resettlement should be avoided where feasible or minimized, exploring alternative project designs.

Where it is not feasible to avoid resettlement, the resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits.

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

Displaced persons should be compensated at full replacement cost. The taking of land and related assets should only happen after full compensation has been paid. Replacement land, other than cash compensation, should be considered as compensation to displaced persons when the residual land holdings are not economically viable.

Displaced persons should 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 to levels prevailing before the beginning of project implementation, whichever is higher.

Particular attention should be given to socially disadvantaged and vulnerable groups such as; the very poor (people living below the poverty line), the disabled, minorities, orphans and child-headed families, female-headed households, the sick and elderly, persons recovering from drugs and substance abuse, squatters, and others without clear legal rights to land. Such vulnerable groups should be identified and earmarked for special assistance (WB OP/BP 4.12).

International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability

IFC has a set of eight performance standards (PS) that aim to safeguard and cushion displaced persons from environmental and social risks. These standards, however, apply to private sector projects that may potentially cause resettlement impacts. The relevant standards are; IFC PS 5 on Land Acquisition and

Involuntary Resettlement; IFC PS 7 on Indigenous Peoples; and IFC PS 8 on Cultural Heritage. The guiding principles in these standards are; avoidance of the project, and when avoidance is not possible, minimize displacement by exploring alternative project designs, provision of relocation assistance and transition support to the PAPs, consultation with indigenous peoples (marginalized groups) in a culturally appropriate manner, and compensating cultural assets in a culturally appropriate manner, respectively (IFC PS 8). According to the IFC standards, compensation of lost assets of the PAPs due to displacement should be at full replacement cost, without taking into account depreciation of the assets.

African Development Bank (AfDB) Involuntary Resettlement Policy

The overall goal of the AfDB'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 involves their resettlement. The Policy has the following key objectives;

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-cultural considerations, such as the culture or religious significance of land, the vulnerability of the affected population, or the availability of in-kind replacement for assets, especially when they have important intangible implications. 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 given serious consideration.

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.

To provide explicit guidance to Bank staff and the borrowers on the conditions that need to be met regarding involuntary resettlement issues in Bank operations to mitigate the negative impacts of displacement and resettlement, and establish a

sustainable economy and society.

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

Assistance to be given to a category of displaced persons who have no recognizable legal right or claim to the land they are occupying in the project area.

JICA Environmental and Social Considerations (ESC) Guidelines 2010

The Japan International Cooperation Agency (JICA) is an independent governmental agency that implements Official Development Assistance (ODA) of Japan. In April 2010, JICA adopted a new set of guidelines for Environmental and Social Considerations (ESC), to ensure that its assistance will lead to sustainable development. ESC in a JICA project must be in line with the World Bank's Safeguard Policies, including Operational Policy on Involuntary Resettlement (OP 4.12) and, therefore, the policy objectives and features in OP 4.12 shall apply in all JICA funded projects in developing countries.

The key principles of JICA policies on involuntary resettlement are summarized below:

Involuntary resettlement and loss of means of livelihood are to be avoided, when feasible, by exploring all viable alternatives.

When population displacement is unavoidable, effective measures to minimize the impact and to compensate for losses should be taken.

People who must be resettled involuntarily, and people whose means of livelihood will be hindered or lost, must be sufficiently compensated and supported, so that they can improve, or at least restore, their standard of living, income opportunities, and production levels to pre-project levels.

Compensation must be based on the full replacement cost as much as possible.

Compensation and other kinds of assistance must be provided before displacement.

For projects that entail large-scale involuntary

resettlement, Resettlement Action Plans (RAPs) must be prepared and made available to the public. The Resettlement Action Plan should include elements laid out in the World Bank Safeguard Policy, OP 4.12.

Review of Kenya Laws on Involuntary Resettlement

The primary role of laws is to bring order and promote peaceful co-existence in society. Laws protect and promote the rights and privileges of people and guarantee their freedoms. Guidelines and policies, on the other hand, provide a framework to guide actions, activities and decisions aimed at improving quality, and safeguarding the lives of people. Resettlement laws, guidelines and policies thus offer the framework within which resettlement activities are carried out to ensure that the lives of persons affected by projects are improved, or at least restored, to pre-displacement levels.

