



**ORIGINA**

**REPUBLIC OF KENYA  
MINISTRY OF WATER & SANITATION AND IRRIGATION (MOWSI)**

**Coastal Region Water Security and Climate Resilience Project (CRWSCR)**

**Credit No.: IDA 5543-KE**

**Project No: P145559**



**ZAMCONSULT CONSULTING ENGINEERS LTD.**

**RESSETLMENT ACTION PLAN (RAP) REPORT**

**CONSULTANCY SERVICES FOR PREPARATION OF ENVIRONMENTAL AND  
SOCIAL IMPACT ASSESSMENT (ESIA) AND RESETTLEMENT ACTION PLAN  
(RAP) FOR MWACHE ROADS, KWALE COUNTY.**

**CONTRACT No.: MOWSI/KWSCR-2/002/2020-2021**

**PREPARED BY  
DR. DAN ADINO-LEAD RAP EXPERT**

**DECEMBER 2022**

TO  
The Principal Secretary,  
Ministry of Water, Sanitation and Irrigation,  
Maji House, Ngong Road,  
5<sup>th</sup> Floor – Room No. 513/547  
P.O. Box 49720-00100, Nairobi.  
Tel: +254 20 2716103 Ext. 42366/42335.  
E-mail: [procurement@kwscrp.org](mailto:procurement@kwscrp.org)

FROM  
Zamconsult Consulting  
Engineers Ltd.  
P.O. Box 68221-00200  
Nairobi.  
E-Mail:  
[Zamconsultltd@Gmail.Com](mailto:Zamconsultltd@Gmail.Com)

## **RESSETLMENT ACTION PLAN (RAP)**

### **EXECUTIVE SUMMARY**

The Government of Kenya (GOK) has received credit financing from the World Bank in the form of International Development Association (IDA) loan to implement activities and projects under the Kenya Water Security and Climate Resilience Project (KWSCR). One of the potential investments identified under the KWSCR 2 is the Mwache Multipurpose Dam Project, a Vision 2030 flagship project, which has been given high priority by the Ministry of Water & Sanitation and Irrigation (MOWSI), Kwale and Mombasa Counties. It will be implemented through the Ministry of Water & Sanitation and Irrigation (MOWSI), State Department of Water through the Kenya Water Security and Climate Resilience Project (KWSCR) and Coast Development Authority (CDA).

The Coastal Region Water Security and Climate Resilience Project (KWSCR-2) was approved by the World Bank Board on December 16, 2014. The project development objective of the KWSCR 2 is to improve water security and build climate resilience, sustainably increase bulk water supply and increase access to water and sanitation in the Coastal Region by:

- Increasing the supply of bulk water to Kenya’s coastal region, including Mombasa; and
- Developing an Irrigation Demonstration Scheme.

The objectives of the Mwache Dam Project are to improve the living standards of Kwale County and Mombasa residents through poverty alleviation and sustainable development. A large-scale multi-purpose water reservoir will be created to cater for public and industrial water supply and irrigation in order to effectively contribute towards regional and national socio-economic development. Other specific objectives include ecosystem conservations, and irrigation.

#### **Overall objectives of the RAP 3 are:**

- i. Avoid or minimize adverse resettlement impacts including physical and economic displacement. Where it is not feasible to avoid resettlement, 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.
- ii. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs in accordance with the principles outlined in OP4.12
- iii. 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 prior to the beginning of project implementation, whichever is higher.
- iv. Mitigate adverse social and economic impacts from land acquisition by:
  - a. Providing compensation for loss of assets at full replacement cost;
  - b. Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected; and
  - c. Improve or at least restore the livelihoods and standards of living of affected people.
- v. Provide additional assistance and opportunities (e.g., credit facilities, training, or job opportunities) and improve or at least restore the income-earning capacity, production

levels and standards of living of economically displaced persons whose livelihoods or income levels are adversely affected;

- vi. Provide transitional support to affected people, as necessary, based on a reasonable estimate of the time required to restore their income earning capacity, production levels, and standards of living.

The key principles of this RAP are based on the requirements of OP. 4.12 and constitute the following: -

- i. Compensation and resettlement of project-affected people will be carried out in compliance with Kenyan legislation and World Bank operational policy OP 4.12
- ii. Where Kenyan legislation is less favourable to PAHs than the requirements of OP 4.12 the latter shall apply;
- iii. All physically and economically displaced people will be offered an option between either a full resettlement package, including the provision of replacement structures or cash compensation;
- iv. The Project will provide for measures to support sustainable use of cash compensation (money management training) and for mechanisms within the overall monitoring framework to follow up the use of cash compensation;
- v. The Project will assist PAHs in restoring their livelihoods to at least their previous levels through the development and implementation of tailored livelihoods restoration packages for each household
- vi. The Project aims to ensure PAHs are Project beneficiaries; targeted livelihood restoration programs will have this as a core strategy to achieve this goal.
- vii. The RAP implementation and outcomes will be monitored and evaluated as part of a transparent process.
- viii. Key methods of consultations with the communities included Focus Group Discussion, Key informant interviews at venues identified and agreed upon via consensus.

## **Mwache Dam Project Components and related RAPs**

### **RAP 1**

RAP 1 covers the following areas;

1. Main dam area comprising of the;
  - Reservoir area (quarries of high potential rock material have been identified in parts of the reservoir areas for supply of dam building materials prior to the impoundment of the reservoir),
  - Base camp area,
  - Dam operational areas (raw water treatment plant and transmission pipeline, police post, clinic/health facility will be constructed within the dam operation area.)
2. Lower Check Dam including silt pile area
3. Access roads A, C and H.

RAP 1 is further divided into RAP 1a and RAP 1b;

RAP 1a covers ALL of Priority 1 works areas i.e. the lower check dam site and quarry site areas (part of which are in Mwavumbo Group Ranch) and main dam site and some operational areas,

All of Priority 2 areas i.e. part of main dam operational and reservoir areas and PART of Priority 3 areas (part of main dam operational and impoundment areas and part of the lower check dam reservoir areas, silt pile) and Access roads C & H, A3 and J.

RAP 2 covers all resettlement activities associated with the Upper Check Dam and Irrigation Demonstration Scheme areas – and all the access roads in the upper check dam.

RAP 3 covers Roads A, D and E.

## MWACHE DAM ACCESS ROADS - LAND ACQUISITION PLANS

Mwache Dam road project involved 9 roads. The RAP was based on the road designs that were provided by the client (MOWIS). The execution of RAP 3 referenced to two previous RAP reports (RAP 1 and RAP 2) to avoid potential overlaps. The following map (Figure 1) shows the Roads with respect to the previous RAPs. Some of the roads are covered in RAP 3 while some of the roads are covered in RAP 1 and RAP 2 respectively. RAP 1 was further divide into RAP 1a and RAP 1b.

RAP 1a mainly covered the dam area (comprising of Reservoir area, base camp area, the dam operational areas, the lower check dam including silt pile area) as well as Access roads A, F & H, C, G and J. RAP 1b covered the rest of the main dam and lower check dam reservoir areas all of which are within Mwavumbo Group Ranch – through which Access roads E and G traverse.

Table 1: Summary of the Roads under the project

	<b>ROAD</b>	<b>Remarks Existing/New</b>	<b>Land Registration/ Adjudication Status</b>	<b>Registration/ Adjudication section</b>	<b>Width (metres)</b>	<b>Length (Km)</b>	<b>RAP</b>
1	A	Existing (up-to SGR)	Registered	Mazeras	20	5.151	Partly RAP I and partly RAP3
2	B	Existing	Adjudication on-going	Mnyenzi	20	5.359	RAP3
3	C	New	Registered	Mazeras	20	0.842	RAP I
4	D	New	Adjudication on-going	Mnyenzi	20	1.120	RAP 3
5	E	Partly existing and partly new	Partly in Mwavumbo Ranch (subdivision underway) partly in Chigato (Registered) and partly in Mnyenzi (undergoing)	Mwavumbo Ranch/Chigato / Mnyenzi	40-60	15.556	RAP 3

			adjudication)				
6	F	Existing	Registered	Chigato	20	3.945	RAP 3
7	G	Existing	Registered	Chigato	20	1.929	RAP3
8	H	Existing	Registered	Mazeras	20	0.745	RAP1
9a	UCD1-Village Access Road	Greenfield	Adjudication underway	Bofu	20	0.7	RAP 3
9b	UCD2-Right Bank Access Road	Greenfield	Adjudication underway	Bofu	20	1.2	RAP 2
9c	UCD3-Sediment Deposit Connection Road	Greenfield	Adjudication underway	Bofu	20	1.6	RAP 2
9d	UCD4-Dam Access Road	Greenfield	Adjudication underway	Bofu	20	1.0	RAP 2
9e	UCD5-Crest Access Road	Greenfield	Adjudication underway	Bofu	20	0.2	RAP 2
9f	UCD6-Downstream Connection Road	Greenfield	Adjudication underway	Bofu	20	0.3	RAP2
9g	UCD7-Valve Chamber Access Road	Greenfield	Adjudication underway	Bofu	20	0.2	RAP2

### **Road A (Dam Access Road)**

The road exists and no land acquisition is intended. This road has a total length of about 5.2 km. It runs from Mazeras Town (in Mombasa Road) up to the Dam Operational Area. The road is mainly in *Mazeras Land Registration Section*. The road has a proposed corridor of 20m; the road is in three sections (see Figure 2)

Section 1 (A1): Mazeras Town up to Mazeras High School

- The road section is about 1.7 km
- The road will be graveled as it is and no land acquisition is intended;
- Only the structures strong/businesses along the road will be picked

Section 2 (A2) Mazeras High School to the SGR Bridge

- The road section is about 1.4 km long
- It will be tarmacked and land acquisition is intended

Section 3 (A3) SGR Bridge to the Dam Operational Area

- This section is about 2.1 Km and is mainly for the damn operations
- The land has already been acquired and vacated

### **Road B (Access Road on Right Side of the Dam)**

- The road exists and will be graveled as it is and no acquisition is intended
- This road it has a total length of about 5.4 km (see Figure 3). The road diverts from the Mazeras – Kinango Road (D560) and forms a loop around Miyani Primary School and then back to the Mazeras – Kingango Road.
- The road is mainly in *Mnyenzi Land Adjudication Section*. The road has a proposed corridor of 20m;

### **Road C (Access Road to pumping Station)**

- This is an access road to the pumping station
- It is about 0.9Km long within the Dam operations area It is proposed for gravelling
- The land has already been acquired and vacated

### **Road D (Access Road to Dam Crest along Kinango Road)**

- The road does not exist - it is mainly a green field Land had partially been acquired; The road connects Road B and the Dam
- It is about 1.1 Km long with corridor of 20m and is proposed for tarmacking;

### **Road E (Realignment of Road D560)**

- This will be the main road that will connect Mazeras to Kinango. The road about 15.4Km long will mainly be a re-alignment of the existing road D560.
- The road nominal width is 40m – except at some bridge sections being with a width of 60m.
- The road traverses mainly four land registration sections namely: Mazeras (1.5Km), Mwavumbo Ranch (8.0Km), Chigato Registration Section (4.0Km) and Mnyenzi Adjudication Section (2.0Km). Whereas the land parcels in Chigato have been registered, those in a Mnyenzi are currently under adjudication process, and therefore interim land parcel numbers of the affected land parcels were provided. In Mwavumbo Ranch, which is undergoing subdivision, temporary land parcel numbers of the affected land parcels were provided
- The road is proposed for tarmacking and currently part of the road is a greenfield (in Mwavumbo Ranch)
- The road corridor is proposed for land acquisition.

### **Road F (Chigato Village Access Road)**

- The road exists and is mainly in Chigato land registration section - however, no land acquisition is intended;
- This road (See Figure 7) is 4Km long
- The road is to be widened to 20m width and graveled as it is
- The purpose of the road is to provide access to the Lower Check Dam from the Quarry & Chigato village access

### **Road G (Temporary Diversion of Road D560)**

- This is a temporary road for use during construction

- The road is 3Km long and only a small portion is to be graveled at either ends of the road;
- The road lies in Chigato Registration section and land has already been acquired – no land acquisition is intended;

### Road H (Base Camp Access Road)

- The road is 0.5Km long and 20m wide will connects the Base camp and Road A.
- The road is within the land that has already been acquired

### Road J (Access the Valve Control house)

This is an internal road along Raw Water Pipe to provide access the Valve Control house

### Upper Check Dam Roads

- There are seven roads in the upper check dam as summarized in the table below.
- The roads are planned to be 20m wide and total length of 4.5Km
- The roads are within Bofu Land Adjudication Section.
- The land has already been acquired and therefore no land acquisition is intended;

**Table 2: Upper Check Dam Roads**

Road Reference	Road Details	Length (Km)	Existing or New (greenfield) Road
1	Village Access Road	0.7	Greenfield
2	Right Bank Access Road	1.2	Greenfield
3	Sediment Deposit Connection Road	1.6	Greenfield
4	Dam Access Road	1.0	Greenfield
5	Crest Access Road	0.2	Greenfield
6	Downstream Connection Road	0.3	Greenfield
7	Valve Chamber Access Road	0.2	Greenfield

**Table 3: Summary of the Land Parcels Affected by Mwache roads**

Section Name	Adjudication / Registration	Affected Parcels		Affected Area (Ha)	Complete Details	Incomplete Details
		Gazetted in RAP 1 & RAP 2	Not Gazetted in RAP 1 & RAP 2			
Bofu	Adjudication	0	21	4.9627		21
Chigato	Registration	25	85	17.5419	77	33
Mazeras	Registration	45	21	11.2543	53	13
Mnyenzeni	Adjudication	2	162	15.9078	145	19
Mwavumbo Ranch	Under subdivision	13	152	32.7932	150*	15
<b>Total</b>		85	441	82.4599	275	101

### RAP 3

#### The scope of RAP three

This RAP 3 covers Roads A, D and E. The roads design was provided by MOWIS engineers and has been reviewed by the RAP Consultant who has generated cadastral maps provided in **Annex: ii**. The details of the roads covered in RAP 3 are presented in table 4 below.

**Table 4: Summary of the Roads to be done under RAP 3**

	ROAD	Width (metres)	RAP
1	A	20.0	RAP3
2	D	20.0	RAP3
3	E	40-60	RAP3

### **Project Affected Households (PAHs) and Project Affected Persons (PAPs)**

The construction of roads will affect 267 households and 1020 PAPs as shown in table 5 below.

**Table 5: Distribution of PAPs and PAHs by roads**

Road	PAHs	PAPs	No of parcels
A	4	20	4
D	5	30	5
E	258	970	233
<b>Total</b>	<b>267</b>	<b>1020</b>	<b>242</b>

**Table 6: Summary of Impacts profile**

Type of loss	
Households losing more than 20% of Land	45
Household losing less than 20% of their land	155
Households losing trees	74
Households losing crops	0
Households Losing Structures and loss of business	20
Households with affected gravesites	3
<b><u>Public Infrastructure / community institutions Impacted</u></b>	
<u>Public institutions Impacted</u>	1
<u>Religious institutions Impacted</u>	1

### **Land Acquisition Impacts**

A total of 267 households will lose land totaling to **55.1654** Ha. All the land parcels affected by the project are freehold.

**Table 7: Summary of Land Acquisition Impacts**

#	Access roads	Area of land (Ha)	Length (Km)	Width (M)( Total way leave)
1.	Road A	0.8454	5.14	20
2	Road D	1.31	2.5	20
3	Road E	53.01	15.55	40-60
	<b>Total</b>	<b>55.1654</b>	<b>23.19</b>	

### **Non-land impacts**

The economic and physical displacement as a result of land acquisition for the construction of the access roads will lead to loss of the following assets and incomes:

- Land
- Structures
- Trees
- Graves
- Business income

**Table 8: Non-land impacts**

	<b>ROAD</b>	<b>Number of business and residential Structures</b>	<b>Number of PAPs losing business and residential structures</b>	<b>Number of PAPs losing graves</b>	<b>Number of graves</b>	<b>Number of trees</b>	<b>Number of PAPs losing trees</b>
1	A	1	1	0	0	10	2
2	D	1	1	1	1	10	4
3	E	2 5	18	2	5	2843	68
		27	20	3	6	2863	74

### **The overall approach to resettlement in RAP 3**

All the PAPs belong to the Duruma community and qualify for special consideration under the World Bank policy OP4.10 indigenous peoples. A Vulnerable and Marginalized Groups Plan (VMGP) for Mwache Dam was prepared by KWSCR, reviewed and approved by the World Bank and subsequently disclosed in 2014. As such, the preparation of this RAP has followed the principles outlined in OP4.10 and OP4.12. Specifically, OP.4.10 stipulates that Bank-financed projects include measures to (a) avoid potentially adverse effects on the Indigenous Peoples’ communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects. In the case of Mwache roads, the design has focused on upgrading existing roads and avoidance of densely populated areas while designing new roads. Though consultation with the community, measures were taken to minimize the impact on the community.

OP. 4.10 further stipulates that, “in exceptional circumstances, when it is not feasible to avoid relocation, the borrower will not carry out such relocation without obtaining broad support for it from the affected Indigenous Peoples’ communities as part of the free, prior, and informed consultation process. In such cases, the borrower prepares a resettlement plan in accordance with the requirements of OP 4.12, Involuntary Resettlement that is compatible with the Indigenous Peoples’ cultural preferences, and includes a land-based resettlement strategy. As part of the resettlement plan, the borrower documents the results of the consultation process.

Where possible, the resettlement plan should allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.” As such, the RAP team undertook extensive consultations with the affected community in order to develop a resettlement strategy that is compatible with the cultural preferences of the affected Duruma community. The PAPs preferred cash compensation as opposed to land for land compensation. A livelihood restoration plan for the PAPs losing business income has been included in chapter 10 of this RAP. The full list of affected parcels and PAPs details are provided in annex: i.

## **RAP Methodology**

The preparation of Resettlement Action Plan (RAP 3) entailed verification of PAPs, the affected assets, the socio-economic baseline data of the PAPs, the scope and the magnitude of the social impacts to be borne by the PAPs and design of an appropriate RAP that will provide social safeguard and compensation measures to effectively remedy the impacts of involuntary resettlement on the livelihoods of the PAPs. The RAP 3 report is based on final road designs provided by Ministry of Water & Sanitation and Irrigation (MOWSI).

The RAP was therefore prepared in four stages:

### **Stage one**

The first stage included literature review of relevant project design and safeguard reports and maps. The project documents that were reviewed included:

- a) Feasibility Study and Detailed Design Reports for Mwache Roads
- b) Mwache Dam Resettlement Action Plans (RAP 1a,1b and 2)
- c) Vulnerable and Marginalized Group Plan
- d) Relevant Kenyan legal documents including;
  - Constitution of Kenya,
  - Land Act,
  - Land Registration Act (2012)
  - Valuers Act (1985)
  - National Land Commission Act,
  - Land Registration Act
  - Community Land Act,
  - Water Act
- e) World Bank OP. 4.12 and OP 4.10
- f) KWSCR Resettlement Policy Framework

### **Stage two: Establishing land registration status**

Some roads fall within areas where land has been registered and title deeds issued to the owners while others fall within sections where land adjudication process is ongoing or has not commenced.

#### **Acquisition of land where adjudication is ongoing or has not commenced**

Adjudication process is ongoing in Bofu and Mnyenzi adjudication sections. The process of issuing titles to members of Mwavumbo Group Ranch is also ongoing. The allottees and the ranch members will eventually be officially registered to the particular parcels to which they have been allotted to after the entire adjudication and registration process is complete. Therefore, during the RAP census data collection and asset inventory exercise. RAP Consultant consulted and involved the Kinango land adjudication office, Kwale County Government, the Mwavumbo Group Ranch Management Committee Members and the project affected persons. The aim of this consultation and engagement was to authenticate claims to the affected land and hence document the true ownership of landholders and occupiers and owners of the developments done on such unregistered land for the purpose of valuation and planning for compensation under the RAP 3. The minutes are provided in annex: iv while attendant register is provided in annex: v. The subdivision records for all the land projected to being affected by Mwache Dam in the Ranch have been submitted to the Kwale Land Registry and will be used by NLC when acquiring land in the RAP 3 areas within the Ranch. NLC have reliably depended on these official subdivision records obtained from the Kwale Land Registry in the ongoing land acquisition in the areas affected by RAP 1 within the Ranch and this will be replicated in areas affected under RAP 3. The acquisition in

RAP 3 also includes land affected by the greenfield roads under this RAP 3 and to be constructed within the Ranch This will result to compensation being paid directly to the individual Group members/PAPs as the persons whose interest or claims will have been determined by NLC from the official subdivision records as provided in the Land Act. The searches and confirmation letters are provided in annex: iii.

#### **Acquisition for registered sections**

Roads D, A and sections of road E are falling within Chigato and Mazeras have been registered and land owners issued with title deeds. The RAP methodology approach for these roads involved the acquisition of the Registry Index Maps (RIM) from the Ministry of land office in Kwale and digitalization of the same which were finally superimposed on the road design layout to develop the cadastral maps. The cadastral maps produced contained the size and location of the parcels affected by the project. The cadastral maps were useful during census and valuation. The consultant also conducted the title land searches to establish the legally registered land owners. The searches and confirmation letters are provided in annex: iii.

#### **Stage three: Field surveys**

The third stage comprised fieldwork; census of affected persons, inventory of affected assets, socio-economic profiling of PAHs and recording preferences of each Project Affected Households (PAHs) with regard to resettlement and rehabilitation. The socio-economic survey was conducted between January and February 2022 alongside the census. Consultations were held directly with individual PAPs, relevant individual stakeholders during the field surveys and data collection period. The stakeholders and PAPs agreed that compensation for the affected assets will be paid directly to the PAPs by NLC. During RAP 3 preparation period, affected assets were identified and inventoried, valued and have been include in the Asset Register. The attendance register is provided in annex: v and minutes provided in annex iv. The census and socio-economic survey tools are provided in annex: vii.

#### **Stage four: RAP preparation**

Fourth stage comprised RAP report preparation including valuation of affected assets, social economic data analysis and generating cadastral maps clearly illustrating all the parcels of land that will be acquired as picked from the ground by the RAP surveyors in consultation with the PAPs and stakeholders. The cadastral mapping was generated from intensive ground surveying technique and Geographical Information System (GIS) system enabled management of both the physical information on each parcel of land and PAPs' socioeconomic attributes.

#### **Legal Framework**

The RAP has been designed in accordance with all the relevant legislation pertaining to Constitution of Kenya, Land Act, National Land Commission Act, Land Registration Act, Community Land Act, Traffic Act, Roads Act, Water Act as well as the World Bank Involuntary Resettlement Policy OP 4.12 and Indigenous Peoples Policy OP 4.10), among others. The Kenyan land laws and the Constitution of Kenya (CoK) 2010, requires that there should be just compensation to those affected but it is not clear on specifics of what constitutes just compensation. World Bank OP.4.12 requires full replacement costs. This RAP requires that full replacement cost be paid as compensation for land to be acquired and for structures to be affected by the project for all the PAHs as per the World Bank OP.4.12. The Bank's Operational Policy 4.12: Involuntary Resettlement is triggered by the project since the Mwache Dam Project will take up land, affect structures, communal assets, cultural assets, crops and trees. The Project also triggers Bank's Operational Policy 4.10 as it affects the Duruma community who are classified as vulnerable and marginalized under the policy.

**Table 9: Vulnerable PAPs Categories**

No.	Vulnerable PAPs Categories	No. PAPs
2	Physically Challenged Persons	1
3	Elderly / aged	5
4	Chronically ill	6
5	Orphans	4
6	Widows	2
	<b>Total</b>	<b>18</b>

### PAPs and Stakeholder Consultations

Effective resettlement action planning requires regular and thorough consultation with PAPs and a wide range of project stakeholders drawn from the affected area. This wide consultation is intended to include individuals and groups who will be affected by the project. The PAPs and stakeholders' consultations are extremely important for successful preparation and implementation of the RAP. The stakeholder and PAPs consultations were conducted between the 9<sup>th</sup> January and 26<sup>th</sup> February 2022. The consultations with PAPs were conducted in public barazas while consultation with other key stakeholders were conducted in their offices through Key Informant Interviews. The attendance register is provided in annex: v and minutes provided in annex iv.