In Kenya, resettlement is managed under various laws and policy guidelines. The Constitution of the Republic of Kenya is the main legal instrument that governs resettlement issues in the Country. Section 40 of the Constitution recognizes the rights of individuals to own or acquire property. The Constitution provides for the protection of property from unlawful deprivation of ownership or limitation of enjoyment, unless deprivation is for, among other reasons, public purpose or in the public interest, and is carried out as per the Constitution and any Act of Parliament that: requires prompt payment in full, of just compensation to the person; and, allows any person who has an interest in or right over that property, a right of access to a court of law. Section 40(4) of the Constitution recognizes the rights of non-title owners as occupants in good faith on land, and requires compensation and livelihoods restoration whenever such persons are affected by compulsory acquisition. However, illegal occupants on land are not entitled to compensation. Article 159 of the Constitution encourages the application of alternative and traditional dispute resolution mechanisms in solving disputes, including land-related disputes. Under the principles of Land Policy in Section 60(1g) of the Constitution, communities shall be encouraged to settle land disputes through recognized local community initiatives.

The Land Act 2012 presents compulsory acquisition among the methods through which land may be acquired, and requires prompt payment in full of just compensation to persons affected by the acquisition. Under Section 128 of the Land Act, all compensation disputes are to be referred to the Environment and Land Court, but this provision has since been amended in the Land Value (Amendment) Act 2019, which established the Land Acquisition Tribunal as a lower court for dispute resolution in all land acquisition and resettlement programs.

The Community Land Act 2016 has specific provisions for the acquisition of community land (ROK, 2016). A distinct characteristic of community land in Kenya is that it is vested in, and held by, communities identified based on ethnicity, culture, or similar community of interest. A great amount of community land in Kenya is currently not titled, but the Act makes provision for its adjudication, registration, and titling. Under Section 5(4) of the Act, no interest in or right over community land may be compulsorily acquired by the State except per the law, for a public purpose, and upon prompt payment of just compensation in full, or by negotiated settlement. Any compensation monies payable for unregistered community land shall be held by respective County Governments in trust for the community, until registration of such community land. All dealings (disposition, alienation) of registered community land shall be binding if it is supported by at least two-thirds of the registered adult members of that community.

Apart from the resettlement laws, resettlement in Kenya is guided by several policy documents. Sessional paper No. 3 of 2009 on the National Land Policy for Kenya, in Section 45, provides for compulsory acquisition as the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation (ROK, 2009). The policy provides for a system of land administration and management that will ensure all citizens have the opportunity to access and beneficially occupy and use land. The Evictions and Resettlement Guidelines 2009, prohibit all forms of forced evictions, while the Evictions and Resettlement Bill 2014, prohibits arbitrary evictions, and where evictions have to occur, persons affected should not be violated of their basic rights, and the

evictions should be carried out humanly.

Other resettlement laws, policies and guidelines in Kenya include: National Land Commission Act; Land (Assessment of just compensation) Rules 2017; Land Registration Act 2012; Prevention, Protection and Assistant to Internally Displaced Persons and Affected Community Act No. 56 of 2012; Land Value (Amendment) Act 2019; Environment and Land Court Act 2011; Environmental Coordination and Management Act 1999; Environmental (Impact Assessment and Audit) Regulations 2003; Kenya National Highways Authority (KeNHA) Environment and Social Safeguards Policy (ESS) 2019; Public Participation Bill 2019; and, Valuers Act Cap 532 and Kenya Valuation Standards 2021 in the 'Blue Book'.

The specific provisions relevant to compulsory land acquisition and resettlement are summarized in **Table 1**.

RESEARCH METHODS

The methodology employed to accomplish the goals of this study involved the use of both primary and secondary data. Primary data was collected from key informant interviews conducted with resettlement experts, who were involved in the preparation of Resettlement Actions Plans (RAPs) and Resettlement Policy Framework (RPF) reports of five purposively selected large scale development projects in Kenya. The interviews aimed to obtain the experts' views on gaps between Kenya resettlement laws and the policy guidelines of international project funding agencies. Secondary data was obtained from a review of tests, journals and documents prepared for project implementation in Kenya. A review of relevant local and international laws, regulations and policies was undertaken to deepen knowledge and understanding of resettlement management practices and procedures in Kenya, and in the global scene. The data were analyzed using percentages, and the results tabulated.

RESULTS

From the reviewed literature, it was evident that Kenya lacks a resettlement policy to guide resettlement programs. Land acquisition and involuntary

TABLE 1: Summary of other laws and policy guidelines relevant to land acquisition and involuntary resettlement in Kenya

Legislation/Policy guideline	Relevance to land acquisition and involuntary resettlement
National Land Commission (NLC) Act	Establishes the National Land Commission (NLC). This Act is relevant because it creates the NLC which is the institution mandated to manage compulsory land acquisition and resettlement in Kenya.
Land (Assessment of just compensation rules 2017)	Outlines matters/factors to be considered in assessing just compensation. These rules are relevant because they guide the assessment of just compensation.
Land Registration Act 2012	Provides for registration of interests over land. This Act is relevant because it provides security of tenure to both the affected land owner and the acquiring public body.
Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act No. 56 of 2012	Provides for prevention of project-induced displacements except where it is justified by overriding public interests. This Act is relevant because it protects affected persons from arbitrary evictions from the land they occupy.
Land Value (Amendment) Act 2019	This Act is relevant because it requires valuation for compensation to be based on the Land Value Index which will ensure equity and fairness in compensation. The Act also creates the Land Acquisition Tribunal (LAT) as a lower court to hear and determine compensation and resettlement disputes.
Environment and Land Court Act 2011	Establishes the Environment and Land Court (a court with the status of High Court) to hear and determine disputes relating to Environment and Land, including land acquisition and resettlement disputes. The Act is relevant because it provides a level of appeal in case affected persons are dissatisfied with the decision of the LAT.
Environmental Coordination and Management Act 1999 and Environmental (Impact Assessment and Audit) Regulations 2003	The Act and regulations are relevant because they help mitigate adverse environmental impacts arising out of the proposed public project by making it mandatory for preparation of Environmental Impact Assessment for project activities likely to generate negative impacts to the environment.
KeNHA Environment and Social Safeguard Policy 2019	The Policy is relevant because, it among other things, require losses to be compensated and livelihoods restored, and a Resettlement Action Plan (RAP) prepared to give guidelines to project stakeholders participating in the mitigation of adverse social impacts of a road project. This policy is, however, sector- specific applying to projects undertaken by KeNHA.
Public Participation Bill 2019	This Bill is relevant by encouraging public participation and stakeholder engagement so that people’s voices can be heard in all decisions to implement public projects in their area.
Valuers Act Cap 532 and the Kenya Valuation Standards 2021 in the ‘Blue Book’	This Act and standards are relevant because they promote accuracy and fairness in the assessment/valuation of assets affected by compulsory land acquisition in Kenya by requiring such assets to be valued by competent and qualified valuers registered and licensed by the Valuers Registration Board.

Source: Author 2021

resettlement in Kenya is guided by several pieces of legislation, including; the Kenya Constitution, Acts of parliament, and proposed bills of parliament, as well as guidelines formulated from time to time to address resettlement issues. On the contrary, international project funding agencies have resettlement policies aimed to safeguard the interests of project-affected persons, and to ensure that the projects they fund do not harm the targeted beneficiaries.

In **Table 2**, five Resettlement Action Plans (RAPs) and Resettlement Policy Frameworks (RPFs), prepared by resettlement experts in Kenya, were analyzed to reveal the gaps between Kenya and international policies, as identified by the experts who prepared the documents. The identified gaps in the documents collaborate with the views of resettlement experts and recommendations are made for implementation in the planning and management of resettlement programs for large-scale public projects in Kenya, where there is potential to displace over 200 people. **Table 2** identifies the public project, its international funding agency, the local implementing agency, resettlement safeguard document prepared, and the identified gap/s.

DISCUSSION

Generally, the analysis in **Table 2** reveals that the requirement for RAP preparation is a major gap between the policy of the financiers and the local (Kenya) laws, where about 60% of the experts in the reviewed safeguard documents identified it as a gap. This shows that international financiers of local projects are quite keen on seeing that a clear action plan for resettlement is well laid out before a project is implemented, to ensure that the developmental impact of the project is enhanced, and negative impacts identified, eliminated, or minimized. This gap collaborate with the views of two resettlement experts in Kenya that were interviewed, who felt that the lack of a requirement for RAP preparation in Kenya laws could leave potentially displaced persons in an awkward position, especially for projects that are funded locally without donor support. However, there was a feeling among some experts that, due to the experience the government of Kenya has gained while implementing donor-funded projects, it is likely that the requirements of international funding agencies will, in most cases, be adhered to, even when

projects are funded using local resources. It was agreed that this is a gap that should be addressed in a local resettlement policy. Assistance to PAPs without legally recognizable rights to land, or illegal occupants, was identified as a gap in two, that is, 40% of the reviewed policy documents, and this gap collaborate with the views of a further two resettlement experts interviewed. The experts noted that, while Kenya law is clear that illegal occupants on land are not entitled to compensation, the policy of the financiers insist that such people should be assisted to improve their livelihoods. The experts, however, observed that, even though Kenya law does not provide for compensation to illegal occupants, most local project implementing agencies usually provide some form of ex-gratia compensation to assist such people. It was agreed that this is a gap that should be addressed in a local resettlement policy and law. The identification of socially disadvantaged and vulnerable groups in the project area, and providing them additional support, were identified as gaps in two of the policy documents reviewed, and again collaborated by another two resettlement experts interviewed. Overall, the experts interviewed noted that although gaps exist between Kenya laws and the safeguard policy of financiers, Kenya law is quite robust, and there is need for a National Resettlement Policy to harmonize all existing legislations and guidelines for effective management of land acquisition, and involuntary resettlement in Kenya.