**Table 10: Consultation meetings in the project area**

Date	Venue	Female	Male	Total
15/2/2022	Vikinduni chief's office	44	52	96
16/2/2022	Mnyezeni chief's office	38	62	100
18/2/2022	Miyani chief's office	24	36	60
23/2/2022	Chigato chief's office	34	55	89
23/2/2022	Makutano chief's office	19	29	48
23/2/2022	Mwashanga chief's office	16	3	19
24/2/2022	Kasemeni Frontman office compound	89	233	322
25/2/2022	Pemba market center	28	46	74
	<b>Total</b>	<b>292</b>	<b>516</b>	<b>808</b>

**Table 11: Key stakeholders Consultation meetings**

#	Dates	Name of stakeholders	Venue	No. of Participants
1.	9 Jan	CDA	CDA office boardroom	12
2.	10 Jan	WRM	WRM-Coast office boardroom	4
3.	10 Jan	Frontman	Frontman office boardroom	8
4.	15/2/2022	MCA	Frontman office Kasemeni, MCA Hon. Anthony N. Yama	5
5.	24 Feb 2022	DCC	DCC-Kinango sub-County office	4
6.	18/2/22	Mwavumbo	Makutano Center Makut	5
7.	25/2/2022	ACC	ACC-Kasemeni office	3

**Table 12: Summary of Concerns raised by the Project Affected Persons.**

Issues	Feedback	Response
Absentee land owners	What happens to PAPs who were not available for RAP census and during compensation periods?	National Land Commission (NLC) shall deposit compensation funds for absentee landowners in interest bearing escrow accounts. The RAP implementation team and the local administration through the office of the Chief shall trace the absentee land owners during RAP implementation.
Graves within the road corridor.	Shall there be any compensation for graves and shrine which would be affected by the roads?	Culture is one thing that is respected by the project. All the graves and shrines will be handled by the community according to the community traditions and heritage. The PAPs have the right to inform the project implementing agency on how they would want the graves to be moved or handled as per the cultural requirements. Those graves and shines along the roads would be compensated then relocated.
Succession cases	How would the majority of the PAPs who do not have the titles for the parcels which they inherited from their deceased parents be compensated yet the process of succession has not been concluded or commenced?	The project will facilitate the process of succession. And that the project will hire a lawyer who shall conduct the succession on behalf of the affected families. The PAPs were also informed that they should have the death certificate for the deceased land owner in place in readiness for succession process. Those PAPs who do not have the death certificate were told to inform the chiefs to help them initiate the process of late registration of death so that they can have that certificate. However, the PAPs were informed that such families will have to appoint an administrator who shall be paid land compensation on their behalf. The administrators are expected to share the compensation money with other members of the family based on the formula agreed by the family members.
Compensation	How would crops, trees and other assets be compensated?	All lands and trees which would be affected by the proposed road would be compensated. The short-term crops like maize, beans are not compensated for and the owners shall be given time to harvest their crops.
Trees of cultural and medicinal importance	Would such trees be spared since they play vital role in the community more so as medicine and sacred functions?	For the sacred indigenous trees and medicinal trees, the design engineers might try to have a design which won't affect those sacred trees. Incase these cannot be avoided then cultural appropriate compensation measures shall be considered during RAP implementation.
Parcels affected by the dam and the road	Would there be a second payment for parcels affected by both roads and the dam?	All lands which were affected by the Mwache dam and compensated now belong to the government of Kenya. The land to be compensated are only that which is not in the dam acquired area nor on the existing road reserve. There would no double compensation.
Compensation for projects previously undertaken by other government agencies within	Can the project compensate the PAPs for their land which was taken during the construction of old roads and they were	The area chief responded and informed the community that the County government of Kwale had a project of opening access roads in the community, and those roads were planned long time ago, its people who grabbed the government land without their knowledge. Therefore, the Mwache dam access roads project is different from the

<b>Issues</b>	<b>Feedback</b>	<b>Response</b>
the project area	never compensated?	County Government road project and in case anyone's land, trees, structures and crops to be affected by the Mwache access roads, they will be compensated.
Compensation of unfinished houses	Shall the unfinished houses be compensated for in case they would be affected by the road?	All houses which would be affected by the Mwache dam access roads must be compensated for. Each house would have its own value so even the unfinished houses would be compensated with its own value depending on the completion stage it will be at when NLC carries out actual asset inspection for the purposes of compensation.
Pending compensation for the dam area	Some community members have not been compensated for their land within Mwache dam area. Now at the new relocation area it seems their land too would be affected by the Mwache access roads. Would the community members be compensated both of dam area and roads?	All lands affected by the Mwache dam and Mwache dam access roads will be compensated. Currently the compensation process for the priority dam areas is ongoing and all the affected persons will be compensated. The government implementation schedule allowed compensation to begin with the priority areas. So for those who have not been compensated in all the dam priority areas and dam access roads are scheduled to be compensated fully.
Compensation for Assets with dispute	How will disputed assets including graves be compensated?	First of all, the dispute must be resettled first to establish the rightful owner and claimants of any disputed assets then compensation would follow. National Land Commission (NLC) shall deposit compensation funds for disputed assets in interest bearing escrow accounts pending the resolution of a dispute. The RAP implementation team and the local administration through the office of the Chief shall work towards settling disputes during RAP implementation. The PAPs are advised to strive to resolve land disputes using local/ existing dispute resolution mechanism before the census and asset inventory exercise. Further, the RAP has provisions for dispute resolution through the Grievance Redress and Resettlement Committee (GRRRC) to resolve grievances.
Impacts of dusts on houses bordering the road but not on the Right of Way ROW	Would the community members be compensated for the impacts of dust?	There is no compensation due to dust during construction period but mitigation measures would be put in place like sprinkling water on the dusty roads.
Compensation for developments on leased land	If one had leased land and planted trees would he/she be compensated?	In such case, the owner of the land would be compensated for the land and the one who leased and planted trees would be compensated for trees in that land. So there are two separate compensation packages; for the land and trees in that land.

<b>Issues</b>	<b>Feedback</b>	<b>Response</b>
Requirements for compensation	What are the conditions to be met before compensation is paid by NLC?	NLC will require the following documents from a PAP in order to effect payments: Copy of ID Copy of bank account details Copy of title deed/ Letter of administration Copy of KRA pin  Some PAPs have lost their IDs and they were informed to get a replacement before the compensation process begins.
The design of the roads	Will Mwache dam access roads follow the county of Kwale roads or new roads will be established?	The surveyor would identify exact area where the road would pass. The project entails upgrading of existing roads and establishment of new roads.
Compensation for PAPs without title deeds	Would PAPs without title deeds be compensated?	The consultant responded by stating that before compensation, The Ministry of Land will provide the owners with title deeds then from there the portion of land taken by Mwache dam access roads would be compensated. The house and other assets in the land that would be affected by the Mwache dam access roads must be compensated fully before the kickoff the project.
Compensation for beneficiary PAPs on land belonging to their parents	Will beneficiary PAPs be compensated for developments on land belonging to their parents?	During the assets inventory process, those who have developments on the affected land would be recorded separately as claimants having interests on land belonging to their parents. The law provided for separate compensation for owners of developments on other persons land as they have rightful claim to developments such affected land parcels.
Loss of income from mining sites(quarries/sand ) once the dam is impounded.	Would the youths involved in quarrying on the river bed for building stone blocks and sand harvesting be compensated for loss of livelihoods once the river is impounded	Loss of income due to the actual dam construction activities have been addressed Mwache dam RAPs 1a,1b and RAP 2.
Size of the proposed roads	What would be the size of the Mwache dam access roads?	The road size measurement would range from 20 to 40 meters wide but also the road has different measurements depending on those to be tarmacked and others improved.
Employment of the local youths during construction of the roads	Would the local youth be employed during the construction of the Mwache dam access roads?	It is a government policy for job preference to be given to local people on any publicly funded projects and the Damroad access project would be no exception. This depends on the skill level requirement and availability of required skill in the project areas
Compensation for cultural heritages	Would the project compensate for the expenses incurred in the relocation of cultural	All lands, graves and social facilities which would be affected by the Mwache dam access roads will be compensated. Currently the compensation money set for the graves and shrines relocation process include to all

<b>Issues</b>	<b>Feedback</b>	<b>Response</b>
	sites and social facilities that would be affected by the Mwache dam road access project?	expenses to relocate the graves and shrines.
Benefit sharing from the dam	How would the project empower the youth in the area on how to benefit from the intended benefits of the dam once completed.	The youths constitute the pool for construction labor force. During the construction, they would acquire skills that would help them to diversity their employment opportunities. Once the dam is operational, they would be able to engage in farming activities for high value crops. There would also be opportunities in the fishing activities and there would also be opportunities in recreation and tourism where the youth were best suited.
Gender based violence and vulnerable and marginalized PAPs	How would fairness be ensured in the distribution of compensation for women PAPs whose spouses own the land might receive the compensation and misuse the funds leaving the families destitute?	The World Bank and GoK requirement is that both man and woman would be jointly involved on getting compensation money. There is need for the implementing agency to liaise with local banks to hinder men to withdraw compensation money without their wives or their authority.
Compensation for business owners operating in rented premises	Would PAPs who have rented shops to do business be compensated?	Those who have rented shops and other business which would be affected by Mwache dam access roads will be compensated since their livelihoods must be restored. They will be paid compensation for loss of business income equivalent to six months of their current income.
Compensations for PAPs who bought land but have not transferred to their names	Who will be compensated in cases where PAPs bought land but transfer process has not started or is incomplete?	For the lands bought, the current title holder/owner won't be compensated but the buyers who are the actual owners through exchange of consideration. In case the owner has not given the buyer or transferred land to the buyer, then the owner is required to transfer land to buyer and if not, so the land would be termed as disputed land and NLC have mechanism on how to handle such kind of lands before compensation. The project GRM provided in chapter 11 of this RAP will also be used and there must be proof of the purchase by the buyer/claimant during the GRM process.
Determination of Rate of compensation	How would the rate of compensation be determined?	The project has employed valuation experts under the RAP Consultant who are registered by the Valuation Board to undertake valuation of every affected asset including land, structures, trees and crops, cultural and communal/public assets for the purpose of the RAP. The initial valuation is for the purpose of budgeting for the RAP implementation The valuation will be based on full replacement cost. Additional and final valuation shall be undertaken by the NLC before PAPs are compensated as

<b>Issues</b>	<b>Feedback</b>	<b>Response</b>
		per the provision of the National Land commission Act.

## **Valuation and Compensation**

The assets affected by Mwache dam access roads have been categorized as:

- i. Land
- ii. Structures
- iii. Trees
- iv. Graves
- v. Business income

All affected assets have been valued on the basis of full replacement cost for compensation planning purposes:

## **Compensation Principles and Strategies**

The RAP aims to ensure that all affected people are compensated and assisted in restoring their livelihoods and standards of living to at least pre-project status or better.

## **Eligibility for Compensation**

Eligibility is based on the nature and scope of losses. All affected persons are eligible for compensation and resettlement assistance under the OP 4.12 and Kenya's laws. However, recognizing that there are PAHs that have no recognizable legal right or claim over the land they are occupying in the project area, compensation for this RAP will therefore be based on OP. 4.12 which applies beyond Kenyan laws as it relates to such claimants.

In this project, displaced persons are classified in one of the following two groups:

- i. Those who have formal legal rights to land (including customary and traditional rights recognized under the laws of Kenya)
- ii. Those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets provided that such claims are recognized under the Kenyan laws or become recognized through a process identified in this RAP.

## **Traditional Land Tenure System.**

Land tenure system in the project area is freehold. All PAPs with claims to affected property shall be compensated. The registered land owners who in most cases are male heads of households are culturally obliged to share land compensation with the family members who lay claims to the portion affected by the road. The RAP implementation team will work closely with the family members and NLC to create an understanding on the sharing of land compensation amount between the fathers, spouses and their eligible children. In addition, the dependents would be compensated for their improvements on the affected land allocated to them by their parents. Such improvements include trees and structures.

This RAP notes that this is complicated by the Lands Act which provides for land compensation to be paid to persons who produce title deeds in their names. This RAP requires that all PAHs including those who do not legally own land that they occupy be entitled to full compensation i.e., land, structures and trees. This is reflected in the compensation schedule.

## The approach to compensation

### Land compensation

Cash compensation shall be paid by NLC directly to registered land owners and the administrators appointed by the courts through the process of succession in cases where the registered land owners are deceased. The project will hire a conveyance lawyer to support the succession process including the appointment of administrators for private land parcels affected by the road project.

### Compensation for Structures, Crops, Trees and graves

Compensation for structures, crops, trees and graves will be in cash at full replacement cost and payable to individual owners directly by NLC.

### Livelihood Restoration Program

Different Livelihood Restoration Programmes (LRP) are proposed to be implemented by the MoWSI with the assistance of relevant government agencies and the local community leadership. LRP is aligned with existing resources, knowledge, skills and household experiences. The LRP measures proposed in this RAP are clearly linked to entitlements because the PAP's livelihoods are largely land-based. They shall receive agricultural and business support. They will also receive basic financial training to enable them utilise and invest the compensation funds wisely. The LRP has three elements:

- (i) Agricultural capacity enhancement / Land based livelihood support;
- (ii) Financial management training;
- (iii) Business support

## Entitlement Matrix

The table below highlights the entitlement matrix for all the categories of PAHs as identified in the RAP.  
**Table 13: Entitlement matrix**

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
1.	Dwelling structure used as primary residence	Rightful owners of the affected house and structures	<b>Option 1:</b> Cash compensation for all	<b>Option 1:</b> Cash compensation to owners of	Financial training for the sustainable

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>who choose to receive cash compensation for the affected houses</p>	<p>structures at replacement cost, based on professional valuation.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative.</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period given to vacate as defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property and</p>	<p>affected structures that are either complete or incomplete. All structures must have been present within the project area at the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p>	<p>and prudent use of cash compensation</p> <p>Monitoring mechanism at main stages of construction of dwelling units.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p>		

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		Rightful owners of the affected houses and structures who choose to have replacement houses/ structures replaced in kind (built by the Project)	<p><b>Option 2:</b> Constructed in kind replacement house of size (measured floor area or number of rooms) at least equivalent to the PAH's pre-resettlement housing, with consideration of functional spatial use, at location of owner's own choice but within Kinango Subcounty. Choices of standardized replacement house design(s) offered to PAHs must comply with County Government building/ planning standards, take spatial and cultural function into consideration and comply with minimum standards of safety and allotments of space per occupant. Houses are to be constructed from durable</p>	<p><b>Options 2 and 3:</b> PAPs who choose in kind replacement house and if the affected structure was present within the project area by the cut-off date and identified and verified through final asset and valuation by NLC.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All PAHs in this category must prove that the affected structure is their primary residence.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Transport to new place of abode for all movable assets as well as registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of construction of dwelling units.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>wall and floor materials and with permanent roof. Houses will be considered complete when constructed as described above and fitted with lockable inner and outer doors and windows and connected with agreed services. Housing unit that meets minimum standards of safety, local housing codes and minimum allotment of space per HH member. will be provided to all PAHS who choose in-kind housing unit replacement regardless of the value of PAH's prior dwelling. If the PAHs prior dwelling was larger or of significant better quality or value than the basic units offered, the PAH can 1) agree with the MOWSI on optional</p>		<p>under the CSDO's office;</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>housing plants/models; and/or</p> <p>2) opt to receive the balance of the compensation in cash.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative.</p> <p>For PAHs who choose to have project build their houses, an agreement will be signed with the PAHs describing the house to be built, the location and the expected time of final relocation (in principle should not exceed 6 months)</p> <p>Materials from the affected structure may be salvaged at</p>		

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>the owner's expense within the notice period given to vacate defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p>		
			<p>Rightful owners of the affected houses and structures who are on priority areas required by the contractors sooner than the project or the PAPS upon receipt of compensation money can</p>	<p><b>Option 3:</b> Provision of suitable temporary rented houses of equivalent functional spatial use to those affected and located within <b>defined radius/areas</b> until their permanent houses are complete. This</p>	<p>All listed vulnerable PAPs and other PAPs who will be required to move out of the project priority areas to enable commencement of project construction activities as they construct permanent or</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Assistance in identification of rental houses and negotiation of the monthly rent with the potential</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		construct permanent relocation homes	<p>is in addition to their rightful compensation for all affected assets under the RAP. They will use the temporary accommodation as residences until their relocation homes are constructed. The construction of the relocation homes will be monitored by the project to ensure that steady progress is made and PAPs are able to relocate to permanent houses as quickly as possible.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced. For PAHs who choose to have the project build their houses, an agreement will be signed with</p>	<p>have replacement houses constructed for them at their own selected and acquired resettlement land.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All PAHs in this category must prove that the affected structure is their primary residence.</p>	<p>landlords if preferred.</p> <p>Execution of tenancy agreement for the rented houses between KWSCR and the landlords if preferred is an option.</p> <p>Timely payment of monthly rent and utility bills for the period of time in temporary housing</p> <p>Transport to new place of abode for all movable assets as well as registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>the PAHs describing the house(s) to be built, the location and the expected time of final relocation (in principle should not exceed 6 months)</p> <p>PAHs choosing to build their own homes will, in principle relocate directly to their final relocation sites within an agreed time frame of not less than three months from the notice to vacate and receipt of compensation or as otherwise agreed. Should the project require that they relocate sooner than the time they need to rebuild, the PAHs and the MOWSI will sign an agreement stipulating the amount of cash needed to build the home to be paid in</p>		<p>conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>advance of the move, identifying the new home site and establishing a maximum time at which the PAH expect to be ready to relocate permanently. The PAHs will receive the balance of their compensation upon final relocation.</p> <p>PAHs who will not be able to relocate directly to their new housing will also receive additional moving assistance and an additional subsistence allowance to compensate for any other verifiable costs of the transition (additional transport costs to work, inability to plant subsistence crops, lost wages or other income, need for additional assistance of any kind).</p>		

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
2.	Structures used for secondary purposes e.g. commercial/business structures	Rightful owners of the affected structures	<p>Cash compensation for all structures at replacement cost, based on professional valuation. Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period to vacate defined by the project schedule and prior to demolition.</p> <p>Compensation for loss of</p>	<p>Ownership established through final asset surveys.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Cash compensation to owners of affected structures that are either complete or incomplete</p> <p>All structures must have been present within the project area by the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p> <p>PAP must provide proof of business income generation at the affected structure and by the related business carried out at the structure through business</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>income for three months or the period of the time actually required to re-establish the business elsewhere if greater 3 months' written notice to vacate the project area.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p> <p>Any other transitional costs such as extended storage, lost wages by other HH members, etc.</p>	<p>records.</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/Registered Valuers</p>	

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		Renter/ Tenants	<p>Reimbursement for unexpired tenancy / lease period or the amount of deposit or advance paid by the tenant to the landlord or the remaining amount at the time of expropriation, or three months' rent, whichever is greater.</p> <p>Compensation for loss of income for the period of the time required to re-establish the business elsewhere: 3 - 6 months' income (or longer if justified)</p> <p>3 months' written notice to vacate the project area.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p>	<p>Proof of a formal tenancy agreement for the occupancy of the affected houses has to be provided.</p> <p>In the absence of a formal agreement, a month rent receipt has to be provided.</p> <p>PAP must provide proof of business income generation at the affected structure and by the related business carried out at the structure through business records</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/ Registered Valuers</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Assistance in locating and negotiating replacement rental premises</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			Any other transitional costs such as extended storage, lost wages, deposits and transaction fees, etc.		
		Workers	Compensation for loss of income for three months or the period of the time actually required to find new employment opportunity elsewhere if greater.	Proof of income or minimum wage	Assistance to facilitate relocation with business owner or obtaining alternate employment
3.	Loss of business income/wages	Persons earning livelihoods (income or wages) from affected assets such as stone quarrying and sand harvesting and running businesses in structures that will be affected	Compensation for loss of income for three months or the period of the time actually required to re-establish the business elsewhere if greater  3 months' written notice to vacate the project area.  Taxes and fees, and registration costs for Registration of property to be paid for	PAP must provide proof of business income or wages generated from the affected resource and business. In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/Registered	Financial training for the sustainable and prudent use of cash compensation  Business skills training and enlightenment on alternative income generating activities.  Monitoring mechanism at main stages of resettlement  Workers will

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>directly in the valuation</p> <p>Any other transitional costs such as extended storage, lost wages, etc.</p>	<p>Valuers. Workers will receive minimum wage.</p>	<p>receive assistance to facilitate moving with the business or obtaining similar employment</p>
4.	Sanitation facilities (Pit latrines & bath shelters).	Rightful owners of the affected structures (residential, commercial and other)	<p>Cash compensation for all structures at replacement cost, based on professional valuation.</p> <p>Statutory Disturbance Allowance of 15% of the compensation amount.</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period to vacate defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs</p>	<p>Cash option is available to owners of affected structures that are either complete or incomplete</p> <p>All structures must have been present within the project area by the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p> <p>NB: Owners already given a replacement house that already includes these facilities will not receive additional cash compensation.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Monitoring mechanism at main stages of resettlement.</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly</p>		
5.	Moveable and other structures such as fences, livestock enclosures, and livestock water points, etc.	Rightful owners of the affected structures	<p>Cash compensation for all structures at replacement cost, based on professional valuation.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Materials may be salvaged at the owner's expense within the notice period to vacate defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property (including livestock) and</p>	<p>Cash compensation to owners of affected structures that are either complete or incomplete.</p> <p>All structures must have been present within the project area by the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Monitoring mechanism at main stages of resettlement.</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Any other transitional costs such as extended storage, temporary shelter or higher costs of feed for livestock, etc.</p>		

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
6.	Land for Primary Residential land/plot – permanent loss	Registered owner or claimants of customary held land on which complete immovable housing structure is established for primary residence.	<p><b>Option 1:</b> Self-managed relocation (Cash compensation with relocation plans overseen)</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance</p>	<p>All PAHs in this category must prove that the affected land is their primary residence and either are PAHs who own other suitable resettlement land or have identified suitable resettlement land and have intention of buying it upon receipt of cash compensation (either through formal or traditional verification processes).</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>PAHs must give proof of ownership of other suitable parcel of land or a verifiable intention to enter into a binding/written sale agreement with a potential seller</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			with Kenyan Law	<p>of the suitable parcel of land before release of cash compensation.</p> <p>To ensure security of tenure to the resettled PAHs, the Legal Consultant will facilitate the execution of Sale Agreements between the sellers of land and the PAHs</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.</p>	
			<b>Option 2:</b> Assisted relocation (Cash compensation held by project and land and structures identified and acquired by the project)	All PAHs in this category must prove that the affected land is their primary residence (either through formal or traditional verification	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Transport and personnel to help PAHs in</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>RAP Implementation Consultant assist willing PAHs to identify suitable resettlement land whose value does not exceed compensation value of affected land and is within Kinango Subcounty. and to negotiate and conclude the sale agreements with sellers, transfer of cash to the sellers and successfully transfer of land ownership to the PAHs.</p> <p>Assistance in conveyancing and transferring title</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced.</p>	<p>processes).</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All listed vulnerable PAHs and all PAHs who neither own other resettlement land nor have identified suitable resettlement land.</p> <p>This is the risky category of land PAHs who will require direct project intervention during RAP Implementation</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where</p>	<p>moving around the host communities' areas and to identify suitable land and negotiate with the potential land sellers.</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law</p>	they are impacted by the project.	CSDO's office;
7.	Permanent loss of agricultural farming land	Registered owners or claimants of customary held lands	<p><b>Option 1:</b> Self-managed relocation (Cash compensation with relocation plans overseen)</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Assistance in conveyancing and transferring title</p> <p>Assistance with transport for their</p>	<p>PAPs must prove ownership (either through formal or traditional verification processes) at the time of NLC verification</p> <p>Acceptable Household level livelihood restoration plan as a condition of compensation payment. Payment of compensation for lost assets and land made</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Agriculture and livestock development projects and support programs targeting the PAHs and host communities</p> <p>Provision of support registration cost and required formalities to</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law; Land Act (See chapter 6)</p>	<p>before displacement. PAHs must give proof of ownership of other suitable parcel of land or a verifiable intention to enter into a binding/ written sale agreement with a potential seller of the suitable parcel of land before release of cash compensation.</p> <p>To ensure security of tenure to the resettled PAHs, the Legal Consultant will facilitate the execution of Sala Agreements between the sellers of land and the PAHs.</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other</p>	<p>ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>methodologies done by NLC/ Registered Valuers</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.</p>	
			<p><b>Option 2:</b> Assisted relocation (Cash compensation held by project and land and structures identified and acquired by the project)</p> <p>RAP Implementation Consultant assist willing PAHs to identify suitable resettlement land whose value does not exceed the total compensation and is within the defined</p>	<p>PAHs must prove ownership (either through formal or traditional verification processes) at the time of final asset surveys.</p> <p>Acceptable Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Payment of compensation for lost assets and land made before</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Transport and personnel to help PAHs in moving around the host communities' areas and to identify suitable land and negotiate with the potential land sellers.</p> <p>Provision of support registration</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>project area and to negotiate and conclude the sale agreements with sellers, transfer of cash to the sellers and successfully transfer of land ownership to the PAHs.</p> <p>Assistance in conveyancing and transferring title.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law</p>	<p>displacement.</p> <p>All listed vulnerable PAHs and all PAHs who neither own other resettlement land nor have identified suitable resettlement land.</p> <p>This is the is also a risky category of land PAHs who will require direct project intervention during RAP Implementation</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.</p>	<p>cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
8	Annual Crops	Owners of crops on farm land	<p>The project will make every effort to ensure land is taken after annual crops have been harvested. In such circumstances, no compensation for annual crops will be paid.</p> <p>Where crops are planted as part of the regular farming cycle in the project area and land is required, prior to harvesting, Crop Owners receive:</p> <p>Cash: damaged crops will be compensated in cash as mature crops at agreed rates determined annually based on replacement cost determined by Ministry of Agriculture based on market prices plus transaction costs</p>	Crop owners identified through final asset surveys by NLC and verified by RAP IT	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Agriculture and livestock development projects and support programs targeting the PAHs and host communities</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			Statutory Disturbance Allowance of 15% of compensation amount.		
9	Perennial Crops (Including fruit and economically valuable trees)	Owners of crops on farm land	Cash compensation based on replacement cost determined by Ministry of Agriculture and Kenya Forest Service for crops/ fruit trees and trees of economic/ medicinal value respectively based on market prices plus transaction costs  Compensation according to defined growth stage or size categories. Statutory Disturbance Allowance of 15% of compensation amount.	Crops or trees in place (rooted) at cut-off date and identified through final surveys by NLC and verified by the RAP IT	Household level livelihood restoration plan as a condition of compensation payment.
10	Loss of agricultural employment	Agricultural workers	Three months lost wages at documented level or minimum wage or actual work losses whichever is greater.	Wage workers on agricultural parcels	Assistance to facilitate moving with employer or obtaining similar employment
11	Vulnerable	All PAPs in	Transitional	Identified	Special

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
	Support Program (Tailored)	the project area are considered vulnerable due to poverty and are hence entitled to livelihood restoration support. This category refers to PAHs with other forms of vulnerabilities which may require special consideration. Vulnerable individuals and families who may find it difficult to cope with the Transition e.g. the elderly (over 70 years old), physically challenged, those suffering from chronic illness; widows and children who are under 18 years	<p>hardship assistance program appropriate to specific cases and based on Project assessment, including: -</p> <p>Priority in physical mobilization and transfer to resettlement plot;</p> <p>A preference for in-kind compensation</p> <p>Assistance in the compensation payment procedure</p> <p>Resettlement near to kin and former neighbors to maintain informal support networks where feasible</p>	through final census survey based on agreed vulnerability criteria relevant to Project.	<p>assisted transit to new land;</p> <p>Additional moving, loading and unloading assistance, if necessary;</p> <p>Other specific support related to moving process (e.g. medical assistance) identified by support case workers.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p> <p>Assistance with transport for their</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
						<p>property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Follow up on orphans to make sure they identify and register in school upon relocation. The Persons with Disability (PWD) and those HIV affected access support services in areas of new settlement.</p> <p>Widows, orphans and affected vulnerable persons to be assisted through local administration and family for issuance of land registration documents;</p> <p>Relocation of the widows, orphans and vulnerable persons to be</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
						<p>facilitated and receive adequate notice to relocate</p> <p>Assist and monitor orphans to make sure that these children get back to school in case of relocation and ensure they are compensated</p> <p>The vulnerable such as mentally sick, people with disabilities, aged, chronically ill to access information and opportunities</p> <p>Monitor the resettlement of the vulnerable e.g. orphans to make sure they gain school transfers; the HIV affected and chronically ill have access to medication and the persons with disability are</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
					locally registered with APDK office.
12	Graves/ cemeteries	Family and community members	<p>Complete relocation of graves (exhumation, transportation and reburial) to designated cemetery around the project area or at the PAPS resettlement land as per individual preference</p> <p>Cash compensation at a rate/ grave that is determined by NLC in consultation with the PAHs and project staff. This cash is meant to assist the affected PAHs and communities to conduct customary ceremonies during the relocation of graves. This was specifically requested by the PAPS at various consultation forums.</p>	<p>Familiar graves identified during asset inventory and/or confirmed through the Cultural Heritage survey.</p> <p>Unmarked graves identified through chance-find do not qualify for ceremonial assistance and will be dealt with in accordance with the Chance Finds Procedure in the Cultural Heritage Management Plan.</p>	Contractors equipment/ excavator to relocate the graves when requested by the PAPS or community members

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.		
13	Non-land owners	PAHs who are informal occupants that will lose their main residential structures constructed on land that they have no legal claim on	Legal land owners of the land they occupy to share the replacement land with them so that they can build new residential structures on the land and resettle	These are relatives of the legal land owners on whose land they have been allowed to build the structures and cultivate crops/trees but they have not been given legal entitlement to the land	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
						the existing welfare support programs under the CSDO's office;

## **Grievance Redress and Management**

Grievance redress mechanisms are necessary avenues for allowing project affected persons to voice concerns about the resettlement and compensation process as they arise and, if necessary, for corrective action to be taken promptly. Such mechanisms are important to achieve transparency in the land acquisition and resettlement processes. Arising from the above observations, the Consultant proposes that all the grievances be addressed before commencing construction.