CONCLUSION AND RECOMMENDATIONS

Before the enactment of the Kenya Constitution 2010, and the new land laws, there were glaring gaps between the provisions of Kenya laws and the resettlement policy requirements of international funding agencies concerning resettlement and compensation of PAPs. Most of these gaps have since been addressed by the Constitution, and the new laws and regulations. The Kenya Constitution and the new laws are quite robust in their provisions relating to the protection of human rights in general, and rights of property ownership, and if properly implemented, can substantially improve resettlement outcomes in large-scale development projects. Gaps, however, still exist, as highlighted in the analysis in the previous section and in **Table 2**. There is need for a National Resettlement Policy for Kenya to harmonize existing laws and guidelines on involuntary resettlement. Where gaps exist between

TABLE 2: Gap analysis of Kenya laws and International safeguard policies

	Name of project	International funding agency	Local implementing agency	Resettlement safeguard document prepared	Gap analysis (International resettlement policy vs. Kenya resettlement laws)
1	Kenya Marine Fisheries and Socio-economic Development Project (KEMFSED)	The World Bank Group	Government of Kenya - Ministry of Agriculture, Livestock and Fisheries - State Department of Fisheries and The Blue Economy	Resettlement Policy Framework (RPF)	<ul style="list-style-type: none"> -WB resettlement policy emphasis on preparation of Resettlement Action Plans (RAPs) and Livelihood Restoration Plans (LRPs) reports for projects likely to cause displacements, Kenya resettlement laws do not, except sector-specific guidelines, e.g., KeNHA ESS policy -WB emphasis on the setting of project cut-off date to manage resettlement, Kenya laws do not -WB emphasis on project inbuilt grievance redress mechanisms to address resettlement and compensation grievances, Kenya laws do not
2	National Agricultural and Rural Inclusive Growth Project (NARIGP)	The World Bank Group	Government of Kenya - Ministry of Agriculture Livestock, Fisheries and Irrigation	Resettlement Policy Framework (RPF)	<ul style="list-style-type: none"> -WB is explicit on mechanisms for the full restoration of PAPs livelihoods, e.g., lost assets to be valued at full replacement cost, full compensation before displacement. Kenya law on the other hand is not explicit -WB emphasis on assistance to PAPs without recognizable legal rights in land, encroachers. Under Kenya law, illegal occupants on land are not 'occupants in good faith, and are therefore not entitled to compensation
3	Infrastructure Finance and Public-Private Partnership (IFPPP) Project	The World Bank Group	Government of Kenya - The National Treasury	Resettlement Policy Framework (RPF)	<ul style="list-style-type: none"> -WB emphasis on preparation of RAPs, RPF for projects components and sub-projects with the potential to cause involuntary resettlement, Kenya laws do not -WB emphasis the identification of displaced persons who are underprivileged, vulnerable, minority and marginalized, and indigenous people; to be considered for special additional support. Kenya laws do not -WB emphasis that compensation and other kinds of assistance must be provided before displacements, Kenya laws are not explicit

4	Nairobi Rivers Basin Rehabilitation and Restoration Program: Sewerage Improvement Project Phase 11	African Development Bank (AfDB)	Government of Kenya - Athi Water Services Board (AWSB)	Resettlement Action Plan (RAP)	-AfDB policy emphasis on assistance to PAPs without recognizable legal rights in land, encroachers; Kenya law is clear that illegal occupants on land are not 'occupants in good faith' and are, therefore, not entitled to compensation - As per AfDB policy, consultations and compensation to the PAPs must be culturally appropriate, taking regard to the cultures, taboos and traditions of displaced communities, especially where affected persons are minority/marginalized or indigenous communities. Kenya law does not make a specific requirement for cultural appropriateness in the consultation and compensation process
5	Mombasa Gate Bridge (MGB) Project	Japan International Cooperation Agency (JICA)	Government of Kenya - Kenya National Highways Authority (KeNHA)	Resettlement Action Plan (RAP)	-JICA resettlement policy emphasis on preparation of Resettlement Action Plans (RAPs) and Livelihood Restoration Plans (LRPs). Kenya laws do not -JICA policy emphasis the identification of vulnerable and marginalized people for targeted additional support. Kenya law is not explicit

Source: Data analysis 2021

the Kenya resettlement policy and the policy of the financier, the policy framework that is likely to yield the best resettlement outcome should prevail and be implemented in the planning and management of development projects in Kenya.

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