A well-defined Grievance Redress Mechanism that provides the PAPs with an avenue of lodging complaints and concerns and receiving quick/timely response is critical. Grievance mechanisms are important to the resettlement process as they allow for RAP implementers to identify disputes in good time and allow for them to be resolved in a transparent and accountable manner. Compensation based disputes are issues also likely to occur during and after the RAP implementation program, hence it is critical to establish this system prior to implementation of the resettlement program.

Lack of perceived transparency may lead to feelings of mistrust and misinformed judgements on both sides. A well established and validated grievance mechanism can also promote good relations between the project proponent and the affected community thus reducing the risk of hostilities and delays on the construction program, both before and after the contractor takes possession of the site.

The Mwache dam project already has a robust GRM which is being used to handle grievances arising in the ongoing RAP 1a and RAP 1b implementation phase. This RAP 3 will adopt the existing GRM whose scope shall be expanded to include representation of PAPs affected by Mwache dam access roads. The objective of RAP Grievance Redress Management (GRM) is to provide a set of clear and traceable procedures by which any grievance arising from or in connection with this RAP can be reported by an affected person/household, and then heard and resolved. The dispute hearing and resolution will mainly be through the informal, alternate dispute resolution process that is consistent with best practice and the requirements of OP. 4.12 before pursuing the legal formal justice (judicial process). Judicial process still remains the right of every affected person/household in this RAP.

The existing GRM for Mwache Dam project has five (5) levels of grievance management as provided below:

- 1) Elders Land Disputes Resolution Committee
- 2) Sub-Location Resettlement and Grievance Redress Committee
- 3) Sub-County Resettlement and Grievance Redress Committee
- 4) County Arbitration Committee
- 5) Resort to Judicial recourse - Environment and Land Court. The Environment and Land Court established under the Environment and Land Act 2012 addresses land related matters and PAHs will be free to ignore the project's GRM and use the formal legal system at any time or point.

## **RAP Institutional Implementation Arrangements**

This RAP 3 shall be implemented within the existing institutional RAP implementation arrangement for Mwache dam project. A mix of institutions—government agencies at the County, Sub County and national levels, technical agencies, consulting firms and individual consultants recruited by KWSCRIP will be involved in RAP implementation.

The existing RAP implementation arrangement for Mwache dam project is provided below:

- a) National Government-Ministry of Water & Sanitation and Irrigation
- b) KWSCRП-National Project Management Unit and Coast Project Management Unit
- c) Safeguards Project Implementing Unit
- d) RAP Conveyance Consultant
- e) RAP Implementation Consultant
- f) Grievance Redress and Resettlement Committees
- g) RAP Implementation steering committee

### **RAP Implementation Schedule**

The RAP implementation period and timelines will be approximately 24 months while some livelihood restoration programs and monitoring may last beyond the actual resettlement activities. Refer to **Annex: vi** for the RAP 3 Implementation Schedule.

Monitoring is a key component of this RAP. There will be monitoring in two forms internal and external.

- (i) Internal monitoring and reporting
  - Monitoring of Construction Activities
  - Monitoring of Resettlement Activities and Measures
- (ii) External Monitoring and Reporting
  - RAP Audit Consultant
  - Disclosure of Monitoring Reports
  - Independent Environmental and Social Panel of Expert

### **RAP Disclosure**

The RAP will be disclosed in English while the executive summary (non-technical) will be translated into Kiswahili and Duruma languages. Disclosure of RAP 3 in Kiduruma and Kiswahili will be done in hard copy at the affected households' level and its contents explained verbally to all PAP participants and stakeholders during RAP disclosure public meetings to be held at the inception phase of RAP 3 implementation. Disclosure of the RAP 3 in English will be in electronic form on the website of the following institutions namely: -

- a) KWSCRП
- b) Coast Development Authority
- c) Ministry of Water & Sanitation and Irrigation
- d) County Government of Kwale
- e) World Bank external affairs

Hard copies will be made available in the same offices with additional copies availed at the following sites:

- a) KWSCRП Nairobi Office
- b) KWSCRП Coast Office
- c) CDA office
- d) Kwale County Headquarters
- e) Office of contractor
- f) Kwale Sub County Office

- g) All Locational offices affected by the project
- h) All Ward offices affected by the project

### **RAP budget**

The total budget for resettlement compensation is Kshs. **214,548,140** including disturbance allowance and livelihood restoration, conveyancing and succession and grievance redress. In addition, administration cost of 15 per cent for the RAP implementation and monitoring and evaluation has been considered. All costs associated with this RAP as highlighted in Table 12 below will be met by KWSCRPMU. However, the total costs of the RAP are bound to change as the unit prices will further be reviewed by NLC at the early stage of implementation to reflect the market prices and/or value and hence full replacement cost at that time.

**Table 14: RAP budget**

<b>Total RAP cost</b>	<b>Total PAHs</b>
Land	88,607,505
Structure	14,466,000
Loss of business income	180,000
Trees	6,801,800
<b>Sub- total 1</b>	<b>110,055,305</b>
Disturbance allowance (15%)	16,508,295
<b>Sub-total 2</b>	<b>126,563,600</b>
Livelihood restoration programme	15,000,000
Conveyance /succession lawyer	30,000,000
Independent completion audit	10,000,000
Facilitation for Grievance Redress committee	5,000,000
<b>Sub-total 3</b>	<b>60,000,000</b>
<b>Sub –total 2 + Sub-total 3</b>	<b>186,563,600</b>
Contingency (15% of total RAP cost)	<b>27,984,540</b>
<b>Grand total</b>	<b>214,548,140</b>

**Actions to be taken by the government**

- i. Prompt payment of compensation: The Government has set aside the funds to compensate the PAPs within the scheduled timeframe.
- ii. Human resources: Successful implementation of this RAP requires adequate human resources and the MoWSI is making preparation to have a RAP 3 Implementation Consultant to begin implementing the rap upon approval by WB. To this effect, the government should identify a RAP expert to guide and support the implementing agencies to implement this RAP.



## TABLE OF CONTENTS

1	INTRODUCTION.....	1
1.1	Project Background.....	1
2	PROPOSED PROJECT DESCRIPTION.....	4
2.1	Project location.....	4
2.2	Project beneficiaries.....	5
3	RAP METHODOLOGY.....	6
3.1	Literature review.....	6
3.2	Establishing land registration status.....	7
3.3	Stakeholder Consultations.....	8
3.4	Asset Inventory, Census, Socio-Economic Surveys.....	8
3.4.1	Asset Inventory.....	8
3.4.2	Census and Socio-Economic Survey.....	9
3.5	Training of enumerators.....	9
3.6	Identification of PAHs.....	9
3.7	Cadastral land survey.....	10
3.8	Asset Valuation Surveys.....	10
3.9	Data Collection, Entry and Analysis and RAP report preparation.....	10
3.10	RAP Team.....	10
4	LEGAL AND POLICY FRAMEWORK.....	11
4.1	The Constitution of Kenya.....	11
4.2	The National Land Commission Act.....	12
4.3	The Land Act (Revised Edition 2019 [2012]).....	13
4.4	The Community Land Act.....	23
4.5	The Land Registration Act 2012.....	24
4.6	Dissolution of Mwavumbo Group Ranch & Registration of Land to Individual Members.....	25
4.7	Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities No. 56 of 2012.....	26
4.8	World Bank Operational Policy on Involuntary Resettlement.....	27
4.9	World Bank Indigenous Peoples Policy OP. 4.10.....	28
4.10	World Bank Policy on Gender and Development.....	29
4.11	Kenya Land Policy.....	30
4.12	KWSCRIP Resettlement Policy Framework.....	31
4.13	Comparison of GoK Legal Framework and World Bank OP 4.12 And OP. 4.10.....	34
4.14	RAP Disclosure.....	44
5	BASELINE AND SOCIO-ECONOMIC PROFILE OF PAPS.....	45
5.1	Position and Size of Kwale County.....	45
5.2	Administrative and Political Units.....	45
5.3	Demographics.....	45
5.4	Population Size and Composition.....	45
5.5	Demographics in Project Affected Households.....	45
5.6	Household Characteristics.....	46
5.6.1	Age distribution.....	46
	Fig 4: Age distribution (Source- Respondents).....	46
5.6.2	Gender Distribution of Household Heads among the PAPs.....	46
5.6.3	Educational Level.....	47
5.6.4	Occupation.....	47
5.6.5	Household Incomes.....	48
5.6.6	Energy.....	48
5.6.7	Water and Sanitation.....	49
5.6.8	Health.....	50

5.7	Vulnerable GROUPS.....	51
5.8	Road network within the project area.....	51
6	PROJECT IMPACTS AND MITIGATION MEASURES.....	53
6.1	RAP 3 Project Components triggering displacement.....	53
7	ELIGIBILITY AND VALUATION.....	56
7.1	Eligibility.....	56
7.1.1	Eligibility Criteria.....	57
7.1.2	Cut-Off Date.....	57
7.1.3	Category of PAH.....	57
7.1.4	Entitlement Matrix.....	57
7.2	Valuation Methods.....	60
7.2.1	Valuation Process for Land and other Assets.....	60
7.2.1.1	<u>Land - Market Research and Valuation.....</u>	<u>60</u>
7.2.1.2	<u>Land Market Research - Objectives.....</u>	<u>60</u>
7.2.1.3	<u>Land Market Research - Target PAPs.....</u>	<u>60</u>
7.2.1.4	<u>Valuation of land using Comparison Method.....</u>	<u>60</u>
7.2.2	Valuation of structures using current replacement approach.....	60
7.2.3	Replacement Cost Valuation of Trees.....	60
7.2.4	Valuation of graves.....	61
8	COMPENSATION PACKAGES.....	62
8.1	Loss of Residential Land.....	62
8.2	Loss of Farmland.....	62
8.3	Loss of Residential Structures.....	62
8.4	Loss business Structures.....	62
8.5	Loss of Graves Burial Sites and Sacred Sites.....	62
8.6	Loss of trees.....	63
8.7	Special Measures for Vulnerable Households During Compensation Process.....	63
9	LIVELIHOOD RESTORATION PROGRAM.....	64
10	GRIEVANCE REDRESS MECHANISM.....	65
10.1	Grievance Redress Mechanism.....	66
10.2	Need for Grievance Redress Mechanism.....	66
10.3	Essentials in Grievance Redress.....	66
10.4	Grievance Redress Mechanism Players.....	67
10.5	Principles Grievance Redress Mechanism.....	67
10.6	Grievance Management Levels and roles.....	68
10.6.1	First Level: Elders Land Disputes Resolution Committee.....	68
10.6.2	Second Level: Sub Location Grievance Redress Committees (SLEGRC)....	69
10.6.3	Third Level: Kinango Sub-County Grievance Redress Committee (SCRGRC)	69
10.6.4	Fourth Level: County Arbitration Committee.....	70
10.6.5	Fifth Level: Resort to Justice.....	70
10.7	Appointment of Grievance Redress and Committee Members.....	70
10.8	Grievance Redress and Compensation Committee Members Remuneration.....	71
10.9	Capacity-Building For Grievance Officer and Grievance Committee.....	71
10.10	National Land Commission.....	71
10.11	Grievance Redress Hierarchy.....	71
10.12	Grievance Registration and Monitoring.....	72
10.13	Hearing of Complaints: where and by whom.....	76
10.14	Appeal Procedures.....	76
11	INSTITUTIONAL FRAMEWORK FOR RAP IMPLEMENTATION.....	78
11.1	National Government- Ministry of Water & Sanitation and Irrigation.....	78
11.2	KWSCR- National Project Management Unit and Coast Project Management	
Unit	78	

11.3	RAP Conveyance Consultant.....	78
11.4	RAP Implementation Team.....	79
11.5	RAP Implementation Steering committee.....	79
11.6	Safeguards Implementing Unit.....	79
11.7	Communication and Coordination.....	80
11.8	Management of RAP Implementation.....	80
11.9	Change Management.....	80
11.10	Capacity building.....	80
11.11	National Land Commission.....	81
11.11.1	Summary Roles of NLC.....	81
11.12	Grievance Redress and Resettlement Committees.....	81
11.13	Ministry of Lands.....	81
12	RAP IMPLEMENTATION SCHEDULE.....	82
12.1	Disclosure of RAP.....	82
12.2	Operationalize Grievance Mechanisms.....	82
12.3	Conduct Training Programme for Officials.....	83
12.4	Other RAP Implementation Activities.....	83
13	Monitoring and Evaluation.....	85
13.1	Adaptive Management Approach.....	85
13.2	Internal Monitoring and Reporting.....	85
13.2.1	Monitoring of Construction Activities.....	85
13.2.2	Monitoring of Resettlement Activities and Measures.....	86
13.3	External Monitoring and Reporting.....	88
13.3.1	RAP Implementation Consultant.....	88
13.3.2	Disclosure of Monitoring Reports.....	88
13.3.3	Independent Environmental and Social Panel of Expert.....	89
14	RAP BUDGET.....	90
	REFERENCES.....	91
	APPENDICES.....	92
	APPENDIX A: Census Tool.....	92
	Appendix-B: Grievance Redress Log.....	96
	APPENDIX C - Sample Grievance Form.....	97
	APPENDIX D- Sample of a Grievance Resolution Form.....	98
	APPENDIX E: Title Deed Searches.....	99
	APPENDIX F: VALUATION DETAILS.....	118

## Table of Figures

Figure 2: Gender Distribution of Household Heads (Source- Respondents ).....	47
Figure 3: Occupation (Source- Respondents).....	47
Figure 4: Household Incomes (Source- Respondents).....	48
Figure 5: Energy (Source- Respondents).....	49
Figure 6: Water and Sanitation (Source- Respondents).....	50
Figure 7: Health (Source- Respondents).....	50
Figure 9: Pyramid showing the various GRRC.....	72
Figure 10: Process of filing complaints and the taking, hearing and resolution of appeals.....	77

## List of Tables

Table 1: Distribution of RAP 3 PAHs by Road categories.....	3
Table 2: Description of the Mwache Dam Roads .....	4
Table 3: Comparative Analysis of World Bank OP 4.12 and OP. 4.10 &GoK requirements including measures to address gaps.....	36
Table 4: Vulnerable Groups.....	51
Table 5: Summary of the Roads to be done under the project .....	53
Table 6: Distribution of PAPs and PAHs by roads.....	54
Table 7: Impacts profile.....	54
Table 8: Summary of Land Acquisition Impacts.....	55
Table 9: Non-land impacts.....	55
Table 10: Eligibility Framework.....	56
Table 11: Entitlement matrix.....	58
Table 12: Grievance Mechanism Steps.....	72
Table 13: RAP implementation schedule.....	84
Table 14: RAP Monitoring Indicators.....	86
Table 15: Total RAP Budget.....	90

## **ACRONYMS AND ABBREVIATIONS**

ADR	Alternative dispute resolution
AIDS	Acquired Immuno-Deficiency Syndrome
APDK	Association of People with Disabilities of Kenya
DCC	Deputy County Commissioner
FGD	Focused Group Discussions
GRCC	Grievance Redress and Compensation Committee
GRRCs	Grievance Redress and Resettlement Committees
GPS	Geographical Positioning System
GRM	Grievance Redress Mechanism
HH	Household Head
HIV	Human Immuno Virus
ID	Identity card
KCSE	Kenya Certificate of Secondary Education
KFS	Kenya Forest Service
KNBS	Kenya National Bureau of Statistics
KRA	Kenya Revenue Authority
KWSCR (AoI)	Kenya Water Security and Climate Resilience Project Kinango Area of Influence
LRCC	Locational Resettlement and Compensation Committees
LRP	Livelihood Restoration Programmes
M&E	Monitoring and Evaluation
MOF	Ministry of Finance
NGOs	Non-governmental organizations
NLC	National Land Commission
OP	Operational Policy
PAPs	Project Affected Persons
PASW	Predictive Analytics Software
PWDs	Persons with Disability
PIU	Project Implementation Unit
PMU	Project Monitoring Unit
RAP	Resettlement Action Plan
RIC	RAP Implementation Consultant
RPF	Request for Proposal
ROW	Right of Way
SPSS	Statistical Packages for Social Sciences
SCSDO	Sub County Social Development Officers
(SLEGRC	Second Level: Sub Location Grievance Redress Committees)
(SCRGRC)	Sub-County Grievance Redress Committee
TOR	Terms of Reference
USD	United States Dollar
UTM	Universal Transverse Mercator

---

## 1 INTRODUCTION

---

### PROJECT BACKGROUND

---

The Government of Kenya (GOK) has received credit financing from the World Bank in the form of International Development Association (IDA) loan to implement activities and projects under the Kenya Water Security and Climate Resilience Project (KWSCRP). One of the potential investments identified under the KWSCRP 2 is the Mwache Multipurpose Dam Project, a Vision 2030 flagship project, which has been given high priority by the Ministry of Water & Sanitation and Irrigation (MOWSI), Kwale and Mombasa Counties. It will be implemented through the Ministry of Water & Sanitation and Irrigation (MOWSI), State Department of Water through the Kenya Water Security and Climate Resilience Project (KWSCRP) and Coast Development Authority (CDA).

The Coastal Region Water Security and Climate Resilience Project (KWSCRP-2) was approved by the World Bank Board on December 16, 2014. The project development objective of the KWSCRP 2 is to improve water security and build climate resilience, sustainably increase bulk water supply and increase access to water and sanitation in the Coastal Region by:

- Increasing the supply of bulk water to Kenya’s coastal region, including Mombasa; and
- Developing an Irrigation Demonstration Scheme.

The objectives of the Mwache Dam Project are to improve the living standards of Kwale County and Mombasa residents through poverty alleviation and sustainable development. A large-scale multi-purpose water reservoir will be created to cater for public and industrial water supply and irrigation in order to effectively contribute towards regional and national socio-economic development. Other specific objectives include ecosystem conservations, and irrigation.

#### **Overall objectives of the RAP 3 are:**

- vii. Avoid or minimize adverse resettlement impacts including physical and economic displacement. Where it is not feasible to avoid resettlement, 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.
- viii. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs in accordance with the principles outlined in OP4.12
- ix. 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 prior to the beginning of project implementation, whichever is higher.
- x. Mitigate adverse social and economic impacts from land acquisition by:
  - a. Providing compensation for loss of assets at full replacement cost;
  - b. Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected; and
  - c. Improve or at least restore the livelihoods and standards of living of affected people.

- xi. Provide additional assistance and opportunities (e.g., credit facilities, training, or job opportunities) and improve or at least restore the income-earning capacity, production levels and standards of living of economically displaced persons whose livelihoods or income levels are adversely affected;
- xii. Provide transitional support to affected people, as necessary, based on a reasonable estimate of the time required to restore their income earning capacity, production levels, and standards of living.

The key principles of this RAP are based on the requirements of OP. 4.12 and constitute the following: -

- ix. Compensation and resettlement of project-affected people will be carried out in compliance with Kenyan legislation and World Bank operational policy OP 4.12
- x. Where Kenyan legislation is less favourable to PAHs than the requirements of OP 4.12 the latter shall apply;
- xi. All physically and economically displaced people will be offered an option between either a full resettlement package, including the provision of replacement structures or cash compensation;
- xii. The Project will provide for measures to support sustainable use of cash compensation (money management training) and for mechanisms within the overall monitoring framework to follow up the use of cash compensation;
- xiii. The Project will assist PAHs in restoring their livelihoods to at least their previous levels through the development and implementation of tailored livelihoods restoration packages for each household
- xiv. The Project aims to ensure PAHs are Project beneficiaries; targeted livelihood restoration programs will have this as a core strategy to achieve this goal.
- xv. The RAP implementation and outcomes will be monitored and evaluated as part of a transparent process.
- xvi. Key methods of consultations with the communities included Focus Group Discussion, Key informant interviews at venues identified and agreed upon via consensus.

## **Mwache Dam Project Components and related RAPs**

### **RAP 1**

RAP 1 covers the following areas;

1. Main dam area comprising of the;
  - Reservoir area (quarries of high potential rock material have been identified in parts of the reservoir areas for supply of dam building materials prior to the impoundment of the reservoir),
  - Base camp area,
  - Dam operational areas (raw water treatment plant and transmission pipeline, police post, clinic/health facility will be constructed within the dam operation area.)
2. Lower Check Dam including silt pile area
3. Access roads A, C and H.

RAP 1 is further divided into RAP 1a and RAP 1b;

RAP 1a covers ALL of Priority 1 works areas i.e. the lower check dam site and quarry site areas (part of which are in Mwavumbo Group Ranch) and main dam site and some operational areas, All of Priority 2 areas i.e. part of main dam operational and reservoir areas

and PART of Priority 3 areas (part of main dam operational and impoundment areas and part of the lower check dam reservoir areas, silt pile) and Access roads C & H, A3 and J.

RAP 1b covers PART of Priority 3 i.e. the rest of the main dam and lower check dam reservoir areas all of which are within Mwavumbo Group Ranch.

#### RAP 2

RAP 2 covers all resettlement activities associated with the Upper Check Dam and Irrigation Demonstration Scheme areas.

#### RAP 3

This RAP 3 covers Roads A, D and E. The roads design was provided by MOWIS engineers and has been reviewed by the RAP Consultant who has generated cadastral maps provided in **Annex: ii**. The details of the roads covered in RAP 3 are presented in table 15 below.

#### The scope of RAP three

**Table 15: Summary of the Roads to be done under RAP 3**

	ROAD	Width (metres)	RAP
1	A	20.0	RAP3
2	D	20.0	RAP3
3	E	40	RAP3

**Table 16: Summary of the Roads under the project**

	ROAD	Remarks Existing/New	Land Registration/ Adjudication Status	Registration/ Adjudication section	Width (metres)	Length (Km)	RAP
1	A	Existing (up-to SGR)	Registered	Mazeras	20	5.151	Partly RAP I and partly RAP3
2	B	Existing	Adjudication on-going	Mnyenzi	20	5.359	RAP3
3	C	New	Registered	Mazeras	20	0.842	RAP I
4	D	New	Adjudication on-going	Mnyenzi	20	1.120	RAP 3
5	E	Partly existing and partly new	Partly in Mwavumbo Ranch (subdivision underway) partly in Chigato (Registered)	Mwavumbo Ranch/Chigato / Mnyenzi	40	15.556	RAP 3

			and partly in Mnyenzi (undergoing adjudication)				
6	F	Existing	Registered	Chigato	20	3.945	RAP 3
7	G	Existing	Registered	Chigato	20	1.929	RAP3
8	H	Existing	Registered	Mazeras	20	0.745	RAP1
9	UCD - 1	Existing	Adjudication underway	Bofu	20	0.605	RAP 3
10	UCD - 2	Existing	Adjudication underway	Bofu	20	1.513	RAP 3
11	UCD - 3	Existing	Adjudication underway	Bofu	20	1.159	RAP 3
12	UCD - 4	Existing	Adjudication underway	Bofu	20	0.904	RAP 3

**Table 17: Summary of the Affected Land Parcels**

Section Name	Adjudication / Registration	Affected Parcels		Affected Area (Ha)	Complete Details	Incomplete Details
		Gazetted in RAP 1 & RAP 2	Not Gazetted in RAP 1 & RAP 2			
Bofu	Adjudication	0	21	4.9627		21
Chigato	Registration	25	85	17.5419	77	33
Mazeras	Registration	45	21	11.2543	53	13
Mnyenzi	Adjudication	2	162	15.9078	145	19
Mwavumbo Ranch	Under subdivision	13	152	32.7932	150*	15
<b>Total</b>		85	441	82.4599	275	101

## 2 PROPOSED PROJECT DESCRIPTION

### MWACHE DAM ACCESS ROADS - LAND ACQUISITION PLANS

Mwache Dam road project involved 9 roads. The RAP was based on the road designs that were provided by the client (MOWIS). The execution of RAP 3 referenced to two previous RAP reports (RAP 1 and RAP 2) to avoid potential overlaps. The following map (Figure 1) shows the Roads with respect to the previous RAPs. Some of the roads are covered in RAP 3 while some of the roads are covered in RAP 1 and RAP 2 respectively. RAP 1 was further divide into RAP 1a and RAP 1b.

RAP 1a mainly covered the dam area (comprising of Reservoir area, base camp area, the dam operational areas, the lower check dam including silt pile area) as well as Access roads A, F & H, C, G and J. RAP 1b covered the rest of the main dam and lower check dam reservoir areas all of which are within Mwavumbo Group Ranch – through which Access roads E and G traverse. RAP 2 covers all resettlement activities associated with the Upper Check Dam and Irrigation Demonstration Scheme areas – and all the access roads in the upper check dam. The details of the roads and the respective RAPs where they are covered is presented in Figure 1 and 2 below.

Figure 1: Mwache Dam Access Roads with reference to RAP 1 and RAP 2

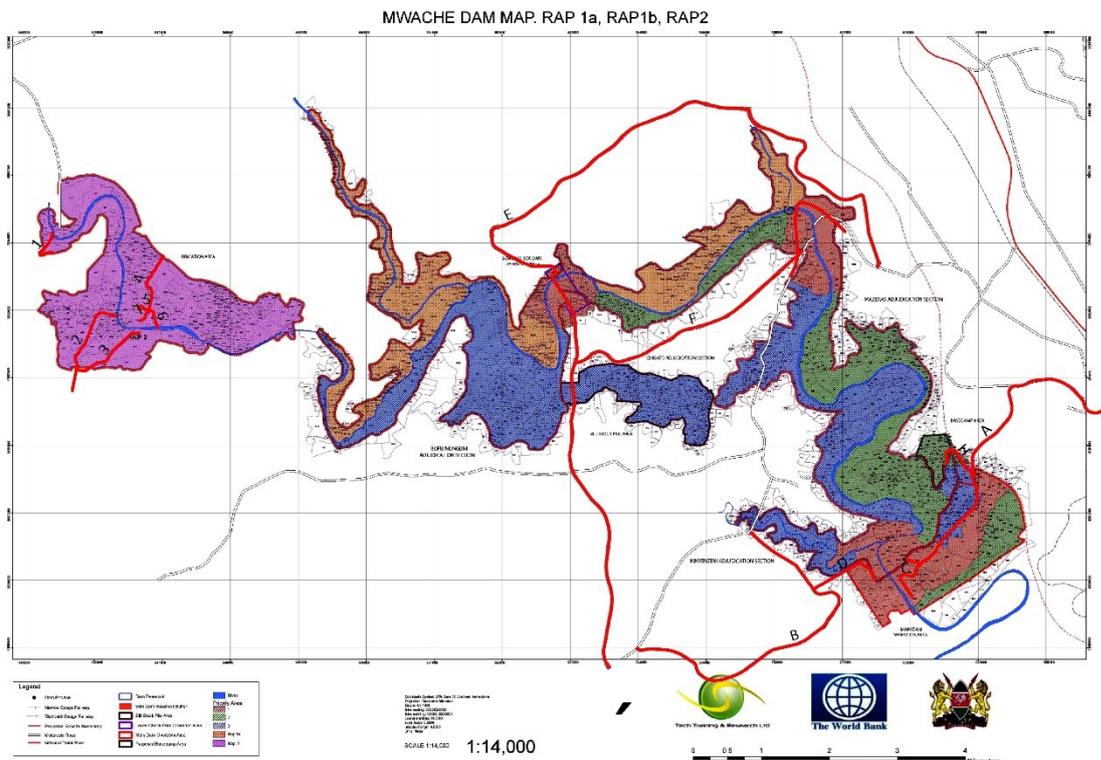
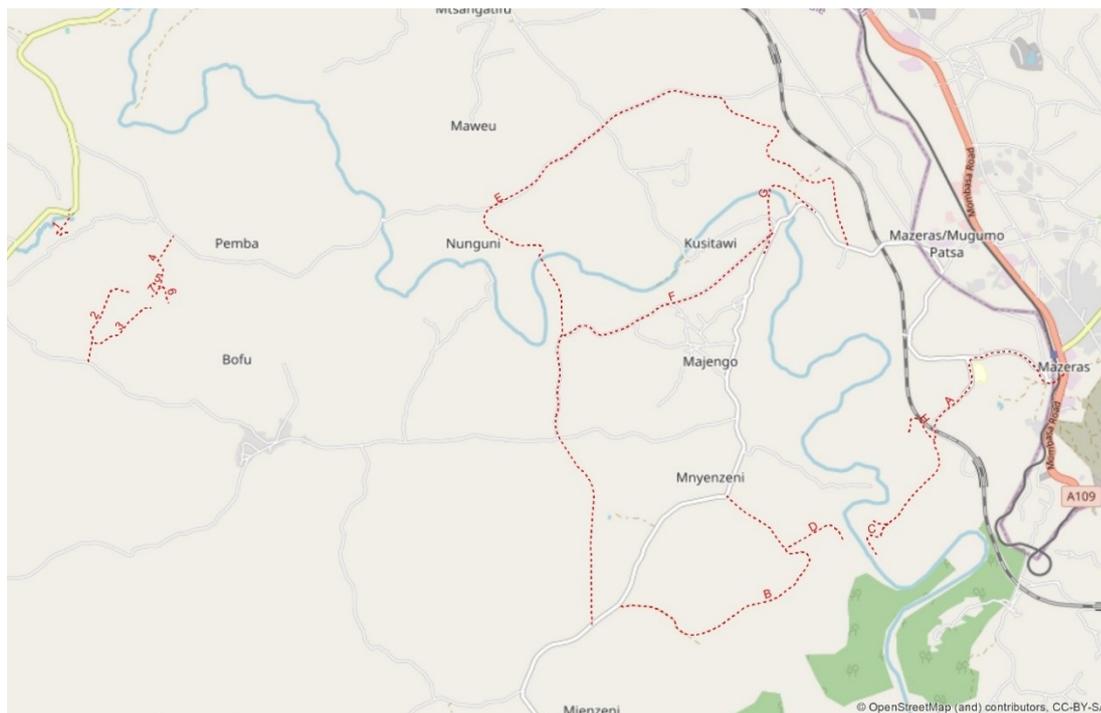


Figure 2: Mwache Dam Roads Layout



## 1. Description of Mwache Dam Roads

### Road A (Dam Access Road)

The road exists and no land acquisition is intended. This road has a total length of about 5.2 km. It runs from Mazeras Town (in Mombasa Road) up to the Dam Operational Area. The road is mainly in *Mazeras Land Registration Section*. The road has a proposed corridor of 20m; the road is in three sections (see Figure 2)

#### Section 1 (A1): Mazeras Town up to Mazeras High School

- The road section is about 1.7 km
- The road will be graveled as it is and no land acquisition is intended;
- Only the structures strong/businesses along the road will be picked

#### Section 2 (A2) Mazeras High School to the SGR Bridge

- The road section is about 1.4 km long
- it will be tarmacked and no land acquisition is intended

#### Section 3 (A3) SGR Bridge to the Dam Operational Area

- This section is about 2.1 Km and is mainly for the damn operations
- The land has already been acquired and vacated

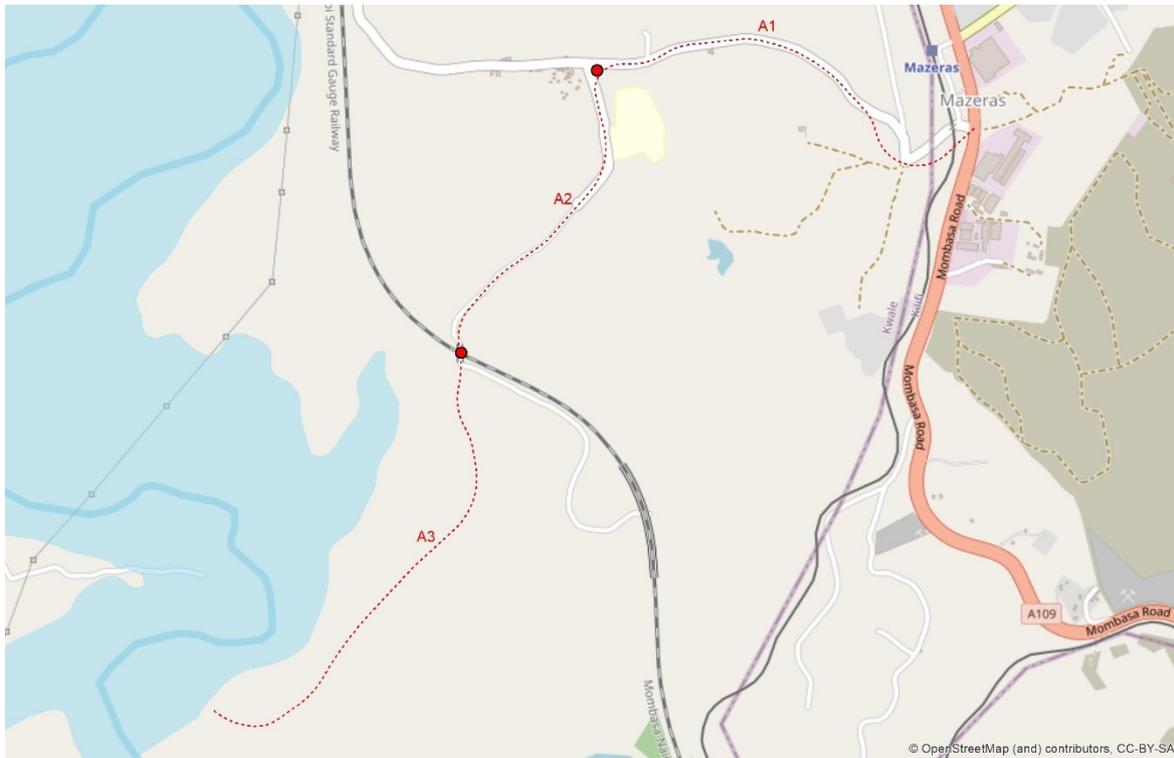


Figure 3: Road A Layout

**Road B (Access Road on Right Side of the Dam)**

- The road exists and will be graveled as it is and no acquisition is intended
- This road it has a total length of about 5.4 km (see Figure 3). The road diverts from the Mazeras – Kinango Road (D560) and forms a loop around Miyani Primary School and then back to the Mazeras – Kinango Road.
- The road is mainly in *Mnyenzi Land Adjudication Section*. The road has a proposed corridor of 20m;

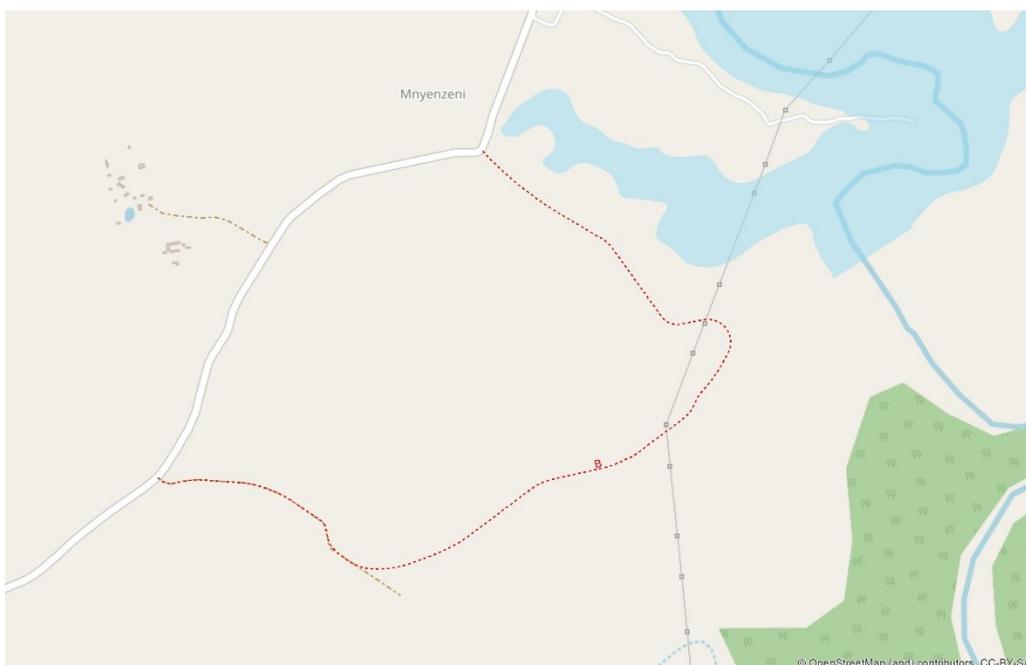


Figure 4: Road B Layout

### Road C (Access Road to pumping Station)

- This is an access road to the pumping station (see Figure 5);
- It is about 0.9Km long within the Dam operations area It is proposed for gravelling
- The land has already been acquired and vacated



Figure 5: Road C Layout

### Road D (Access Road to Dam Crest along Kinango Road)

- The road does not exist - it is mainly a green field Land had partially been acquired;
- The road connects Road B and the Dam (Figure 6);
- It is about 1.1 Km long with corridor of 20m and is proposed for tarmacking;



Figure 6: Road D Layout

### Road E (Realignment of Road D560)

- This will be the main road that will connect Mazeras to Kinango. The road about 15.4Km long will mainly be a re-alignment of the existing road D560.
- The road nominal width is 40m – except at some bridge sections being with a width of 60m.
- The road traverses mainly four land registration sections namely: Mazeras (1.5Km), Mwavumbo Ranch (8.0Km), Chigato Registration Section (4.0Km) and Mnyenzi Adjudication Section (2.0Km). Whereas the land parcels in Chigato have been registered, those in a Mnyenzi are currently under adjudication process, and therefore interim land parcel numbers of the affected land parcels were provided. In Mwavumbo Ranch, which is undergoing subdivision, temporary land parcel numbers of the affected land parcels were provided
- The road is proposed for tarmacking and currently part of the road is a greenfield (in Mwavumbo Ranch)
- The road corridor is proposed for land acquisition.

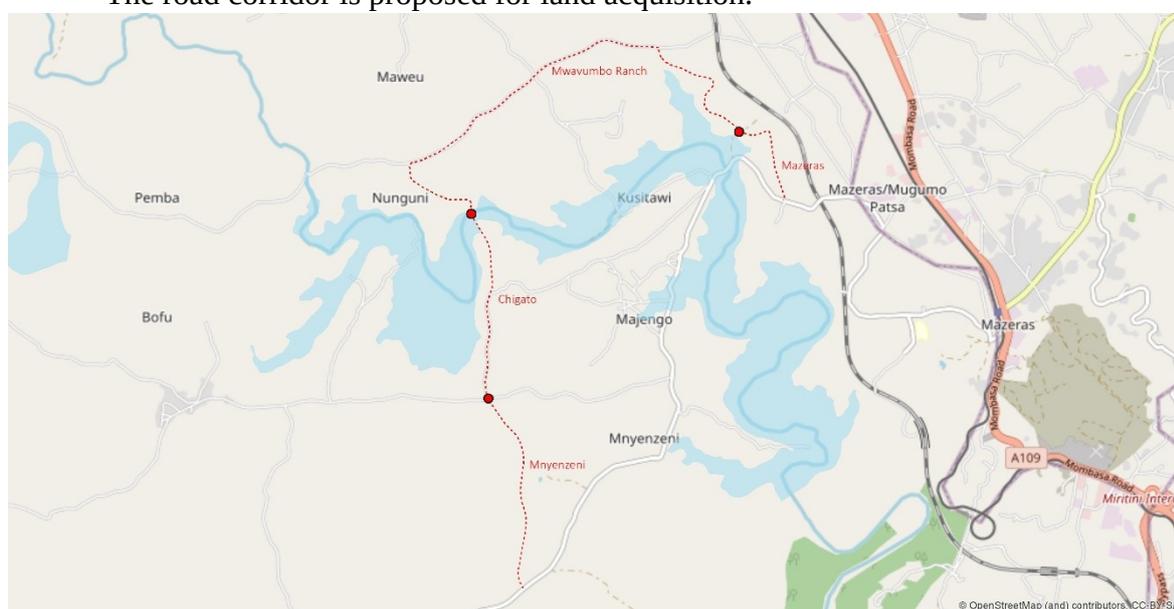


Figure 7: Road E Layout

### Road F (Chigato Village Access Road)

- The road exists and is mainly in Chigato land registration section - however, no land acquisition is intended;
- This road (See Figure 8) is 4Km long
- The road is to be widened to 20m width and graveled as it is
- The purpose of the road is to provide access to the Lower Check Dam from the Quarry & Chigato village access

### Road G (Temporary Diversion of Road D560)

- This is a temporary road for use during construction (see Figure 8);
- The road is 3Km long and only a small portion is to be graveled at either ends of the road;
- The road lies in Chigato Registration section and land has already been acquired – no land acquisition is intended;



Figure 8: Road F and G Layout

**Road H (Base Camp Access Road)**

- The road (see Figure 9) is 0.5Km long and 20m wide will connects the Base camp and Road A.
- The road is within the land that has already been acquired



Figure 9: Road H Layout

**Road J (Access the Valve Control house)**

This is an internal road along Raw Water Pipe to provide access the Valve Control house

**Upper Check Dam Roads**

- There are seven roads in the upper check dam as summarized in the table below and illustrated in Figure 10.
- The roads are planned to be 20m wide and total length of 4.5Km
- The roads are within Bofu Land Adjudication Section.
- The land has already been acquired and therefore no land acquisition is intended;

**Table 18: Upper Check Dam Roads**

Road Reference	Road Details	Length (Km)	Existing or New (greenfield) Road
1	Village Access Road	0.7	Greenfield
2	Right Bank Access Road	1.2	Greenfield
3	Sediment Deposit Connection Road	1.6	Greenfield
4	Dam Access Road	1.0	Greenfield
5	Crest Access Road	0.2	Greenfield
6	Downstream Connection Road	0.3	Greenfield
7	Valve Chamber Access Road	0.2	Greenfield



Figure 10: Upper Check Dam Roads

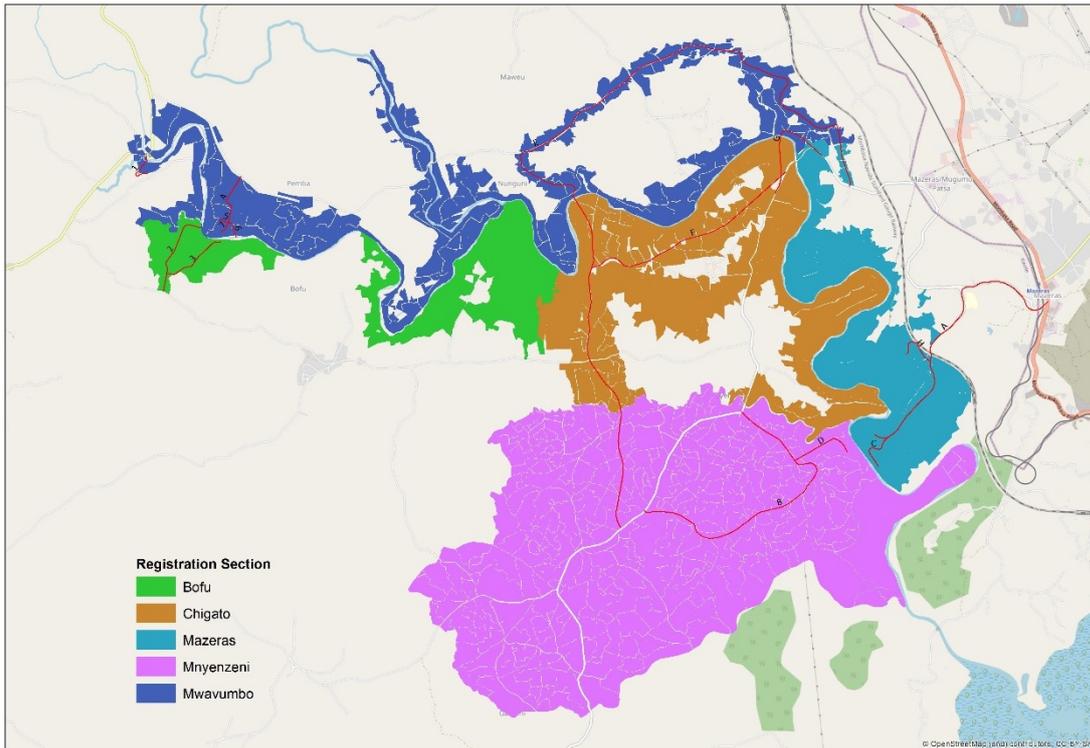


Figure 11: Registration/Adjudication Sections

## PROJECT BENEFICIARIES

An estimated 626,200 people will directly benefit from this project. This figure represents the beneficiaries in Kwale County who includes the PAPs of whom majority are expected to resettle in Kinango Sub-County. They would then be provided with improved water sources, sanitation facilities, improved hygiene and sanitation practices; benefits from the 100-ha irrigation demonstration pilot under Component 2 of the project.

---

### 3 RAP METHODOLOGY

---

The preparation of Resettlement Action Plan (RAP 3) entailed verification of PAPs, the affected assets, the socio-economic baseline data of the PAPs, the scope and the magnitude of the social impacts to be borne by the PAPs and design of an appropriate RAP that will provide social safeguard and compensation measures to effectively remedy the impacts of involuntary resettlement on the livelihoods of the PAPs. The RAP 3 report is based on final road designs provided by Ministry of Water & Sanitation and Irrigation (MOWSI). All the PAPs belong to the Duruma community and qualify for special consideration under the World Bank policy OP4.10 on indigenous peoples. A Vulnerable and Marginalized Groups Plan (VMGP) for Mwache Dam was prepared by KWSCR, reviewed and approved by the World Bank and subsequently disclosed in 2014. As such, the preparation of this RAP has followed the principles outlined in OP4.10 and OP4.12. Specifically, OP.4.10 stipulates that Bank-financed projects include measures to (a) avoid potentially adverse effects on the Indigenous Peoples' communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects. In the case of Mwache roads, the design has focused on upgrading existing roads and avoidance of densely populated areas while designing new roads. Though consultation with the community, measures were taken to minimize the impact on the community.

OP. 4.10 further stipulates that, "in exceptional circumstances, when it is not feasible to avoid relocation, the borrower will not carry out such relocation without obtaining broad support for it from the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process. In such cases, the borrower prepares a resettlement plan in accordance with the requirements of OP 4.12, Involuntary Resettlement that is compatible with the Indigenous Peoples' cultural preferences, and includes a land-based resettlement strategy. As part of the resettlement plan, the borrower documents the results of the consultation process. Where possible, the resettlement plan should allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist." As such, the RAP team undertook extensive consultations with the affected community in order to develop a resettlement strategy that is compatible with the cultural preferences of the affected Duruma community. As opposed to the dam project, road construction will lead to minimum physical displacement of PAPs because no PAP is losing more than 20% of their land parcels. The PAPs preferred cash compensation as opposed to land for land compensation. A livelihood restoration plan for the PAPs losing business income has been included in chapter 10 of this RAP.

---

#### LITERATURE REVIEW

---

The first stage included literature review of relevant project design and safeguard reports and maps. The project documents that were reviewed included:

- a) Feasibility Study and Detailed Design Reports for Mwache Roads
- b) Mwache Dam Resettlement Action Plans (RAP 1a,1b and 2)
- c) Mwache Dam Resettlement Action Plan (RAP 1a) prepared in 2019
- d) Vulnerable and Marginalized Group Plan
- e) Relevant Kenyan legal documents including
  - Constitution of Kenya,
  - Land Act,
  - Land Registration Act (2012)
  - Valuers Act (1985)

- National Land Commission Act,
  - Land Registration Act
  - Community Land Act,
  - Water Act
- f) World Bank OP. 4.12 and OP 4.10
- g) KWSCRP Resettlement Policy Framework

### **ESTABLISHING LAND REGISTRATION STATUS**

Some roads fall within areas where land has been registered and title deeds issued to the owners while others fall within sections where land adjudication process is ongoing or has not commenced.

#### **Acquisition of land where adjudication is ongoing or has not commenced**

Adjudication process is ongoing in Bofu and Mnyenzi adjudication sections. The process of issuing titles to members of Mwavumbo Group Ranch is also ongoing. The allottees and the ranch members will eventually be officially registered to the particular parcels to which they have been allotted to after the entire adjudication and registration process is complete. Therefore, during the RAP census data collection and asset inventory exercise. RAP Consultant consulted and involved the Kinango land adjudication office, Kwale County Government, the Mwavumbo Group Ranch Management Committee Members and the project affected persons. The aim of this consultation and engagement was to authenticate claims to the affected land and hence document the true ownership of landholders and occupiers and owners of the developments done on such unregistered land for the purpose of valuation and planning for compensation under the RAP 3. The minutes are provided in annex: iv while attendant register is provided in annex: v. The subdivision records for all the land projected to being affected by Mwache Dam in the Ranch have been submitted to the Kwale Land Registry and will be used by NLC when acquiring land in the RAP 3 areas within the Ranch. NLC have reliably depended on these official subdivision records obtained from the Kwale Land Registry in the ongoing land acquisition in the areas affected by RAP 1 within the Ranch and this will be replicated in areas affected under RAP 3. The acquisition in RAP 3 also includes land affected by the greenfield roads under this RAP 3 and to be constructed within the Ranch This will result to compensation being paid directly to the individual Group members/PAPs as the persons whose interest or claims will have been determined by NLC from the official subdivision records as provided in the Land Act. The searches and confirmation letters are provided in annex: iii.

#### **Acquisition for registered sections**

Roads C, D, H, A, F1 and sections of road E are falling within Chigato and Mazeras have been registered and land owners issued with title deeds. The RAP methodology approach for these roads involved the acquisition of the Registry Index Maps (RIM) from the Ministry of land office in Kwale and digitalization of the same which were finally superimposed on the road design layout to develop the cadastral maps. The cadastral maps produced contained the size and location of the parcels affected by the project. The cadastral maps were useful during census and valuation. The consultant also conducted the title land searches to establish the legally registered land owners. The searches and confirmation letters are provided in annex: iii. The various land registration and adjudication areas are provided in figure 2 below.

### **ASSET INVENTORY, CENSUS, SOCIO-ECONOMIC SURVEYS**

PAHs were consulted individually at their household level during the census and asset valuations. The questionnaires which collected personal and livelihood information including their perceptions, hopes, fears and concerns about the proposed project were administered. The census survey was conducted between January and February 2022 alongside the census.

### 3.1.1 Asset Inventory

Asset Inventory covered the following:

- i. Full asset inventory of all affected land, structures and trees
- ii. Full census of all 267 PAHs
- iii. A Socio-Economic Survey to obtain a socio-economic profile of the PAHs in the project area and to further evaluate potential project impacts.

The data was collected using asset inventory forms which captured information on structures, land, crops and trees. The asset inventory also included GPS and photos of affected property.

#### **Census and Socio-Economic Survey**

The census and socio-economic surveys were conducted by a multidisciplinary team comprising sociologists, surveyor, valuers and enumerators under the direction of the Team Leader. The survey team employed the following methods as part of the census and socio-economic survey:

- i. Semi structured questionnaires
- ii. Focus Group Discussions
- iii. Key Informant Interviews
- iv. Field observation

The following topics were covered by the census:

- i. Ownership of land, trees and structures
- ii. Economic activities
- iii. Household income;
- iv. Gender,
- v. Age,
- vi. Education,
- vii. Employment status
- viii. Religion

The census and socio-economic survey tools are provided in annex: vii.

#### **TRAINING OF ENUMERATORS**

---

During the various community barazas the consultant picked the youths in the meeting through the assistance of the village elders. They were then trained by the RAP expert and were then used as enumerators who would work with the whole team. The training covered the following aspects:

- i. Ethical standards (confidentiality and informed consent)
- ii. Familiarity with the tools.

## **IDENTIFICATION OF PAHS**

---

The surveyors used the design co-ordinates to provided by the MOWIS to identify the affected land parcels whose owners were included in the PAHs register. Using the design coordinates, GIS Specialist/ surveyors prescribed the Project Area of Impact using GPS instruments and identified land that would be affected within those boundaries. The land and structure owners for each affected land identified were then interviewed, firstly for the purposes of asset inventory by the valuer, followed by the enumerators with a Census form and a Socio-Economic questionnaire; and if a land owners had more than one piece of affected land, each of this was surveyed, valued and inventoried separately. However, only one Census/ Socio-Economic survey was completed for such PAH.

## **CADASTRAL LAND SURVEY**

---

The cadastral land surveys included the following activities:

- i. Acquiring of maps (PIDs and RIMs) from Survey of Kenya
- ii. Geo-referencing of the acquired maps to UTM Arc 1960
- iii. Overlaying of the roads design on the geo-referenced maps
- iv. Extracting data (areas + co-ordinates) of affected parcels
- v. Ground verification using GPS
- vi. Final calculation of areas of affected parcels
- vii. Confirmation of the ownership of affected parcels by conducting land title searches at the Land Registry (Title search certificates for all the affected parcels have been obtained from the Land registry in Kwale). Searches are provided in annex: iii.

## **ASSET VALUATION SURVEYS**

---

Asset Valuation Surveys included the following activities:

- i. Conducting market research of land transactions, market prices, construction materials, and labor costs within the project locality.
- ii. Identification of all affected land parcels and ground boundaries
- iii. Measuring the affected portion of land for acquisition
- iv. Local rates from the State Department of Agriculture and markets were adopted for crop valuation, taking into account acreage of each particular crop. The emphasis was to ensure full replacement cost. Valuation of trees adopted the local KFS (Kenya Forestry Services) rates, considering the age factor for trees.
- v. Recording the location of all assets with a GPS machine and taking photographs of affected assets.

## **DATA COLLECTION, ENTRY AND ANALYSIS AND RAP REPORT PREPARATION**

---

The information obtained from the above surveys were analyzed qualitatively and quantitatively to prepare the RAP report. A database of all the PAHs has been generated and shall be used by the client to implement this RAP. The client will keep on updating the database on a need basis.

## **RAP TEAM**

---

The RAP preparation team of experts consisted of the following:

- i. Land Surveyor
- ii. Valuation Expert
- iii. GIS Specialist
- iv. Sociologist
- v. Research Assistants/ enumerators

---

## 4 LEGAL AND POLICY FRAMEWORK

---

The RAP has been designed in accordance with all the relevant legislation pertaining to Constitution of Kenya, The Land Act, National Land Commission Act, Land Registration Act, Community Land Act, Traffic Act, Roads Act, Water Act as well as the World Bank Involuntary Resettlement Policy OP 4.12 and Indigenous Peoples Policy OP 4.10), among others. The Kenyan land laws and the Constitution of Kenya (CoK) 2010, requires that there should be just compensation to those affected but it is not clear on specifics of what constitutes just compensation. World Bank OP.4.12 requires full replacement costs. The RAP requires that full replacement cost be paid as compensation to all the PAHs for land to be acquired, for structures and other developments to be affected by the project as per the World Bank OP.4.12.

The Bank's Operational Policy 4.12: Involuntary Resettlement is triggered by the project since the Mwache Dam Project will take up land, affect structures, communal assets, cultural assets, crops and trees. The Project also triggers Bank's Operational Policy 4.10 as it will affect the Duruma community who are classified as vulnerable and marginalized under the policy.

### **THE CONSTITUTION OF KENYA**

---

The Constitution of Kenya categorizes land as follows:

- Public Land;
- Community Land;
- Private Land.

#### **Community land**

Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. Community land consists of—

- a) land lawfully registered in the name of group representatives under the provisions of any law;
- b) land lawfully transferred to a specific community by any process of law;
- c) any other land declared to be community land by an Act of Parliament; and
- d) land that is—
  - i. lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
  - ii. ancestral lands and lands traditionally occupied by hunter gatherer communities; or
  - iii. lawfully held as trust land by the county governments but not including any public land held in trust by the county government under Article 62(2).

Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held. Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

Section 40 of the Constitution of Kenya provided for the Protection of right to property Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property of any description; and in any part of Kenya. Parliament shall not enact a law that permits the State or any person.

- a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
- b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).

The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

- a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
- b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that;
  - i. requires prompt payment in full, of just compensation to the person; and
  - ii. allows any person who has an interest in, or right over, that property a right of access to a court of law.

Provision may be made for compensation to be paid to occupants in good faith of land acquired who may not hold title to the land.

### **THE NATIONAL LAND COMMISSION ACT**

This is an Act of Parliament to make further provision as to the functions and powers of the National Land Commission, qualifications, and procedures for appointments to the commission; to give effect to the objects and principles of devolved government in land management and administration, and for connected purposes.

- Compulsory Acquisition in Kenya is also to be handled by the National Lands Commission.
- Other mandates of the Commission include management of public land on behalf of the national and county governments.
- The Act also mandates the Commission to ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations.
- Thirdly, the Act empowers the Commission to administer all unregistered trust land and unregistered community land on behalf of the county government.

#### **Article 67(2) of the Constitution, the functions of the Commission are to;**

- Manage public land on behalf of the national and county governments;
- Compulsory acquire land for national and county governments
- Compensate acquired land on behalf of national and County government
- Recommend a national land policy to the national government;
- Advise the national government on a comprehensive Programme for the registration of title in land throughout Kenya;
- Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- Initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- Encourage the application of traditional dispute resolution mechanisms in land conflicts;
- Assess tax on land and premiums on immovable property in any area designated by law; and
- Monitor and have oversight responsibilities over land use planning throughout the country.

### **Under the National Land Commission Act, the Commission shall:**

- On behalf of, and with the consent of the national and county governments, alienate public land;
- Monitor the registration of all rights and interests in land;
- Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;
- Develop and maintain an effective land information management system at national and county levels;
- Manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and
- Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.
- Implement Settlement Programmes on behalf of national and county governments as outlined in section 134 of the Land Act.
- Administer the Land Settlement Fund in accordance with section 135 of The Land Act 2012
- Manage the Land Compensation Fund
- Identify ecologically sensitive areas that are within public land and demarcate and take any other justified action on those areas and act to prevent environmental degradation and climate change in accordance with the Land Act.
- Reserve public land for the establishment of approved settlement Programmes, and where public land is not available, purchase private land subject to the Public Procurement and Disposal Act, 2005 or any other law as provided for in section 134 (5) of the Land Act.
- Set aside land for investment purposes in accordance with section 12(3) of the Land Act.
- Approve compulsory acquisitions, way leaves, easements and analogous rights.
- Ensure that the investments, in land benefit local communities and their economies.
- Make regulations prescribing the criteria for allocation of public land, such regulations to prescribe forms of ownership and access to land under all tenure systems.
- The procedure and manner of setting aside land for investment should respect mechanisms of benefit sharing with local communities.

### **Relevance**

The NLC will be a key institution in the implementation of this RAP and will take the lead as provided for by NLC Act in overseeing the compulsory acquisition of all affected land by this project including compensation of all identified PAHs.

### **THE LAND ACT (REVISED EDITION 2019 [2012])**

---

This is an Act of Parliament intended to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land-based resources, and for connected purposes.

## Relevant Sections

- Section 4 (1) provides the Guiding values and principles of land management and administration in this section bind all State organs, State officers, public officers and all persons whenever any of them;
- Section 7 provides for the Methods of acquisition of title to land including compulsory acquisition
- Section 9 provides for Conversion of land from one category to another in accordance with the provisions of The Land Act or any other written law.
- Section 49. (1) provides guidelines of land transfers including succession related due to death
- Part VII provides the procedure for compulsory acquisition of interest in land.

## Part VIII – Compulsory Acquisition of Interests in Land

### Preliminary notice

(1) Whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee Member shall submit a request for acquisition of land to the Commission to acquire the land on its behalf.

(2) The Commission shall prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land.

(3) The Commission may reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed under subsection (2) and Article 40(3) of the Constitution.

Where the Commission rejects a request of an acquiring authority in accordance with subsection (3), the Commission shall inform the relevant acquiring authority within fourteen days of the decision to reject the request.

(4) If the Commission establishes that the request under subsection (1) meets the requirements prescribed under subsection (2) and Article 40(3) of the Constitution, the Commission shall:

- cause the affected land to be mapped out and valued by the Commission using the valuation criteria set out under the Act; and
- establish that the acquiring authority has identified the number and maintains a register of persons in actual occupation of the land, confirming for each such occupation how much time they have been in uninterrupted occupation or ownership of interest in the land prior to the date of the request for acquisition of the land, and the improvements thereon.

(5) Upon approval of a request under subsection (1), the Commission shall publish a notice to that effect in the *Gazette* and the county *Gazette*, and shall deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.

(5A) The notice issued under subsection (5) shall contain the following particulars

- the purpose for which the land is to be compulsorily acquired; and
- the location, general description and approximate area of the land.

(5B) Upon receipt of the notice under subsection (5), the Registrar shall make an order, pursuant to section 76 (1) of the Land Registration Act, 2012, prohibiting or restricting dealings with the affected portion of land thereof until it vests in the acquiring authority.

(6) Upon service of the notice, the registrar shall make an entry in the register of the intended acquisition.

(7) For the purposes of sections 107 to 133, interested persons shall include any person whose interests appear in the land registry and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such person.

(8) All land to be compulsorily acquired shall be geo-referenced and authenticated by the office or authority responsible for survey at both the national and county government.

### **Criteria for assessing value for compulsorily acquired freehold land**

(1) Valuation of freehold land and community land for purposes of compensation under The Land Act shall be based on the provisions of this Part and the land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate.

(2) The land value index under subsection (1) shall be developed within six months of the commencement of The Land Act.

(3) For purposes of this Part, "land value index" means an analytical representation showing the spatial distribution of land values in a given geographical area at a specific time.

(4) In addition to any other principle that may be employed in calculating the land value index, the declared value of the land for purposes of payment of rates, rents or stamp duty shall be taken into account.

(5) In assessing the value of freehold land and determining the just compensation to be awarded for land acquired under The Land Act, an increase in the value shall be disregarded if—

a) the increase in the value of land is occasioned by the intended use or development of the land to be acquired;

b) the increase in the value of the land as at the date of publication of the notice of intention to acquire it is likely to accrue from the use to which the land will be put when acquired;

c) the increase in the value of the land is occasioned by any development or improvement to the land if—

i. the improvement was made on the land within two years prior to the date of publication in the *Gazette* of the notice of intention to acquire the land, unless it is proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land: Provided that where the national government or the county government makes changes in the use of the land compulsorily acquired to affect other land owners, these owners shall be excluded from the application of this provision.

ii. the improvement was done after the date of publication in the *Gazette* of the notice of intention to acquire the land, unless the improvements were necessary for the maintenance of any building in a proper state of repair and are not capital improvements.

iii. the improvement is contrary to any law or is detrimental to the health of the occupiers or to public health generally.

(6) In addition to the provisions of subsection (1), the following circumstances shall not be taken into account in determining the value of the land;

(a) the degree of urgency which has led to the acquisition;

(b) any inconvenience caused to a person interested in the land; or

(c) damage which is likely to be caused to the land after the date of publication in the *Gazette* of the notice of intention to acquire the land or in consequence of the intended land use;

(7) Despite subsections (1) and (3), the following matters may be taken into consideration in assessing the value of land—

- a) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of severing the land from other land;
- b) damage sustained or likely to be sustained by persons interested in the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings;
- c) if, in consequence of the acquisition, any of the persons interested in the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission;
- d) damage genuinely resulting from diminution of the profits of the land between the date of publication in the *Gazette* of the notice of intention to acquire the land and the date the Commission takes possession of the land; and
- e) the effect of any express or implied condition of title or law which restricts the intended land use.

(8) In determining the damage resulting from diminution of the profits of the land, the Commission shall require proof of existence of the profits including evidence of tax returns.

(9) For purposes of Article 40(4) of the Constitution, compensation to be made to occupants in good faith of land compulsorily acquired who may not hold title to the land shall be assessed based on—

- a) the number of persons in actual occupation of the land for an uninterrupted period of six years immediately before the publication of the notice of intention to acquire the land;
- b) improvements done before the date of publication in the *Gazette* of the notice of intention to acquire the land;
- c) damage sustained or likely to be sustained by the occupants of the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings; and
- d) if, in consequence of the acquisition, any of the occupants in good faith of the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission.

(10) An occupant in good faith does not include a person unlawfully occupying any land without the consent of the owner.

(11) The compensation payable under subsection (7) shall not in any case exceed the value of the structures and improvements on the land.

(12) Despite subsection (10), where boundaries of land are ascertainable, prompt payment in full, of just compensation may be made to occupants in good faith in the case of—

- (a) land lawfully held, managed or used by individuals or families as ancestral land; or
- (b) land traditionally occupied by individuals, families or entities pending adjudication.

(13) For the purposes of this section, "value" in relation to land means the value of the land, assessed in accordance with this section, at the date of publication in the *Gazette* of the notice of intention to acquire the land.

### **Criteria for assessing value for compulsorily acquired leasehold land**

(1) Where the lessee of a public land is in breach of any term or condition of the grant, the land shall revert back to the national or county government as provided for under The Land Act.

(2) In assessing the value of the leasehold land and determining the just compensation to be awarded for land acquired under The Land Act, where the lessee of a public land has complied with all the conditions of the grant, the following matters shall be taken into consideration—

- a) the value of the land based on the unexpired term of the lease calculated on the basis of a land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate;
- b) the value of developments or improvements on the land and any other cost incurred on the basis of the terms and conditions of the grant; and
- c) any other criteria which the Commission may prescribe in Regulations in consultation with the Cabinet Secretary and county governments and with the approval of the National Assembly and the Senate.

### **Power of entry to inspect land**

(1) The Commission may authorize, in writing, any person, to enter upon any land specified in a notice published under section 107 and inspect the land and to do all things that may be reasonably necessary to ascertain whether the land is suitable for the intended purpose.

(2) An authorization under subsection (1) shall not empower a person to enter a building, or an enclosed court or garden attached to a dwelling house, unless that person

- a) has first obtained the consent of the occupier; or
- b) has served on the occupier a not less than seven days written notice of the intention to enter.

### **Payment for damage caused by entry for inspection**

As soon as practicable after entry has been made under section 108, the Commission shall promptly pay in full, just compensation for any damage resulting from the entry.

### **Notice of acquisition and effect of acquisition on plant and machinery**

(1) Land may be acquired compulsorily under this Part if the Commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for fulfilment of the stated public purpose.

(2) If, after land has been compulsorily acquired the public purpose or interest justifying the compulsory acquisition fails or ceases, the Commission may offer the original owners or their successors in title pre-emptive rights to re-acquire the land, upon restitution to the acquiring authority the full amount paid as compensation.

(3) If any plant or machinery is attached or permanently fastened to the land, the person interested in that plant or machinery may serve on the Commission a notice in writing that such person desires to sever and remove the plant or machinery, after receiving the notice of intention to acquire the land under section 107(5), and not later than fifteen days before the inquiry appointed under section 112(1).

### **Compensation to be paid**

(1) If land is acquired compulsorily under The Land Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.

(1A) The acquiring authority shall deposit with the Commission the compensation funds in addition to survey fees, registration fees, and any other costs before the acquisition is undertaken.

(1B) Compensation for compulsorily acquired land may take any one or more of the following forms

- a) allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;
- b) monetary payment either in lump sum or in instalments spread over a period of not more than one year;
- c) issuance of government bond;
- d) grant or transfer of development rights as may be prescribed;
- e) equity shares in a government owned entity; or
- f) any other lawful compensation

Provided that regardless of the form of compensation under this section, where an acquisition process is not completed within twenty-four months from the date of publication of the notice of intention to acquire the land, the acquisition shall lapse.

1C. Subject to subsection (1B), an owner of land compulsorily acquired shall elect the form of compensation.

1D. Compensation relating to compulsory acquisition shall not be paid to a public body unless there is a demonstrable inference that the land was purchased and developed by that public body.

(2) The Commission shall make rules to regulate the assessment of just compensation.

### **Inquiry as to compensation**

(1) At least thirty days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land, and shall;

- a) cause notice of the inquiry to be published in the *Gazette* or county *Gazette* at least fifteen days before the inquiry; and
- b) serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.

(2) The notice of inquiry shall call upon persons interested in the land to deliver a written claim of compensation to the Commission, not later than the date of the inquiry.

(3) At the hearing, the Commission shall;

- a) make full inquiry into and determine who are the persons interested in the land; and
- b) receive written claims of compensation from those interested in the land.

(4) The Commission may postpone an inquiry or adjourn the hearing of an inquiry from time to time for sufficient cause.

(5) For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Commission of documents of title to the land.

(6) The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry.

### **Award of compensation**

(1) Upon the conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has determined to have an interest in the land.

(2) Subject to Article 40 (2) of the Constitution and section 122 and 128 of this Act, an award;

a) shall be final and conclusive evidence of—

i. the size of the land to be acquired;

ii. the value, in the opinion of the Commission, of the land;

iii. the form of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry;

b) shall not be invalidated by reason only of a discrepancy which may thereafter be found to exist between the area specified in the award and the actual area of the land.

(3) If an interest in land is held by two or more persons as co-tenants, the award shall state;

a) the amount of compensation awarded in respect of that interest; and

b) the shares in which it is payable to those persons.

(4) Every award shall be filed in the office of the Commission.

### **Notice of award**

(1) On making an award, the Commission shall serve on each person whom the Commission has determined to be interested in the land, a notice of the award and offer of compensation.

### **Payment of compensation**

(1) After notice of an award has been served on all the persons determined to be interested in the land, the Commission shall, promptly pay compensation in accordance with the award to the persons entitled thereunder, except in a case where;

a) there is no person competent to receive payment; or

b) the person entitled does not consent to receive the amount awarded; or

c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid.

(2) In any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying any persons interested accordingly.

(3) If the compensation payable in any of the cases referred to in paragraphs (a), (b) and (c) of subsection (1), is in the form of an alternative land, the Commission may hold the title to such land in trust for the beneficiaries.

### **Payment in error**

If a person has received any money by way of compensation awarded for an interest in the land being acquired, either in error or before it has been established that some other person is rightfully entitled to the interest, the Commission may, by notice in writing served on that person, require that person to refund to the Commission the amount received, and the amount shall be a debt due from that person to the Commission.

### **Payment of interest**

(1) If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the base lending rate set by the Central Bank of Kenya and prevailing at that time from the time of taking possession until the time of payment.

(2) If additional compensation is payable under section 119 there shall be added to the amount of the additional compensation interest thereon at the base lending rate set by the Central Bank of Kenya and prevailing at that time from the time when possession was taken or compensation was paid, whichever is earlier.

#### **Final survey**

(1) If part of the land comprised in documents of title has been acquired, the Commission shall, as soon as practicable, cause a final survey to be made of all the land acquired.

(2) Upon completion of final survey under subsection (1), the Commission shall cause to be issued new title documents for every affected parcel.

#### **Condition for payment of compensation**

Payment of compensation shall be made only upon the exercise of due diligence which shall include final survey and the determination of acreage, boundaries, ownership and value.

#### **Formal taking of possession**

(1) After an award has been made, the Commission may take possession of the respective land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the national or county government as the case may be, provided that such taking of possession will not result in persons being rendered homeless.

(2) In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under The Land Act, the Commission may take possession of the land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire, and on the expiration of that time the Commission shall, notwithstanding that no award has been made, take possession of that land in the manner prescribed by subsection (1).

(3) Upon taking possession of land under subsection (1) or subsection (2), the Commission shall also serve upon

- a) the registered proprietor of the land; and
- b) the Registrar, a notice that possession of the land has been taken and that the land has vested in the national or county governments as the case may be.

(4) Upon taking possession and payment of just compensation in full, the land shall vest in the national or county governments absolutely free from encumbrances.

#### **Surrender of documents of title**

(1) If the documents evidencing title to the land acquired have not been previously delivered, the Commission shall, in writing, require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar.

(2) On receipt of the documents of title, the Registrar shall;

- a) cancel the title documents if the whole of the land comprised in the documents has been acquired;
- b) if only part of the land comprised in the documents has been acquired, the Registrar shall register the resultant parcels and cause to be issued, to the parties, title documents in respect of the resultant parcels.

(3) If the documents are not forthcoming, the Registrar will cause an entry to be made in the register recording the acquisition of the land under The Land Act.

### **Acquisition of other land on account of severance**

- (1) The powers of acquisition conferred by this Part shall not be exercised so as to acquire a part only of a permanent building in any case if;
  - a) that part is reasonably required for the full and unimpaired use of that building; and
  - b) a person interested in the building desires that the whole of the building shall be acquired.
- (2) The person referred to under subsection (1)(b) may, at any time before the Commission has made an award, withdraw or modify the person's statement by notice in writing served on the Commission.
- (3) If the Commission is satisfied that the partial compulsory acquisition originally intended will render the remaining land inadequate for its intended use or will severely and disproportionately reduce the value of the remaining land, it will instruct the acquiring authority to acquire the remaining land.
- (4) The remaining land referred to in subsection (3) shall be used for public purposes or be included in the Land Bank.
  
- (5) If a question arises as to whether or not any part of a building is reasonably required for the full and unimpaired use thereof, and the parties cannot agree thereon, the matter shall be referred by the Commission to the Court for determination.

### **Withdrawal of acquisition**

- (1) At any time before possession is taken of any land acquired under this Act, the Commission may, revoke a direction to acquire the land, and, shall determine and pay compensation for all damage suffered and all costs and expenses reasonably incurred by persons interested in the land by reason of or in consequence of the proceedings for acquiring the land.
- (2) The principles relating to the determination of compensation set out in the rules shall apply, so far as they are relevant, to the determination of compensation payable under this section.

### **Power to obtain temporary occupation of land**

- (1) If the Commission is satisfied that the possession of any land is required by a public body for a particular period not exceeding five years, and that;
  - a) the possession of the land is necessary for public purpose or public interest;
  - b) the possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit; and
  - c) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property, and so certifies in writing, possession of such land may be taken for that period under this section.
- (2) The Commission shall then serve on every person interested or who claims to be interested in the land to be taken possession of under subsection (1), or on such of them as after reasonable inquiry are known to the Commission, a notice that the Commission is to take possession of the land for the period in question.
- (3) At the end of seven days after service of notices has been completed under subsection (2), the Commission may take possession of the land by entering, personally or by agents, on the land and positing on the land a notice in the prescribed form that possession has been taken of the land, and shall serve a copy of the notice on the occupier.
- (4) This section shall not apply where the use of land is likely to cause permanent damage to land.

**Payment of compensation**

(1) The Commission shall, as soon as is practicable, pay full and just compensation to all persons interested in the land.

**Compensation for damages**

If the Commission is satisfied that any land of which the occupation or use has been secured under this Part is needed solely as a means of access to other land, then—

- a) the use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and
- b) the compensation to be paid under section 124 (3) shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.

**Reference of matters to the Court for determination by the Commission**

(1) The Commission may at any time, by application in the prescribed form, refer to the Court for its determination any question as to;

- a) the construction, validity or effect of any instrument;
  - b) the persons who are interested in the land concerned;
  - c) the extent or nature of their interest;
  - d) the persons to whom compensation is payable;
  - e) the shares in which compensation is to be paid to tenants in common;
  - f) the question whether or not any part of a building is reasonably required for the full and unimpaired use of the building; or
- a) the condition of any land at the expiration of the term for which it is occupied or used.

(2) Without prejudice to the powers of the Court under this Part, the costs of any reference to the Court under subsection (1) shall be paid by such person as the Court may direct or, where the Court does not give direction, by the Commission.

**Reference to the Environment and Land Court**

Any dispute arising out of any matter provided for under the Land Act may be referred to the Land and Environment Court for determination.

**Right of entry**

The Commission and any officer or person authorized under section 108 shall, upon notice, have the right at all reasonable times to enter upon any land in furtherance of any of the purposes of The Land Act.

**Penalty for obstruction**

A person who wilfully hinders or obstructs the Commission or an officer or person mentioned in section 129 in doing any of the acts authorized or required by The Land Act, or who wilfully fills up, destroys, damages or displaces any trench, post or mark made or put on land under The Land Act, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding three million shillings, or to both.

### **Service of notices**

- (1) A notice which may be given under this Part may be served on a person;
  - a) by delivering it to the person personally;
  - b) by sending it by registered post to the person's last known address;
  - c) if the whereabouts of the person or the address cannot, after reasonable inquiry, be ascertained, by leaving it with the occupier of the land concerned or, if there is no occupier, by affixing it upon some prominent part of the land;
  - d) if the person is a body corporate, society or other association of persons, by serving it personally on a secretary, director or other officer thereof or on a person concerned or acting in the management thereof, or by leaving it or sending it by registered post addressed to the body corporate, society, or, if there is no registered office, at any place where it carries on business, or, if there is none, by leaving it with the occupier of the land concerned, or, if there is no occupier, by affixing it upon some prominent part of the land; or
  - e) the Commission may in addition to serving notice by paragraphs (c) and (d), place an advertisement in two newspapers with a national circulation.

### **Exemption from stamp duty**

Stamp duty shall not be chargeable for an award or agreement made under this Act, and no person claiming any such award or agreement shall be liable to pay a fee for a copy of the agreement.

### **133. Rules**

The Commission may make rules generally for carrying out the purposes and provisions of this Part

### **Relevance**

This RAP 2 has been prepared in line with the Land Act 2012 (Revised Edition 2019 [2012]) and during its implementation, the relevant sections applying to the category of PAHs will be applied. This will be in regard to all the community land that will be acquired for the project within Mwavumbo Group Ranch and privately owned land at Guro Village

## **THE COMMUNITY LAND ACT**

---

This is an Act of Parliament to give effect to Article 63 (5) of the Constitution; to provide for the recognition, protection and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes. The Land Act provides that Community land shall be managed in accordance with the law relating to Community Land enacted pursuant to Article 63 of the Constitution and that Community land may be converted to either private or public land in accordance with the law relating to community land enacted pursuant to Article 63(5) of the Constitution

Community land refers to land lawfully held, managed and used by a specific community. It is a right of commons that exists within a community where each member has a right to use independently the holdings of the community.

Community land shall vest in the community and maybe held under any of the following tenure system—

- (a) customary;
- (b) freehold;
- (c) leasehold; and
- (d) such other tenure system recognized under the Community Land Act or other written law.

### **Conversion of community land**

(1) The Community land register shall, in addition to the particulars set out under section 8(1) of the Land Registration Act, 2012 (No. 3 of 2012) contain the particulars of all conversions involving community land.

(2) A registered community shall, before the conversion of registered community land into any other category of land seek and obtain approval from two thirds of the assembly in a special meeting convened for that purpose.

### **Conversion of community land to public land**

(1) Community land may be converted to public land by—

(a) compulsory acquisition;

(b) transfer; or

(c) surrender.

(2) Nothing in the Community Land Act Limits Land Act, 2012 (No. 6 of 2012) and any other compulsory acquisition of land.

(3) Reversionary interest of such land shall lie with the community in the first instance upon expiry of such public use interest.

(4) Transfer of community land shall, subject to the approval of the members of the registered community in a community meeting, be done in accordance with the Land Act, 2012 (No. 6 of 2012) and any other applicable law.

In the project affected area, there are PAHs who own land under communal land ownership and these are specifically those PAHs in the Mwavumbo Group Ranch. In addition, much of the land immediately surrounding the project area into which displaced people intend to buy land and relocate to are a mix of registered and adjudicated land and the larger Mwavumbo Group Ranch.

### **Relevance**

The provision of this Act on the conversion of the community land into public land through compulsory acquisition will be followed. The Act also stipulates that ‘nothing in this Act limits The Land Act, 2012 (No. 6 of 2012) and any other compulsory acquisition of land. This therefore gives the Land Act an upper hand in proving direction on how to acquire community land in Mwavumbo Group Ranch which is the large part affected by the Mwache Upper Check Dam and Irrigation Demonstration Scheme.

## **THE LAND REGISTRATION ACT 2012**

---

This is an Act of Parliament intended to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes. Section 7(1) of the Act provides for establishment of a land registry in each registration unit which shall keep registers of the following regarding land:

- A land register, in the form to be determined by the Commission;
- The cadastral map;

- Parcel files containing the instruments and documents that support subsisting entries in the land register.
- Any plans which shall, after a date appointed by the Commission, be geo-referenced;
- The presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;
- An index, in alphabetical order, of the names of the proprietors; and
- A register and a file of powers of attorney.

### ***Sec 8; Community Land Register***

(1) Subject to the legislation on community land made pursuant to Article 63 of the Constitution, there shall be maintained in each registration unit, a community land register in which shall be kept—

- (a) a cadastral map showing the extent of the community land and identified areas of common interest;
- (b) the name of the community identified in accordance with Article 63(1) of the Constitution and any other law relating to community land;
- (c) a register of members of the community;
- (d) the user of the land;
- (e) the identity of those members registered as group representatives;
- (f) the names and identity of the members of the group; and
- (g) any other requirement as shall be required under the law relating to community land.

(2) The Registrar shall issue a certificate of title or certificate of lease in the prescribed form.

(3) The Registrar shall not register any instrument purporting to dispose of rights or interest in community land except in accordance with the law relating to community land.

(4) For the avoidance of doubt the provisions in this section shall not apply to unregistered community land held in trust by county governments on behalf of communities under Article 63(3) of the Constitution.

### **Relevance**

These provisions are essential throughout the RAP process including the verification of land ownership for Mwavumbo Group Ranch which is registered as Kwale/Mwavumbo/1 and when fully dissolved whether within the timelines of the RAP or later, each PAP will have their allocated portions of land registered in their names and title deeds issued to them as proof of ownership of the land. The conversion of the Group Ranch into Private Land will follow the provisions laid down in the Community Land Act above.

### **The Kenya Roads Act, 2007 (Revised 2012)**

An Act of Parliament that provides for the establishment of the Kenya National Highways Authority, the Kenya Urban Roads Authority and the Kenya Rural Roads Authority with clear and separated mandates. Part II of the Act establishes the various Roads Authorities in Kenya and outlines their functions.

Section 8 and 9 of the Act provides for the dedication, conservation or alignment of public travel lines including construction of access roads adjacent to lands from the nearest part of a public road. Section 10 and 11 allows for notices to be served on the adjacent land owners

seeking permission to construct the respective roads. Already public meetings were held during public consultations and notifications to this effect issued.

Section 23 of the Act outlines procedures for acquisition of land for the purpose of the Authority's development while Section 24 (1) allows any authorized employee of an Authority to enter upon any land and survey such land or any portion thereof for the purposes of the Authority's development activities. Section 24 (2) provides that where any damage to land is caused by reason of the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to compensation therefore in accordance with this Act.

Section 49 gives provision for the responsible authority to give written permission to erect, construct, lay, make structural alteration or additions to a structure on the surface of a road or road reserve or land in a building restriction area. It also gives the authority permission to give or refuse to give such permissions.

Section 49(6) states that "a person who contravenes any of the provisions of subsection (1) commits an offence and is liable on conviction to a term of imprisonment not exceeding one year or to a fine not exceeding one hundred thousand shillings, or to both."

*By undertaking this project, KENHA is exercising his mandate and, therefore, has the mandate and duties to construct, upgrade, rehabilitate and maintain roads under its control while observing all the requisite environmental standards and legislation.*

### **The Traffic Act, Cap 403**

The Traffic Act consolidates the law relating to traffic on all public roads. The Act prohibits encroachment on and damage to roads including land reserved for roads. Any vegetation grown to protect the road edges should not cause problems during maintenance. The Act also spells out conditions for use of roads by motorists, among others.

### **Integrated National Transport Policy, 2009, Sessional Paper 2012**

This policy aims to enable the transport sector to effectively play its role in economic development and sustainable growth. It identifies the challenges inhibiting the transport sector from performing its role in national, regional and international economies and also aims to develop an efficient, cost effective, safe, secure and integrated transport system that links the policy with other sectoral policies, in order to achieve national and international development objectives in a socially, economically and environmentally sustainable manner.

Section 73 on strategic objectives of non-motorized and intermediate means of transport states that the government should incorporate Non – Motorized and Intermediate Means of Transport (NMIMTs) in the national transport policy as part of the government's strategy for wealth creation and poverty reduction. Further, NMIMTs are expected to complement and enhance the impact of motorized and other modes of transport thus developing an integrated and seamless transport network at various levels of affordability.

### **Kenya Roads Board**

Strengthening the institutional framework is one of the strategies the government of Kenya (GoK) has adopted to improve the road network in Kenya. The Roads Maintenance Levy Fund manages the roads in repair and rehabilitation.

## **Kenya National Highways Authority**

This is an autonomous road agency, responsible for the management, development, rehabilitation and maintenance of international trunk roads linking centres of international importance and crossing international boundaries or terminating at international ports (Class A road), national trunk roads linking internationally important centres (Class B roads), and primarily roads linking provincially important centres to each other or two higher-class roads (Class C roads).

The authority shall be charged with the responsibility of ensuring that the contractor implements the laid out environmental procedures to prevent deterioration of the environment

### **DISSOLUTION OF MWAVUMBO GROUP RANCH & REGISTRATION OF LAND TO INDIVIDUAL MEMBERS**

---

Mwavumbo Group Ranch is within the Mwavumbo Registration Section (registration section as defined by the Land Registration Act). Although the Ranch has many members, it is already registered under one Title Deed, Kwale/Mwavumbo/1. The Group Ranch membership register is in the custody of the Kwale Adjudication Office (County Land Management Co-ordinator), Ministry of Land and Physical Planning (MoLPP). Dissolution of the Ranch involves the surveying and subdivision of the entire land in the Ranch and issuing individual title deeds to each of the member and hence closing/cancelling the original title deed as done in all other registration sections in Kenya when similar subdivision of registered land happens. One of the documents that are submitted to the MoLPP so as to register a land subdivision is a MUTATION FORM that is signed by a registered private surveyor who has undertaken the subdivision.

Kwale County Government (KCG) has supported the members of the Ranch to subdivide the Ranch by hiring for them the registered private Surveyor. This assistance was partly motivated by the KCG support for the Mwache Dam project and partly by their desire that MoWSI and NLC compensates individual PAPs in the Mwavumbo Ranch area affected by Mwache Dam and not the Ranch Management Committee. It is in the best interest of the KCG that the entire Ranch is subdivided and the land registered to the individual members of the Ranch as a better way of managing land resources within the County. During one of the consultation meetings held with the MoLPP and KCG officers, it was reported that there are ongoing efforts of subdividing other Ranches in Kwale besides Mwavumbo Group Ranch. The individually registered title holders would then benefit from the ability to manage their land affairs and related benefits of single title holding as opposed to being controlled and managed by Ranch Management Committees.

For entire Mwache Dam, the KCG reported that estimated 650 parcels had been subdivided in the entire area that is to be acquired for Mwache Dam Project within the Ranch and data submitted to the MoLPP. However, Green Cards could not be opened at the Land Registry nor land official searches conducted for these parcels. This will be possible when the entire Ranch is subdivided and individual parcels fully registered and title deeds issued to the members by the Kwale Land Registrar. However, the Ranch members who have officially been allocated the subdivided parcels and who are in the process of full registration will be confirmed by the Land Registrar against the available land registration data. The land subdivision and registration data has been submitted by the private Surveyor and processed through the various MoLPP departments and is

currently domiciled at the Land Registrar who shared a copy with relevant stakeholders. However, full land registration which include opening of green cards at the registry and issuing of title deeds could not be achieved until all the subdivision work of the entire Ranch for the remaining/ approximately 10,000 parcels in the larger Mwavumbo Group Ranch is completed. When completed, the Title Deed LR. No. Kwale/ Mwavumbo /1 will be dissolved/ closed by the creation of new LR Numbers and Title Deeds for the newly created parcels. Kwale County Government is continuing the support to the Ranch members in the ongoing sub-division of the remaining parcels. This process is ongoing with its timelines for completing the task dependent on the available resources and capacity within the Kwale based MoLPP and KCG survey departments.

#### **PREVENTION, PROTECTION AND ASSISTANCE TO INTERNALLY DISPLACED PERSONS AND AFFECTED COMMUNITIES NO. 56 OF 2012**

---

The Act defines Internally Displaced Persons as a person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, **large scale development projects**, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

Article 12(1), authorizes the formation of a national Consultative Coordination Committee for internally displaced persons that can deal with matters that arise out of displacement and relocation. While article 22(1-5) explains the procedures for displacement induced by development projects, which should take into considerations the following:

- Seek the free consent and informed consent of the affected persons;
- Hold public hearings on the project planning
- Give justification for displacement and demonstrate that the displacement is unavoidable and no feasible alternative exist
- Give reasonable time to the persons affected to review the decision and challenge it if need be
- the displacement to be carried out in a manner that is respectful of the human rights of those affected, taking in particular into account the protection of community land and the special needs of women, children and persons with special needs
- The process to incorporate information for those affected and their effective participation, including by women, in planning, management of the displaced, and in defining suitable durable solutions;
- Provisions of safe, adequate and habitable sites and to the greatest practicable extent, of proper accommodation; and
- Creation of satisfactory conditions of safety, nutrition, health and hygiene and the protection of family unity.
- Ensure the presence of government official when the displacement and relocation is effected and the monitoring by the independent body.

The proposed project triggers this Act. The Proponent is complying with the requirements of this Act by carrying out this RAP Study to assess project impacts where feasible and minimize involuntary resettlement. The potential economic and social impacts of the project have been assessed and cost of compensation determined in this report. Project-affected persons, host communities and other stakeholders have been consulted. PAPs have been informed of their rights including prompt compensation of acquired way leave land at the current market value and compensation at full replacement cost for loss of assets attributable to the project; assistance during relocation, and transitional support and development assistance.

## **WORLD BANK OPERATIONAL POLICY ON INVOLUNTARY RESETTLEMENT**

---

The policy requires that a Resettlement Action Plan be developed for a project that would require resettlement of people.

Throughout project implementation supervision of the implementation of the resettlement instrument is done to ensure that the requisite social, financial, legal, and technical experts are included in supervision missions. Supervision focuses on compliance with the legal instruments, including the Project Implementation Plan and the resettlement instrument.

The World Bank OP 4.12 includes safeguards to address and mitigate impoverishment risks arising from involuntary resettlement.

For the purposes of this policy, "involuntary" means actions that may be taken without the displaced person's informed consent or power of choice.

The Bank's experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to negative socio-cultural and economic impacts on the resettled people. For this reason, the overall objectives on WB's policy on involuntary resettlement are:

- Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs;
- Where it is not feasible to avoid resettlement, 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 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 prior to the beginning of project implementation, whichever is higher.
- During the RAP study, the policy guides the following:
- Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs;
- Borrower needs to inform potentially displaced persons at an early stage about the resettlement aspects of the project and take their views into account in project design;
- Displaced persons and their communities, and any host communities receiving them, should be provided with timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement.

### **Relevance**

This RAP report has been prepared in accordance with World Bank's OP. 4.12 in view of the fact that there exist certain gaps between the OP. 4.12 and related Kenya laws on land compulsory land acquisition. These gaps are highlighted in detail in **Table 19** and include actions for addressing these gaps, which primarily include using OP. 4.12 policies in cases where the Kenyan statutes are inadequate.

---

## **WORLD BANK INDIGENOUS PEOPLES POLICY OP. 4.10**

---

This policy contributes to the Bank's mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples. For all projects that are proposed for Bank financing and affect Indigenous Peoples, the Bank requires the borrower to engage in a process of free, prior, and informed consultation.

The Bank provides project financing only where free, prior, and informed consultation results in broad community support to the project by the affected Indigenous Peoples.

Such Bank-financed projects include measures to (a) avoid potentially adverse effects on the Indigenous Peoples' communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects.

Bank-financed projects are also designed to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive.

The Bank recognizes that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. These distinct circumstances expose Indigenous Peoples to different types of risks and levels of impacts from development projects, including loss of identity, culture, and customary livelihoods, as well as exposure to disease. Gender and intergenerational issues among Indigenous Peoples also are complex.

As social groups with identities that are often distinct from dominant groups in their national societies, Indigenous Peoples are frequently among the most marginalized and vulnerable segments of the population.

As a result, their economic, social, and legal status often limits their capacity to defend their interests in and rights to lands, territories, and other productive resources, and/or restricts their ability to participate in and benefit from development. At the same time, the Bank recognizes that Indigenous Peoples play a vital role in sustainable development and that their rights are increasingly being addressed under both domestic and international law.

### **Relevance**

Members of the Duruma community who dominate the Mwache dam Project area are considered a vulnerable and marginalized group under the World Bank Indigenous Peoples Policy OP.4.10. A Vulnerable and Marginalized Groups Plan (VMGP) for Mwache Dam was prepared by KWSCR, reviewed, and approved by the World Bank and subsequently disclosed in 2014. The applicable elements of the VMGP including the need to achieve broad community support for the project has been used in the development of this RAP including use of culturally appropriate consultation methods, ensuring the Indigenous People derive benefits from the project while giving special attention to the concerns of the women as required in the OP. 4.10. Refer to **Annex 14** for the VMGP Report.

Since it is not feasible to avoid relocation in this project, KWSCR in the development of this RAP obtained broad support for relocation of the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process including deliberate effort to ensure that this RAP in accordance with the requirements of OP 4.12, Involuntary Resettlement, that is compatible with the Indigenous Peoples' cultural preferences, and includes a land-based resettlement strategy.

## **WORLD BANK POLICY ON GENDER AND DEVELOPMENT**

---

The objective of WB's Gender and Development Policy OP 4.20 is to assist member countries to reduce poverty and enhance economic growth, human well-being, and development effectiveness by addressing the gender disparities and inequalities that are barriers to development. Projects are expected to take into consideration the gender dimensions of the proposed intervention.

### **Relevance**

This study considered the gender dimensions by highlighting the gender disparities and inequalities in the project areas including restoration measures which are gender oriented.

According to the land policy, rights of ownership refer to the quantity of rights that different tenure systems confer on individuals or groups of individuals. The principal rights of ownership are the right to use, the right to dispose of, and the right to exclude others from the land owned.

The definition and scope of these rights to land differ from one tenure system to another, depending on policy considerations such as the need to ensure equity in access to land.

According to the Land Policy, the Kenyan cadaster is still very in-optimal. An optimum cadastral system is necessary to ensure an efficient system of land delivery. In practical terms, this would allow not only for preparation and maintenance of cadastral information that indicates who owns what interest in land; but other details such as land capability, uses, size, distribution and topographical characteristics.

The policy also recognizes the important of local grievance resolution mechanisms and sets forward proposals for implementation of the same. For example, it calls for encouragement and facilitation of the use of Alternative Disputes Resolution (ADR) mechanisms such as negotiation, mediation and arbitration to reduce the number of cases that end up in the court system and delayed justice.

With regard to land take for public purposes, Section 3.2 of the policy on compulsory acquisition has been overtaken by events since the promulgation of the 2010 Constitution. More up to date items of relevance to this RAP are enshrined in the Kenyan Constitution and the new land laws that came into effect after 2012.

This policy document is important for establishment of the government's tenets on land ownership, security of tenure and registration of land ownership instruments. The document also provides historical facts on challenges to security of tenure and settlement in the country.

The policy recognizes that the land rights of vulnerable individuals and groups are not protected and are subject to bias and discrimination. Further, the vulnerable lack cohesive institutions to represent their interests.

The policy identifies that while the Law of Succession Act was supposed to harmonize inheritance laws, in practice the transmission of land rights is largely done within customary law, which discriminates against women and children.

To secure access to land and land-based resources for vulnerable groups, the Government shall:

- Develop mechanisms for identifying, monitoring and assessing the vulnerable groups;
- Put in place mechanisms for redistribution of land and resettlement;
- Facilitate their participation in decision making over land and land-based resources;
- Protect their land rights from unjust and illegal expropriation.
- To protect the rights of women, the Government shall:
- Put in place appropriate legislation to ensure effective protection of women's rights to land and related resources;

- Repeal existing laws and outlaw regulations, customs and practices that discriminate against women in relation to land;
- Enforce existing laws and establish a clear legislative framework to protect the rights of women in issues of inheritance to land and land-based resources;
- Make provision for joint spousal registration and documentation of land rights, and for joint spousal consent to land disposals, applicable for all forms of tenure;
- Secure inheritance rights of unmarried daughters in line with the practices of the respective communities;
- Facilitate public awareness campaigns on the need to write wills to protect dependants in the event of death;
- Carry out public education campaigns to encourage the abandonment of cultural practices that bar women from inheriting family land; and
- Ensure proportionate representation of women in institutions dealing with land at all levels.
- To secure the rights of spouses to matrimonial property, the Government shall:
- Review succession, matrimonial property and other related laws to ensure that they conform to the principle of equality between women and men;
- Enact specific legislation governing division of matrimonial property to replace the Married Women’s Property Act of 1882 of England;
- Protect the rights of widows, widowers and divorcees through the enactment of a law on co-ownership of matrimonial property;
- Put in place appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources during marriage, upon dissolution of marriage and after the death of the spouse; and
- Put in place mechanisms to curb selling and mortgaging of family land without the involvement of the spouses

## **KWSCRIP RESETTLEMENT POLICY FRAMEWORK**

---

The resettlement goals and principles of this RAP are guided by the Resettlement Policy Framework (RPF) prepared for Kenya Water Security and Climate Resilience project (KWSCRIP) in 2012 and stemming from the World Bank OP. 4.12.

The RPF for KWSCRIP is aimed to ensure compliance with best practice and provides a set of resettlement and compensation principles, organizational arrangements and design criteria to guide and govern sub projects under KWSCRIP requiring land acquisition and resettlement. The principles are as follows:

### **Principle I: Minimizing need for resettlement**

Involuntary resettlement and land acquisition will be avoided where feasible, or minimized, where it cannot be eliminated.

People may be affected by land acquisition or restrictions on land use in two ways. They may lose housing, requiring them to move to another location, which is referred to as physical displacement. They may also permanently or temporarily lose land and assets or access to land and assets, leading to a disruption of their livelihoods and loss of income, which is referred to as economic displacement.

The process of relocating people, households and communities from one location to another and/or assisting them to replace their lost livelihoods is referred to as resettlement. Physical and/or economic displacement may have considerable impacts, some of which may be related to human rights. Not adequately addressing these risks may also increase project costs. Therefore, every effort should be made to avoid the need to resettle people and communities. If it is not considered early on and planned well, costs, time and the need for management attention are often underestimated. KWSCRP sub projects activities will seek to avoid, and where avoidance is not possible, minimise displacement (both physical and economic) by exploring alternative Project designs, phasing of land access, and by designing resettlement to minimise impacts on host communities.

**Principle II: Compliance with Laws and Standards**

KWSCRP sub projects will comply with relevant Kenyan legislation, regulations and policy, and with World Bank’s OP. 4.12-Involuntary Resettlement Policy.

**Principle III: Integrating Resettlement in Project Design and Planning**

Consider alternative project designs to avoid or, if not possible, minimize project-induced physical and/or economic displacement.

**Principle IV: Mitigation (and Compensation)**

Where displacement impacts are unavoidable, provide compensation and assistance to mitigate adverse impacts on affected persons. Offering compensations options to PAPs and giving preference to in-kind (i.e. land-for-land, house-for-house etc.) based compensation rather than cash wherever livelihoods are land-based; and offering compensation at full replacement value for other affected assets. Where replacement housing is offered seeking to improve living conditions for displaced persons through provision of adequate housing with security of tenure at resettlement sites. Develop appropriate compensation, resettlement and livelihood restoration action plans where displacement is unavoidable.

**Principle V: Replacement Cost Based Compensation**

Mitigate adverse impacts from land acquisition or restrictions on affected persons’ use of and access to land, physical assets or natural resources by providing “replacement cost” based compensation for loss of assets at replacement cost, prior to taking possession of acquired assets. PAPs will be eligible for compensation for loss of assets at full replacement value, as well as rehabilitation assistance. Land acquisition and resettlement should be conceived as an opportunity for improving the livelihoods and living standards of PAPs.

**Principle VI: Resettlement Assistance and Livelihood Restoration**

Assistance for displaced persons and livelihood restoration and improvement will be provided to Project Affected Persons. Livelihood restoration measures will seek to improve or, at a minimum, restore livelihoods and standards of living of physically or economically displaced persons.

The Project will provide opportunities for all displaced persons to derive appropriate development benefits from the Project (e.g. skills training to improve access to jobs etc.) PAPs will be assisted in their efforts to ideally 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 the project implementation, whichever is higher.

Improve or, at a minimum, restore the livelihoods, income earning capacity and standards of living of displaced persons, including those who have no legally recognizable rights or claims to the land (who were present in the project affected area at the time of the cut-off date), to pre-project levels and support them during the transition period.

**Principle VII: Resettlement Must Be Seen as an “Upfront” Project Cost**

KWSCRIP sub projects will ensure that compensation costs, as well as those resettlement costs that fall within their scope of commitment, are built into the overall project budget and clearly defined as such. Experience across the world shows that unless resettlement is built in as an “upfront” project cost, it tends to be under-budgeted, that money gets whittled away from the resettlement budget to more pressing“ project needs, and that it tends to be seen as peripheral to the overall project.

**Principle VIII: Compensation Disclosure**

Ensure that compensation, resettlement and livelihood restoration activities are planned and implemented with appropriate disclosure of information, consultation, and the informed participation of those affected. Projects will ensure that land acquisition and resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected. This includes disclosure of eligibility and entitlements, cut-off dates, compensation and livelihood restoration package

**Principle XI: Full Documentation**

Projects will fully document all engagements, consultations, negotiations, compensation measures and transactions undertaken to acquire access to land.

**Principle XII: Cultural Appropriateness**

All land acquisition and resettlement planning and implementation will be undertaken in a culturally sensitive and appropriate manner with due consideration of local cultures and cultural heritage.

**Principle IX: Stakeholder Consultation**

PAPs will be meaningfully consulted and will participate in planning and implementing of the resettlement activities.

PAPs, including host communities, will be adequately informed and consulted on all matters that affect them and will participate in decision making related to the planning, implementation, monitoring and evaluation phases of the land acquisition and resettlement activities. This will include providing access to appropriate advice to ensure that they understand their rights, responsibilities and options. The Project will involve consultation and engagement with relevant stakeholders throughout the planning, implementation, monitoring and evaluation phases of land acquisition and resettlement. This will include Project Affected Persons and communities, community representatives and leaders, County and National Government, and enable them to participate in the planning process and aspects such as compensation and livelihood restoration packages and resettlement village design.

**Principle X: Vulnerable and Marginalized Groups**

Measures to address resettlement shall ensure that project affected peoples are informed about their options and rights pertaining to resettlement, are included in the consultation process and given the opportunity to participate in the selection of technically and economically feasible alternatives.

They will also be provided prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project investments.

Particular attention will be paid to the needs of vulnerable groups among those displaced; especially those below the poverty line, the landless, the elderly, women and children, orphans, marginalized groups and the ethnic minorities or other displaced persons who may not be protected through the Kenyan law.

The objective is to provide whatever additional assistance may be necessary to restore pre-project living standards. Make special provisions for assisting disadvantaged or vulnerable individuals or groups (who were present in the project affected area at the time of the cut-off date) that may be more adversely affected by displacement than others and who may be limited in their ability to take advantage of livelihood assistance and related development benefits.

**Principle XIII: Informal Rights**

Affected persons with no formal legal rights to land will be included as “displaced persons” provided they have established rights to assets in the Area prior to the cut-off date.

**Principle XIV: Grievance Redress**

Establish a grievance mechanism to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons, including a recourse mechanism designed to resolve disputes in an impartial manner

**Principle XV: Appropriate Monitoring and Evaluation will be undertaken**

Appropriate monitoring and evaluation activities will be undertaken to provide the Project and PAPs with timely, concise, indicative and relevant information about whether compensation, resettlement and development initiatives are on track or whether corrective actions are required. The implementation of land acquisition and resettlement will be subject to monitoring and independent external evaluation, and the results will be shared with the people affected by resettlement.

**COMPARISON OF GOK LEGAL FRAMEWORK AND WORLD BANK OP 4.12 AND OP. 4.10**

As shown in the description of the Kenyan Constitution and in the legislation and laws, generally, there has been a focus on the provision of privately defined land titles. In Kenya, only 15 percent of the national lands are titled. There are many other forms of landownership, lease, or use. The consistency of provisions in the draft Guidelines on Resettlement and Evictions (May 2010) with those of the World Bank’s Operational Policy 4.12 on Involuntary Resettlement (OP 4.12) and Operational Policy 4.10 on Indigenous Peoples shows that land and assets are defined in Kenya differently in terms of occupancy rights, anti-eviction rights, adverse possession, unregistered leases and rentals.

OP 4.12 and OP. 4.10 requires that affected communities be consulted regarding project implementation and resettlement. Affected communities should also receive the opportunity to participate, implement, and monitor resettlement. OP. 4.10 specifically requires that where it is not feasible to avoid relocation as in the case of this project, the project must maintain broad community support for the relocation of the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process including deliberate effort to ensure that the RAP is prepared in accordance with the requirements of OP 4.12, Involuntary Resettlement, that is compatible with the Indigenous Peoples' cultural preferences, and includes a land-based resettlement strategy.

In Kenya, conventional land registration (or titling) systems tend to be highly centralized and rely heavily on professionals, who are mostly based in the country's capital city. Poorer and illegal occupants of lands do not have access to these professionals and are often left without title. The differences in approach vary largely in the application of the land tax and land registration (cadastral).

Since majority of land occupants are non-titled within a county or municipality, the land tax system does not work in terms of tax parcels, tax records, and tax procedures which often make the census-taking of project affected households (PAHs) as defined in the Bank's OP 4.12 more orderly. This becomes problematic in squatter settlements or in protected forests where some evictions of vulnerable (indigenous) groups have allegedly taken place.

Finally, there is also no provision in the laws of Kenya that the state should attempt to minimize involuntary resettlement however in this circumstance the World Bank guidelines on involuntary resettlement will supersede and hence apply in its entirety.

**Table 19: Comparative Analysis of World Bank OP 4.12 and OP. 4.10 &GoK requirements including measures to address gaps**

<b>OP 4.12 and OP. 4.10</b>	<b>Kenyan Legislation</b>	<b>Comparison</b>	<b>Gap Filling Measures Adopted</b>
<p><b>Consultation:</b> Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.</p>	<p>The Land Act outlines procedures for consultation with affected population by the NLC and grievance management procedures.</p>	<p>Same as World Bank</p>	<p>Implement consultation procedures as outlined in both Kenyan legislation and World Bank.</p>
<p><b>Grievance:</b> For physical resettlement, appropriate and accessible grievance mechanism will be established.</p>	<p>Land Act 2012 clearly outline the steps and process for grievance redress that includes alternative dispute resolution, re-negotiation with NLC and is backed by the judicial system through Environmental and Land Court</p>	<p>Kenyan legislation meets OP4.12 and OP. 4.10 requirements.</p>	<p>Project to establish appropriate grievances redress mechanisms</p>
<p><b>Eligibility Criteria</b> Defined as: (a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country); (b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets</p>	<p>The Land Act 2012 provides that written and unwritten official or customary land rights are recognized as valid land right. The Law provides that people eligible for compensation are those holding land tenure rights</p> <p>Land Act also recognizes those who have interest or some claim in the land such pastoralist or who use the land for their</p>	<p>Kenya’s Land Law defines eligibility as both formal (legal) and informal (customary) owners of expropriated land.</p> <p>However, it does not specifically recognize all users of the land to be compensated.</p>	<p>Ensure ALL users (including illegal squatters, laborers, rights of access) of affected lands are included in the census survey or are paid</p>

<b>OP 4.12 and OP. 4.10</b>	<b>Kenyan Legislation</b>	<b>Comparison</b>	<b>Gap Filling Measures Adopted</b>
<p>—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan</p> <p>(c) those who have no recognizable legal right or claim to the land they are occupying To determine eligibility: Carry out resettlement census. Cutoff date for eligibility is the day when the census begins.</p>	<p>livelihood.</p> <p>The Constitution recognizes ‘occupants of land even if they do not have titles’ and payment made in good faith to those occupants of land. However, this does not include those who illegally acquired land</p> <p>Land Act 2012 provides for census through NLC inspection and valuation process</p>	<p>The Constitution of Kenya on the other hand recognizes ‘occupants of land’ who do not have title and who the state has an obligation to pay in good faith when compulsory acquisition is made.</p> <p>Same as World Bank</p>	<p>Implement cut-off procedures as outlined in the RPF and Kenyan Law</p>
<p><b>Measures:</b> Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based. Cash based compensation should only be made where (a) land taken for the project is a small fraction of the affected asset and the residual is economically</p>	<p>Legislation provides for land for land compensation but the Land Act 2012 does not state whether preference should be granted to land to land compensation. Land Act 2012 appears to prefer mode of compensation by the Government to the affected population.</p> <p>Land Act talks of prompt, just</p>	<p>Land for Land provided for in the Land Act based on agreement by the PAP. Cash based compensation seems to be the preferred mode of awarding compensation to the affected population by Government</p>	<p>Ensure ALL users (including illegal squatters, laborers, rights of access) of affected lands are included in the census survey or are paid</p> <p>(b) If the impacts include physical relocation include measures to ensure that the displaced persons are</p>

<b>OP 4.12 and OP. 4.10</b>	<b>Kenyan Legislation</b>	<b>Comparison</b>	<b>Gap Filling Measures Adopted</b>
<p>viable; (b) active markets for lost assets exist and there is sufficient supply of land and housing; or (c) livelihoods are not land-based.</p> <p>World Bank OP4.12 and OP. 4.10 requires that displaced persons are provided with prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project. If physical relocation is an impact, displaced persons must be provided with assistance during relocation and residential housing, housing sites and/or agricultural sites to at least equivalent standards as the previous site. Replacement cost does not take depreciation into account. In terms of valuing assets, if the residual of the asset being taken is not</p>	<p>compensation before the acquisition of land. However, interpretation of just compensation is yet to be clearly outlined through a specific schedule defining just compensation have not been put in place.</p> <p>Attorney’s fees, cost of obtaining advice or cost incurred in preparing and making written claim not in the Land Act other than ‘just compensation’</p> <p>The Act is does not out rightly stipulate assistance for relocation but we can interpret that relocation cost will be included in just compensation.</p>	<p>of Kenya</p> <p>‘Just compensation ’ as stipulated in the Land Act not yet specifically defined.</p> <p>OP 4.12 and OP. 4.10 provides related land transaction fees.</p> <p>Land Act not clear on this.</p> <p>OP4.12 and OP. 4.10 requires that displacement must not occur before all necessary measures for resettlement are in place, i.e., measures over and above simple compensation</p>	<p>(i) provided assistance (such as moving allowances) during relocation; and</p> <p>(ii) provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the old site.</p> <p>(c) Ensure that displaced persons are</p> <p>(i) offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and</p> <p>(ii) provided with development assistance in addition to compensation measures</p> <p>(iii) such as land preparation, credit facilities, training, or job</p>

OP 4.12 and OP. 4.10	Kenyan Legislation	Comparison	Gap Filling Measures Adopted
<p>economically viable, compensation and assistance must be provided as if the entire asset had been taken. Compensation and other assistance required for relocation should be determined prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required</p>			<p>opportunities.</p> <p>Implement prompt and effective compensation at full replacement cost for the losses of the assets. Ensure that ALL resettlement options are agreed on with PAHs and put in place BEFORE displacement of affected persons.</p>
<p><b>Valuation:</b> With regard to land and structures, “replacement cost” is defined as follows:</p> <p>For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land</p>	<p>Valuation is covered by the Land Act 2012 and stipulates, as already mentioned, that the affected person receive just compensation from NLC, as determined by National Land Commission. Valuers Act stipulates that a residual amount of 0.5% of the total valuation of an asset is expected to pay the valuer. Land Act 2012 talks of just compensation for the lost assets but it is not specific of the exact amount or procedures on the same.</p>	<p>Though one could argue that there is some form of consistency between the Kenyan Law and World Bank OP.4.12, and OP. 4.10 interpretation of ‘just compensation’ has not been defined.</p> <p>Interpretation of just compensation not clear</p>	<p>Apply the World Bank OP4.12 valuation measures, as outlined in Section 6, in order to fully value all affected assets in a consistent manner.</p> <p>Apply World Bank OP4.12 on valuation and compensation measures.</p>

<b>OP 4.12 and OP. 4.10</b>	<b>Kenyan Legislation</b>	<b>Comparison</b>	<b>Gap Filling Measures Adopted</b>
<p>to levels similar to those of the affected land, plus the cost of any registration and transfer taxes.</p> <p>For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors' fees, plus the cost of any registration and transfer taxes.</p>	<p>The Land Act 2012 stipulates just compensation.</p>	<p>Interpretation of just compensation not clear.</p>	<p>Apply World Bank OP4.12 and OP. 4.10 on valuation and compensation procedures.</p>
<p><b>Monitor</b> Adequate monitoring and evaluation of activities to be undertaken.</p>	<p>According to Land Act can be undertaken County Land Boards.</p>	<p>Both Kenyan Law and World Bank policy advocates for Monitoring and Evaluation</p>	<p>Implement as prescribed in the World Bank OP4.12, OP. 4.10 and Kenyan Law.</p>

## 5.0 STAKEHOLDER CONSULTATIONS

Effective resettlement action planning requires regular and thorough consultation with PAPs and a wide range of project stakeholders drawn from the affected area. This wide consultation is intended to include individuals and groups who will be affected by the project. The PAPs and stakeholders' consultations are extremely important for successful preparation and implementation of the RAP. The stakeholder and PAPs consultations were conducted between the 9<sup>th</sup> January and 26<sup>th</sup> February 2022. The consultations with PAPs were conducted in public barazas while consultation with other key stakeholders were conducted in their offices through Key Informant Interviews. The attendance register is provided in annex: v and minutes provided in annex iv.

**Table 20: Consultation meetings in the project area**

Date	Venue	Female	Male	Total
15/2/2022	Vikinduni chief's office	44	52	96
16/2/2022	Mnyezeni chief's office	38	62	100
18/2/2022	Miyani chief's office	24	36	60
23/2/2022	Chigato chief's office	34	55	89
23/2/2022	Makutano chief's office	19	29	48
23/2/2022	Mwashanga chief's office	16	3	19
24/2/2022	Kasemeni Frontman office compound	89	233	322
25/2/2022	Pemba market center	28	46	74
	<b>Total</b>	<b>292</b>	<b>516</b>	<b>808</b>

**Table 21: Key stakeholders Consultation meetings**

#	Dates	Name of stakeholders	Venue	No. of Participants
1.	9 Jan	CDA	CDA office boardroom	12
2.	10 Jan	WRM	WRM-Coast office	4
3.	10 Jan	Frontman consulting Ltd	Frontman office boardroom	8
4.	15/2/2022	MCA	Frontman office Kasemeni, MCA Hon. Anthony N.	5
5.	24 Feb 2022	DCC	DCC-Kinango sub-County office	4
6.	18/2/22	Mwavumbo Group Ranch	Makutano Center Makut	5
7.	25/2/2022	ACC	ACC-Kasemeni office	3



**Table 22: Summary of Concerns raised by the Project Affected Persons.**

Issues		Feedback	Response
Absentee land owners		What happens to PAPs who were not available for RAP census and during compensation periods?	National Land Commission (NLC) shall deposit compensation funds for absentee landowners in interest bearing escrow accounts. The RAP implementation team and the local administration through the office of the Chief shall trace the absentee land owners during RAP implementation.
Graves within the road corridor.		Shall there be any compensation for graves and shrine which would be affected by the roads?	Culture is one thing that is respected by the project. All the graves and shrines will be handled by the community according to the community traditions and heritage. The PAPs have the right to inform the project implementing agency on how they would want the graves to be moved or handled as per the cultural requirements. Those graves and shines along the roads would be compensated then relocated.
Succession cases		How would the majority of the PAPs who do not have the titles for the parcels which they inherited from their deceased parents be compensated yet the process of succession has not been concluded or commenced?	The project will facilitate the process of succession. And that the project will hire a lawyer who shall conduct the succession on behalf of the affected families. The PAPs were also informed that they should have the death certificate for the deceased land owner in place in readiness for succession process. Those PAPs who do not have the death certificate were told to inform the chiefs to help them initiate the process of late registration of death so that they can have that certificate. However, the PAPs were informed that such families will have to appoint an administrator who shall be paid land compensation on their behalf. The administrators are expected to share the compensation money with other members of the family based on the formula agreed by the family members.
Compensation		How would crops, trees and other assets be compensated?	All lands and trees which would be affected by the proposed road would be compensated. The short-term crops like maize, beans are not compensated for and the owners shall be given time to harvest their crops.
Trees of cultural and medicinal importance		Would such trees be spared since they play vital role in the community more so as medicine and sacred functions?	For the sacred indigenous trees and medicinal trees, the design engineers might try to have a design which won't affect those sacred trees. In case these cannot be avoided then cultural appropriate compensation measures shall be considered during RAP implementation.
Parcels		Would there be a	All lands which were affected by the Mwache

Issues		Feedback	Response
affected by the dam and the road		second payment for parcels affected by both roads and the dam?	dam and compensated now belong to the government of Kenya. The land to be compensated are only that which is not in the dam acquired area nor on the existing road reserve. There would no double compensation.
Compensation for projects previously undertaken by other government agencies within the project area		Can the project compensate the PAPs for their land which was taken during the construction of old roads and they were never compensated?	The area chief responded and informed the community that the County government of Kwale had a project of opening access roads in the community, and those roads were planned long time ago, its people who grabbed the government land without their knowledge. Therefore, the Mwache dam access roads project is different from the County Government road project and incase anyone's land, trees, structures and crops to be affected by the Mwache access roads, they will be compensated.
Compensation of unfinished houses		Shall the unfinished houses be compensated for in case they would be affected by the road?	All houses which would be affected by the Mwache dam access roads must be compensated for. Each house would have its own value so even the unfinished houses would be compensated with its own value depending on the completion stage it will be at when NLC carries out actual asset inspection for the purposes of compensation.
Pending compensation for the dam area		Some community members have not been compensated for their land within Mwache dam area. Now at the new relocation area it seems their land too would be affected by the Mwache access roads. Would the community members be compensated both of dam area and roads?	All lands affected by the Mwache dam and Mwache dam access roads will be compensated. Currently the compensation process for the priority dam areas is ongoing and all the affected persons will be compensated. The government implementation schedule allowed compensation to begin with the priority areas. So for those who have not been compensated in all the dam priority areas and dam access roads are scheduled to be compensated fully.

Compensation for	How will disputed	First of all, the dispute must be resettled first to establish the
------------------	-------------------	--

Assets with dispute	assets including graves be compensated?	rightful owner and claimants of any disputed assets then compensation would follow. National Land Commission (NLC) shall deposit compensation funds for disputed assets in interest bearing escrow accounts pending the resolution of a dispute. The RAP implementation team and the local administration through the office of the Chief shall work towards settling disputes during RAP implementation. The PAPs are advised to strive to resolve land disputes using local/ existing dispute resolution mechanism before the census and asset inventory exercise. Further, the RAP has provisions for dispute resolution through the Grievance Redress and Resettlement Committee (GRRC) to resolve grievances.
Impacts of dusts on houses bordering the road but not on the Right of Way ROW	Would the community members be compensated for the impacts of dust?	There is no compensation due to dust during construction period but mitigation measures would be put in place like sprinkling water on the dusty roads.
Compensation for developments on leased land	If one had leased land and planted trees would he/she be compensated?	In such case, the owner of the land would be compensated for the land and the one who leased and planted trees would be compensated for trees in that land. So there are two separate compensation packages; for the land and trees in that land.
Requirements for compensation	What are the conditions to be met before compensation is paid by NLC?	NLC will require the following documents from a PAP in order to effect payments: Copy of ID Copy of bank account details Copy of title deed/ Letter of administration Copy of KRA pin  Some PAPs have lost their IDs and they were informed to get a replacement before the compensation process begins.
The design of the roads	Will Mwache dam access roads follow the county of Kwale roads or new roads will be established?	The surveyor would identify exact area where the road would pass. The project entails upgrading of existing roads and establishment of new roads.
Compensation for PAPs without title deeds	Would PAPs without title deeds be compensated?	The consultant responded by stating that before compensation, The Ministry of Land will provide the owners with title deeds then from there the portion of land taken by Mwache dam access roads would be compensated. The house and other assets in the land that would be affected by the Mwache dam access roads must be compensated fully before the kickoff the project.
Compensation for beneficiary PAPs on land belonging to their parents	Will beneficiary PAPs be compensated for developments on land belonging to	During the assets inventory process, those who have developments on the affected land would be recorded separately as claimants having interests on land belonging to their parents. The law provided for separate compensation for owners of developments on other persons land as they have

	their parents?	rightful claim to developments such affected land parcels.
Loss of income from mining sites(quarries/sand ) once the dam is impounded.	Would the youths involved in quarrying on the river bed for building stone blocks and sand harvesting be compensated for loss of livelihoods once the river is impounded	Loss of income due to the actual dam construction activities have been addressed Mwache dam RAPs 1a,1b and RAP 2.

Size of the proposed roads	What would be the size of the Mwache dam access roads?	The road size measurement would range from 20 to 40 meters wide but also the road has different measurements depending on those to be tarmacked and others improved.
Employment of the local youths during construction of the roads	Would the local youth be employed during the construction of the Mwache dam access roads?	It is a government policy for job preference to be given to local people on any publicly funded projects and the Damroad access project would be no exception. This depends on the skill level requirement and availability of required skill in the project areas
Compensation for cultural heritages	Would the project compensate for the expenses incurred in the relocation of cultural sites and social facilities that would be affected by the Mwache dam road access project?	All lands, graves and social facilities which would be affected by the Mwache dam access roads will be compensated. Currently the compensation money set for the graves and shrines relocation process include to all expenses to relocate the graves and shrines.
Benefit sharing from the dam	How would the project empower the youth in the area on how to benefit from the intended benefits of the dam once completed.	The youths constitute the pool for construction labor force. During the construction, they would acquire skills that would help them to diversity their employment opportunities. Once the dam is operational, they would be able to engage in farming activities for high value crops. There would also be opportunities in the fishing activities and there would also be opportunities in recreation and tourism where the youth were best suited.
Gender based violence and vulnerable and marginalized PAPs	How would fairness be ensured in the distribution of compensation for women PAPs whose spouses own the land might receive the compensation and misuse the funds leaving the families destitute?	The World Bank and GoK requirement is that both man and woman would be jointly involved on getting compensation money. There is need for the implementing agency to liaise with local banks to hinder men to withdraw compensation money without their wives or their authority.
Compensation for business owners operating in rented premises	Would PAPs who have rented shops to do business be compensated?	Those who have rented shops and other business which would be affected by Mwache dam access roads will be compensated since their livelihoods must be restored. They will be paid compensation for loss of business income equivalent to six months of their current income.
Compensation for PAPs who bought land but have not transferred to their names	Who will be compensated in cases where PAPs bought land but transfer process has not started or is incomplete?	For the lands bought, the current title holder/owner won't be compensated but the buyers who are the actual owners through exchange of consideration. In case the owner has not given the buyer or transferred land to the buyer, then the owner is required to transfer land to buyer and if not, so the land would be termed as disputed land and NLC have mechanism on how

		to handle such kind of lands before compensation. The project GRM provided in chapter 11 of this RAP will also be used and there must be proof of the purchase by the buyer/claimant during the GRM process.
Determination of Rate of compensation	How would the rate of compensation be determined?	The project has employed valuation experts under the RAP Consultant who are registered by the Valuation Board to undertake valuation of every affected asset including land, structures, trees and crops, cultural and communal/public assets for the purpose of the RAP. The initial valuation is for the purpose of budgeting for the RAP implementation. The valuation will be based on full replacement cost. Additional and final valuation shall be undertaken by the NLC before PAPs are compensated as per the provision of the National Land Commission Act.

## **RAP DISCLOSURE**

---

The RAP will be disclosed in English while the executive summary (non-technical) will be translated into Kiswahili languages. A Project brochure will be prepared at implementation stage with (a) a broad description of the project; (b) entitlement matrix and eligibility; (c) implementation schedule; (d) grievance redress mechanisms and how it will work; and (e) RAP monitoring methods and timeline.

Disclosure will be in electronic form on the website of the following institutions namely:

- (i) KWSCRP
- (ii) Coast Development Authority
- (iii) Ministry of Water & Sanitation and Irrigation
- (iv) County Government of Kwale
- (v) World Bank external affairs

Hard copies will be made available in the same offices with additional copies availed at the following sites:

- (i) KWSCRP Nairobi Office
- (ii) KWSCRP Coast Office
- (iii) CDA office
- (iv) Kwale County Headquarters
- (v) Office of contractor
- (vi) Kwale Sub County Office
- (vii) All Locational offices affected by the project
- (viii) All Ward offices affected by the project

National Land Commission (NLC) will further disclose part of the RAP by publishing on the Kenya Gazette Notice of its intention to acquire land on behalf of the Ministry. The gazette will contain the list of parcel numbers affected by the project, name of registered owners and the size of the land to be acquired in each parcel. The gazette notice will be for a period of thirty days. NLC will further disclose individual compensation awards to the PAHs through one-on-one engagement with individual heads of affected households or accompanied by his/her family members as the PAH may deem appropriate.

---

## **5 BASELINE AND SOCIO-ECONOMIC PROFILE OF PAPS**

---

A socio-economic survey was carried to collect quantitative and qualitative socio-economic data on affected households including household demographics, education and skills, livelihoods, health and nutrition, basic services and community facilities, as well as culture and heritage. The data forms the basis of a better understanding of the structure and make-up of affected households, their livelihoods practices adopted to secure household food needs and income; as well as providing a baseline for evaluating the success of livelihood restoration support. The socio-economic survey was conducted using a sample size of 200 respondents. There was only one respondent per affected household.

### **POSITION AND SIZE OF KWALE COUNTY**

---

Kwale County is one of the six Counties in the coastal region. It borders Taita Taveta County to the North West, Kilifi County to the North East, Taita Taveta and Kilifi to the North, Mombasa County and Indian Ocean to the East and United Republic of Tanzania to the South. The County is located in the South eastern corner of Kenya, lying between Latitudes 30 3' and 40 45' South and Longitudes 380 31' and 390 31' East.

### **ADMINISTRATIVE AND POLITICAL UNITS**

---

Kwale County is divided into three administrative Sub-counties namely Matuga, Kinango and Msambweni. The project site is located in Kinango Sub County.

### **DEMOGRAPHICS**

---

The population of Kinango Sub County, Mwatate and Kasemeni locations are predominantly rural in character and the main economic activity of the area is subsistence farming. According to the 2019, Population Census (KNBS) Kinango Sub County had a population of 94,220 comprising of 45,413 males and 48,806 females. This population comprised of 16,041 households.

### **POPULATION SIZE AND COMPOSITION**

---

Kinango Sub-County is sparsely populated with a population density of 58 people per Km<sup>2</sup> as per 2019 population and housing census. The area is classified as rangeland and is less productive agriculturally but has potential for ranching and general livestock or wildlife husbandry. According to the most recent census, it has a total population of 94,220 people and was projected to rise to 268,758 by 2020 with a poverty index of **84.5%**. Most of Kinango land mass is semi-arid. Of this population 48% are male with the rest being female. Life expectancy is 51.2 years with fertility rate around 5.7 live births per woman. The population is generally youthful putting pressure on the available educational, health and other social facilities.

### **DEMOGRAPHICS IN PROJECT AFFECTED HOUSEHOLDS**

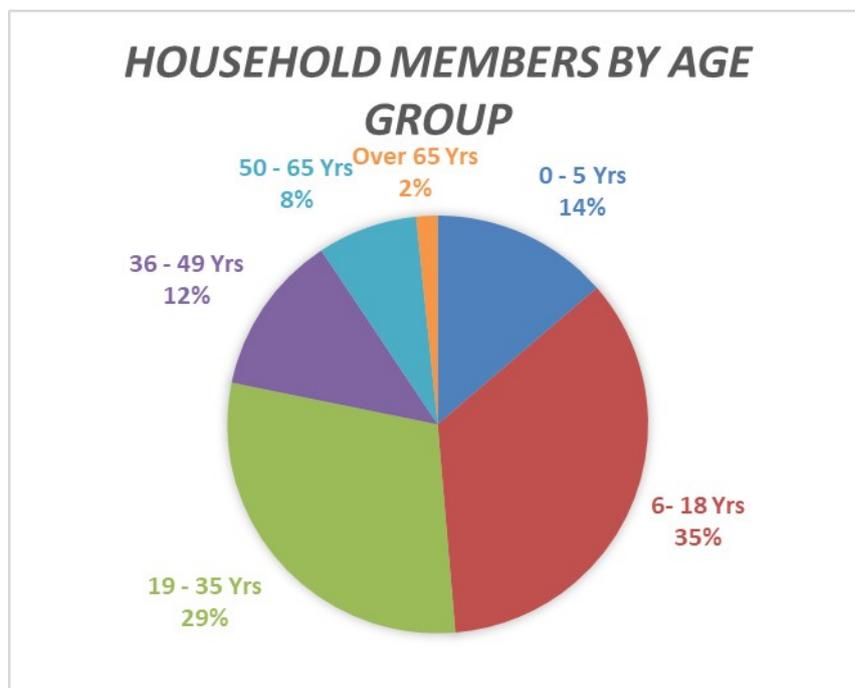
---

As was established during the 100% RAP census and socio-economic study, the total population of the Project Affected Households (PAHs) is 200. These households will be economically and physically displacement during the RAP implementation phase.

## HOUSEHOLD CHARACTERISTICS

### 5.1.1 Age distribution

From the survey the age distribution of the respondents is as follow: 14 % (0-5yrs), 35 % (6-18yrs), 29 % (19-35yrs), 12% (36-49yrs), 8% (50-65yrs) 2 % (65 yrs and above). The majority of the respondents are aged 65years and below. The age distribution is shown in figure 12.



**Fig 12: Age distribution (Source- Respondents)**

### 5.1.2 Gender Distribution of Household Heads among the PAPs

It was noted that affected households include female household heads which make up 53% of PAHs. These include widows who form the larger group in this category of female household heads while the others are separated or single women. In the RAP widows fall under the category of vulnerable groups so that they are not disinherited during compensation. During discussions with opinion leaders and FGDs in the project area the fate of widows in the compensation and resettlement was featured prominently. This is because widows often lose land to the late husband's extended family who claim land and other assets. The community members felt that special consideration be given to female household heads during land succession processes and compensation. The project will hire a succession lawyer who ensure that widows are supported to become estate administrators of their deceased husbands. Additionally, illiterate widows shall be supported go through compensation procedures. Additional support for the widows is included in the entitlement matrix and shall be monitored during RAP implementation. The distribution is shown in figure 13.

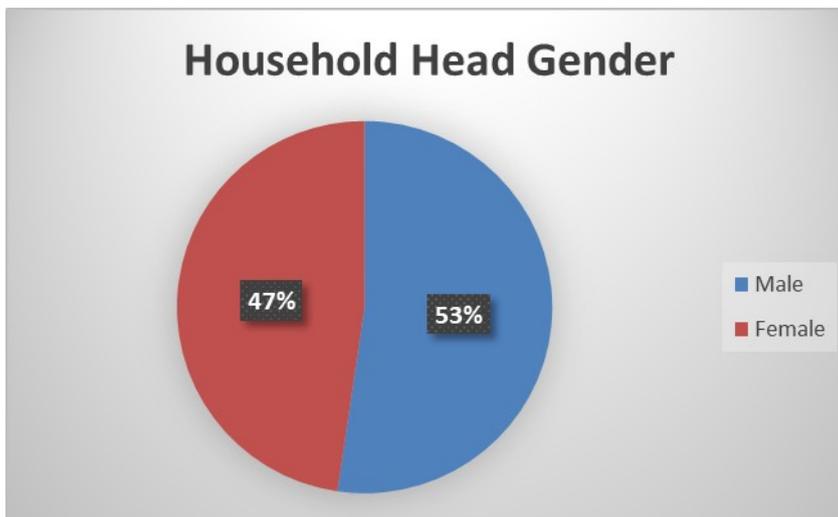


Figure 13: Gender Distribution of Household Heads (Source- Respondents )

### 5.1.3 Educational Level

Majority (64%) of the respondents have attained primary education. Only 19 % of the respondents are illiterate. Education is essential in empowering people to take advantage of opportunities. During the community introductory meetings what came out clearly is that they have capacity to interrogate information given to them. It is assumed that the educated can effectively articulate their issues and understand information passed on to them, they can participate in socio economic development initiatives.

### 5.1.4 Occupation

The main source of income for most (40 %) of the respondents is subsistence farming. However, these are subsistence farmers' using rudimentary methods of farming only to face various challenges in crop production even as they rely on low and unreliable rainfall, and as inferred in the FGDS, certified seeds, fertilizer and farm inputs are hardly used. Only 5 % of the respondents are in formal employment. Other income sources include livestock farming (29%), business (25%), informal employment 1% and Domestic worker 1%. Main businesses include; jua kali shops, bodaboda, groceries, Mpesa and retail shops. Goats are the main type of livestock found in the project area. Other livestock include cattle and sheep. Majority of the respondents are involved in maize farming. Other crops mentioned by the respondents and are planted within the project area include; cassava mangoes, coconut and cashew nuts. The distribution is shown in figure 14.

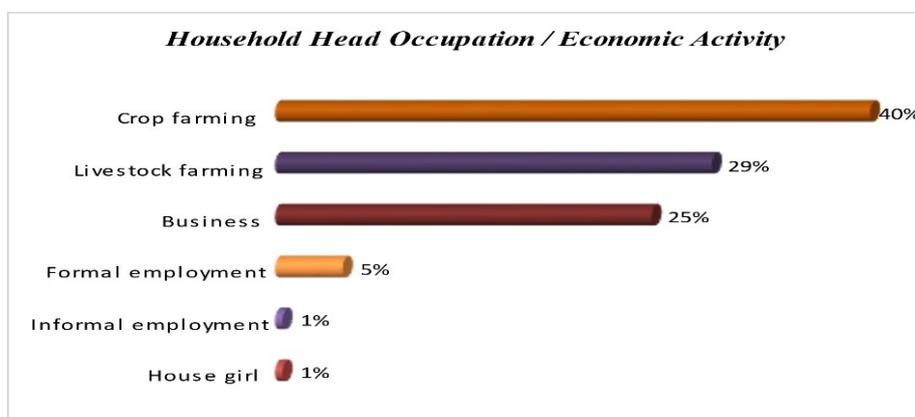


Figure 14: Occupation (Source- Respondents)

### 5.1.5 Household Incomes

The survey shows that majority (55%) of the respondents have income of less than Kshs. 15,000 per month. This is drawn mainly from crop farming. Poverty level in the project area is considered to be equivalent to that of Kwale County, which is around **41.1%** (World data Atlas 2016) and higher than the national average of 34 per cent, hence considered as above average. The causes of poverty in these areas are diverse and include poor soil fertility leading to low farm yields, low income among households to afford farm inputs, over-reliance on traditional methods of farming and lack of alternative sources of income. Income sources include subsistence farming, livestock, formal and informal employment, business, remittances, pensions, etc. There exists food insecurity at the household level as farmers are unable to produce enough under rain-fed conditions due to the unpredictable weather patterns and from the interviews most household expenses are high on food as the harvest is not adequate to meet household food security needs. Successful irrigated farming will increase food production. The distribution is shown in figure 15.

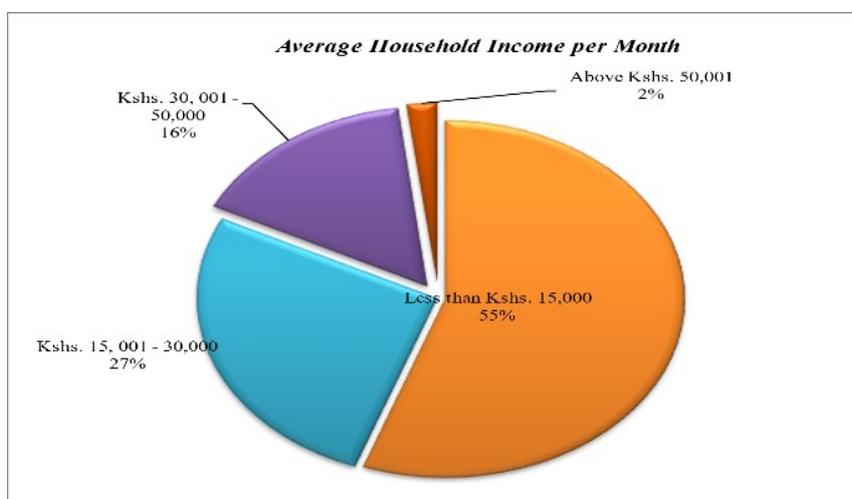


Figure 15: Household Incomes (Source- Respondents)

### 5.1.6 Energy

The project area is covered under the rural electrification project of the Ministry of Energy whose main priority is accelerate connection of power for domestic needs with special priority to schools and health facilities. The high voltage line supplying power on the national grid to Kinango and Kwale traverses the project area. Some of the homesteads that were covered in the household survey and especially the business premises were connected to power mains. Majority of the local population rely on firewood and charcoal as source of energy for cooking and heating at home. Some families supplement their source of lighting and cooking with kerosene. Challenges to access energy include long distances to the sources for firewood and the escalating cost for kerosene and charcoal whose prices are beyond the income levels of most of the respondents. A total of 94% of surveyed households use firewood, 2% use charcoal and 3% use LPG gas for cooking. The distribution is shown in figure 16.

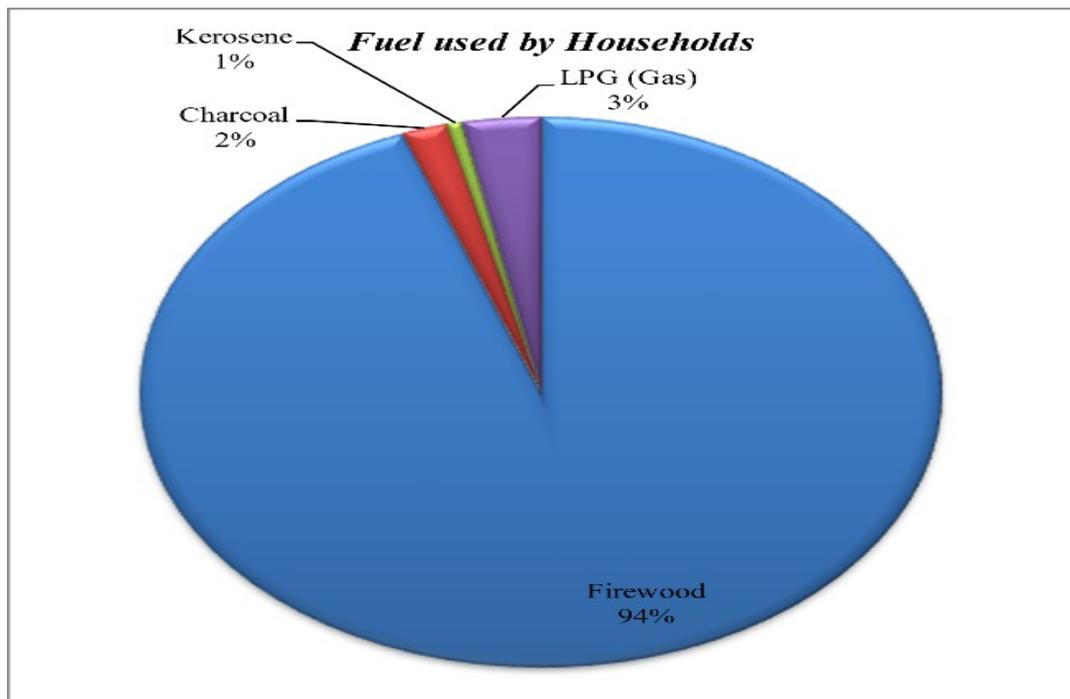


Figure 16: Energy (Source- Respondents)

### 5.1.7 Water and Sanitation

The local community depends on the water pools that are evident at the riverbeds of Mwache and Ngeyeni River for both domestic needs and watering their livestock. Some villages affected by the roads are several kilometers away from the two rivers and the locals are facing water scarcity challenges. However, there is a water pipeline that runs along the main Mazeras-Kinango road and a branch line to Bofu from Majengo junction. The local community depends on shallow wells where piped water has not been supplied. The area being predominantly rural with very scanty population distribution has limited prospects for trunk sewerage. Household water in the affected villages is obtained from various sources including; water pan (10%), private taps (20%), protected springs (24%), public taps (36%) while bore holes and shallow wells each accounted for 5%. The distribution is shown in figure 10. A total of 66% of the respondents consider the water they use to be of fair quality while the remaining 34% consider the water to be of good quality. In terms of duration when households fetch water, it was established that 97% of respondents fetch water every day.

At the same time almost half (51%) of the respondents felt that the water supply within the project area is adequate while 49 % indicated that they experience water shortages. The majority of the residents travel 1-2 km to get their water. 23% travel less than 0.2 kilometres and 7% travel up to a kilometre and 33% travel more than 2km. Considering that it is the poorest families that travel the longest distances, and that they have to do so every day or on alternate days, a lot of time and energy is spent just on water collection. Most of the water sources in the area is (58%) are owned by the public, NGO (28%), Private (9%) faith based organization (5%). Approximately 61% of respondents said that they paid for water, and 39%

said that they did not pay.

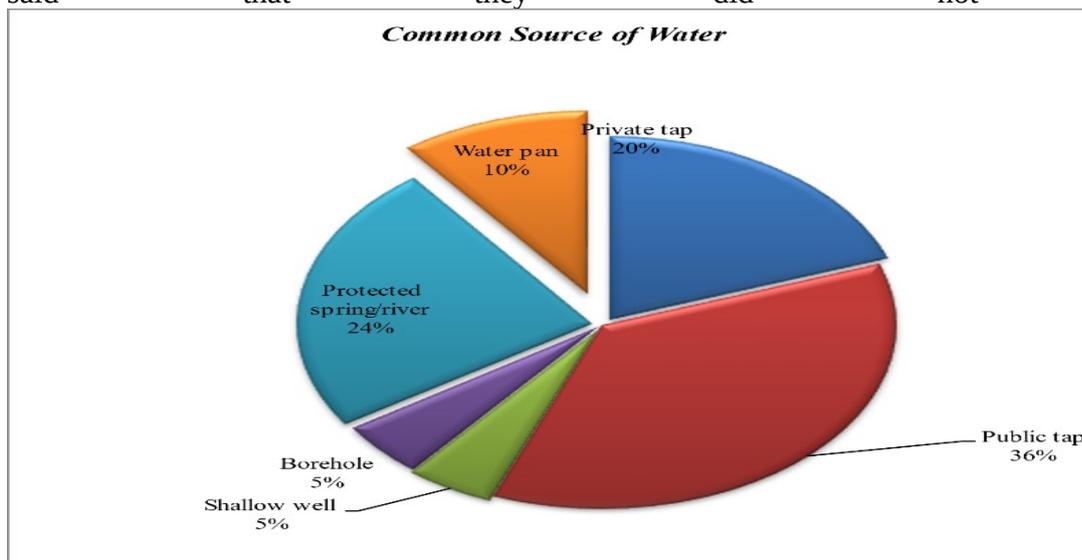


Figure 17: Water and Sanitation (Source- Respondents)

### 5.1.8 Health

All the respondents (100%) indicated that they visit health centres and hospitals when sick. At the same time 68% of respondents said that they visit public hospitals, 6% visit private hospitals while 19% visit those owned by NGOs. Distances travelled to access medical facilities ranged from 1 to 5 kms. A total of 11% of the respondents travelled less than a km, 58% travelled 1 to 3km, 6% travelled 3 – 5km and 25% travelled more than 5km. The distribution is shown in figure 18.

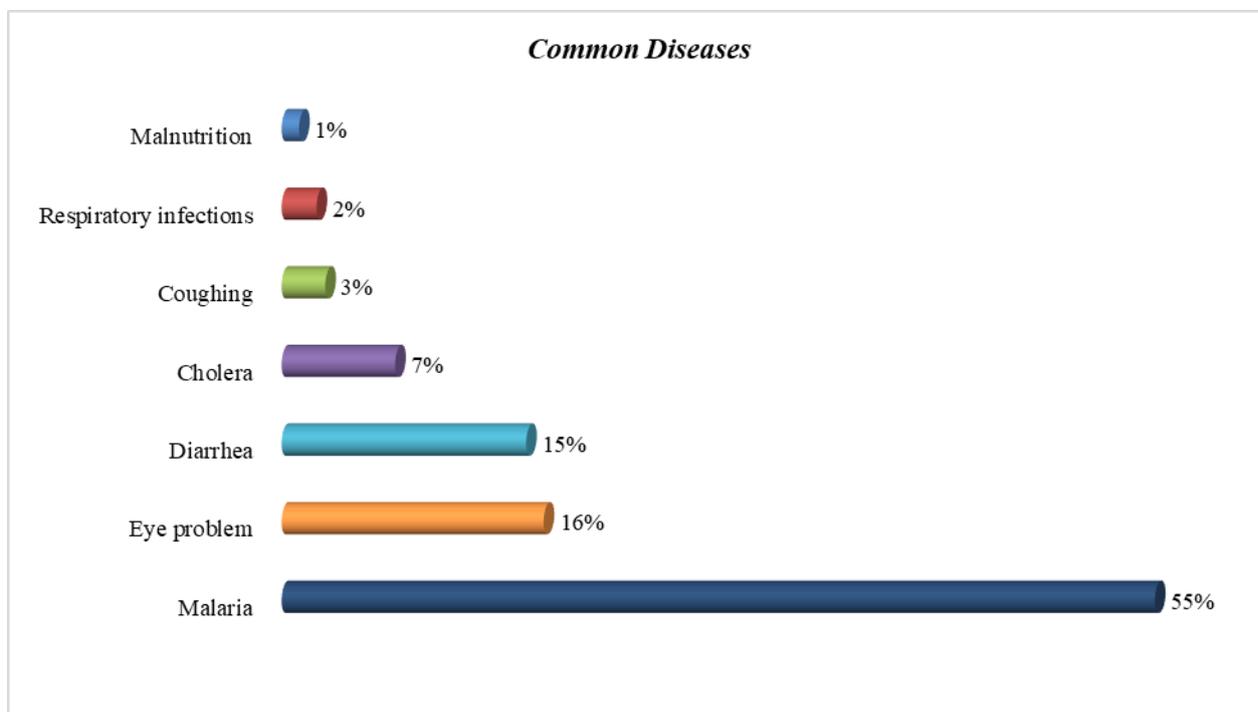
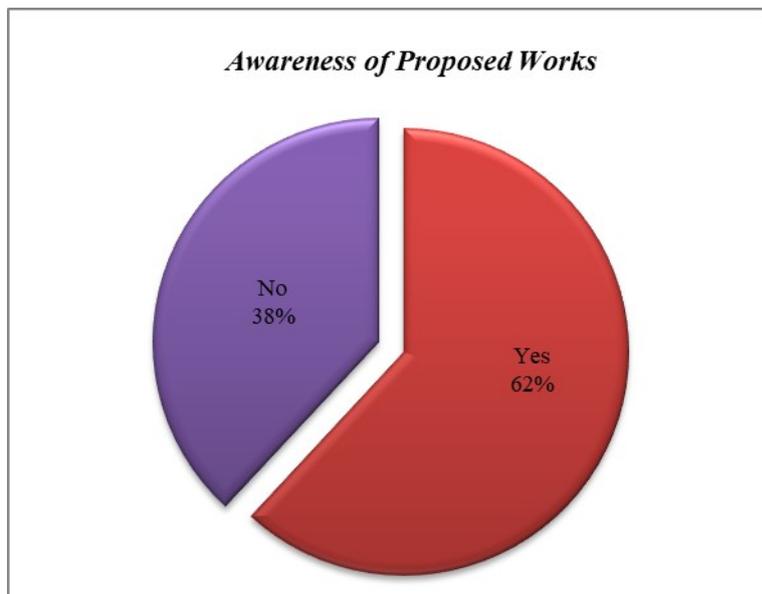


Figure 18: Health (Source- Respondents)



**Figure 19: Awareness of the Proposed Project (Source- Respondents)**

### **VULNERABLE GROUPS**

---

According to the census there were 3 female headed households (widows) who are considered vulnerable. Elderly, infirm or ill people might have limited access to project related information and benefits; unless they are considered with specific supportive measures included to cater for them. The total number of elderly persons was 10. Households headed by orphans (under the age of 18 years) are considered as vulnerable. They usually have no access to education due to family obligations. Hence, their capacity to benefit from training measures is limited as is their capacity to develop alternative livelihoods. According to the results of the RAP census in the project-affected area, 5 of the documented households had orphans but no household was headed by an orphan. During RAP implementation, special attention will be given to the identification of orphan headed household, households headed by terminally sick persons, women headed and elderly headed households. Individual support measures for vulnerable people will be identified early in RAP implementation. The respective consultations will be undertaken under the lead of the RAP Implementation Consultant (RIC), through local resettlement committees.

### **ROAD NETWORK WITHIN THE PROJECT AREA**

---

The proposed project aims to upgrade the existing roads within the project area and also establish new roads in villages which are not covered by any road. During the rainy seasons, transport along the main Mazaras to Kinango road is interrupted when the Mwache River crossing is flooded. Other storm drain crossings are made of drifts that get flooded and make the vehicular river crossings unsable. Crossings at other points on Rivers Mwache and Mnyenzi are disrupted during the rainy seasons and make it difficult for the people to access education, health and other services including their household shopping needs. The alternative is to travel longer distances to safe crossings or await the subsidence of the flooded rivers.

## 6 RAP THREE IMPACTS AND MITIGATION MEASURES

This RAP 3 covers Roads A, D and E. The roads design was provided by MOWIS engineers and has been reviewed by the RAP Consultant. The details of the roads covered in RAP 3 are presented in table 23 below.

**Table 23: Summary of the Roads to be done under RAP 3**

	ROAD	Width (metres)	RAP
1	A	20.0	RAP3
2	D	20.0	RAP3
3	E	40-60	RAP3

### Project Affected Households (PAHs) and Project Affected Persons (PAPs)

The construction of roads will affect 267 households and 1020 PAPs as shown in table 24 below.

**Table 24: Distribution of PAPs and PAHs by roads**

Road	PAHs	PAPs	No of parcels
A	4	20	4
D	5	30	5
E	258	970	233
<b>Total</b>	<b>267</b>	<b>1020</b>	<b>242</b>

**Table 25: Summary of Impacts profile**

Type of loss	
Households losing more than 20% of Land	45
Household losing less than 20% of their land	155
Households losing trees	74
Households losing crops	0
Households Losing Structures and loss of business	20
Households with affected gravesites	3
<b>Public Infrastructure / community institutions Impacted</b>	
Public institutions Impacted	1
Religious institutions Impacted	1

### Land Acquisition Impacts

A total of 267 households will lose land totaling to **55.1654** Ha. All the land parcels affected by the project are freehold.

**Table 26: Summary of Land Acquisition Impacts**

#	Access roads	Area of land (Ha)	Length (Km)	Width (M)( Total way leave)
1.	Road A	0.8454	5.14	20
2	Road D	1.31	2.5	20
3	Road E	53.01	15.55	40-60
	<b>Total</b>	<b>55.1654</b>	<b>23.19</b>	

## Non-land impacts

The economic and physical displacement as a result of land acquisition for the construction of the access roads will lead to loss of the following assets and incomes:

- Land
- Structures
- Trees
- Graves
- Business income

**Table 27: Non-land impacts**

	ROAD	Number of business and residential Structures	Number of PAPs losing business and residential structures	Number of PAPs losing graves	Number of graves	Number of trees	Number of PAPs losing trees
1	A	1	1	0	0	10	2
2	D	1	1	1	1	10	4
3	E	2	18	2	5	2843	68
		5					
		27	20	3	6	2863	74

## ELIGIBILITY AND VALUATION

Mwache access road Project will lead to economic and physical displacement (by affecting households who use lands or have structures in locations where the project components have been identified. Based on the obligations and entitlements outlined in the KWSCR Policy Resettlement Framework (RPF) and Financial Agreement between Government of Kenya (GoK) and World Bank, the Project has developed detailed entitlement matrix for the Mwache Dam project. This chapter outlines the general principles and processes the Project will follow with respect to entitlement for each category of PAP.

### ELIGIBILITY

---

There are four variables to consider regarding eligibility:

- Who is eligible? – This is established through the definition of PAP and their relationship to the project-affected-area determined through the RAP census
- How are they deemed eligible? - This is established in the eligibility criteria
- When are they eligible? - This is defined by the Cut-off Date
- What are they eligible for (entitlement)? – This is defined in the Entitlement Matrix

### Defining Project Affected People (Who is eligible)

For this resettlement, PAHs are defined as any individual or group of persons (constitutes e.g. a family or clan with shared interest in an asset) whom have legal or customary rights to assets that will be affected or lost because of the project activities, as determined by the Cadastral Land and Asset Valuation Survey. A PAH may have a right to one or more groups of assets including (1) rights to land, (2) ownership of annual and perennial crops, (3)

ownership of trees, (4) homestead property, (5) homestead structures, (6) graves, (7) and other privately held physical assets located within the development footprint of the Project. As indicated, a group could refer to an extended family or clan who have shared ownership of land or assets. For this RAP, all assets and land have been recorded against PAHs and each PAH has been given an ID number. Therefore, Entitlement and Eligibility is considered for each PAH with an ID. There may be multiple PAPs within a single household (as used in the socio-economic survey) which claim ownership to different households.

**Table28: Eligibility Framework**

<b>Description</b>	<b>Who</b>	<b>How</b>	<b>When</b>
Physically displaced PAP:	Individuals, households or groups who will lose their place of residence due to Land Acquisition required for the roads' Project	Determined by the RAP Census, the Cadastral and Asset Survey.	At the time of signing the cut-off date form during the rolling out of census and socio-economic survey. The cut-off date for this RAP is <b>6 February 2022</b>
Economically displaced PAP:	Individuals, households who will lose land, assets or access to assets or natural resource that leads to loss of income sources or livelihoods, but does NOT necessarily result in the direct loss of a place of residence.	Determined by the RAP Census,	
Physically and Economically displaced PAP:	Individuals, households or groups who fit into both categories above.	Determined by the RAP Census, the Cadastral and Asset Survey.	

### 6.1.1 Eligibility Criteria

Affected PAPs eligible for compensation/replacement include:

- i. Those who have formal legal rights (Certificate of Title) to land.
- ii. Those who do not have formal legally certified rights to occupy or use the land or other assets but have a claim to the land under the Land Act, 2012.
- iii. Those who have a claim to assets (e.g. structures, trees, graves or crops) on the land to be acquired. This includes land owners/claimants with assets on their own land and also those who claim assets on land they do not own/claim.
- iv. Those who have no recognizable legal right or claim to the land they are occupying (i.e. informal occupants). These were recorded as part of the Cadastral & Asset survey.

### 6.1.2 Cut-Off Date

According to OP 4.12, Cut-off date is the date the RAP census begins. Cut-off date is important because it guards against influx of people to the project area. Influx can increase the cost of compensation and need to be avoided. Persons who encroach on the area after the cut-off date are not entitled to any resettlement package. Improvements made to homes or additional structures added by existing residents after the cut-off date are also not eligible for compensation. The cut-off date could also be the date the project area was delineated, prior to

the census, provided that there has been an effective public dissemination of information on the area delineated to prevent further population influx and opportunistic investments/claims. The cut-off date for Mwache RAP 3 is 26<sup>th</sup> February, 2022. The cut-off date was publicly disclosed in the project areas and to all the PAHs. The disclosure was undertaken by the RAP Consultant teams and local administration officials from the Ministry of Interior and Co-ordination of citizens Affairs. The principle of the cut-off date was disclosed to the community prior to the detailed RAP field surveys. It was communicated to the affected communities during public meetings (barazas) and to individual PAHs during the fieldwork. They were clearly informed that persons moving to the project areas and those who may do further developments on their affected land after the cut-off date would not be entitled for compensation and that persons settling in the project area after the cut-off date may be subject to removal.

### 6.1.3 Category of PAH

The project identified the following categories of Project Affected People differentiated by the types of impacts:

#### **PAH Categorization**

- i. Land Owners
- ii. Land and Tree Owners
- iii. Land and Structure Owners
- iv. Loss of business income
- v. Graves
- vi. Land, Trees and Structure Owners

### 6.1.4 Entitlement Matrix

The Entitlement matrix establishes the specific rights and entitlements to replacement affected assets or provision of compensation and assistance. These rights are granted to any PAHs who will lose proven assets, as determined during the Cadastral, Asset and Valuation study. The RAP 3 Entitlement Matrix is similar to all the other previously prepared, approved and disclosed Mwache RAP Reports with exceptions to specific aspects related to PAPHs who were found to have encroached on public road reserve. The Entitlement Matrix establishes the specific rights per the type of loss, as well as differentiating the potential compensation entitlement granted to physically and/or economically displaced PAPHs.

Table 29: *Entitlement matrix*

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
1.	Dwelling structure used as primary residence	Rightful owners of the affected house and structures who choose to receive cash compensation for the affected houses	<p><b>Option 1:</b> Cash compensation for all structures at replacement cost, based on professional valuation.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative.</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period given to vacate as defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property and salvaged</p>	<p><b>Option 1:</b> Cash compensation to owners of affected structures that are either complete or incomplete. All structures must have been present within the project area at the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Monitoring mechanism at main stages of construction of dwelling units.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p>		
		<p>Rightful owners of the affected houses and structures who choose to have replacement houses/ structures replaced in kind (built by the Project)</p>	<p><b>Option 2:</b> Constructed in kind replacement house of size (measured floor area or number of rooms) at least equivalent to the PAH's pre-resettlement housing, with consideration of functional spatial use, at location of owner's own choice but within Kinango Subcounty. Choices of standardized replacement house design(s) offered to PAHs must comply with County Government building/ planning standards, take spatial and cultural function into consideration and comply with minimum standards of</p>	<p><b>Options 2 and 3:</b> PAPs who choose in kind replacement house and if the affected structure was present within the project area by the cut-off date and identified and verified through final asset and valuation by NLC.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All PAHs in this category must prove that the affected structure is their primary</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Transport to new place of abode for all movable assets as well as registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of construction of dwelling units.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>safety and allotments of space per occupant. Houses are to be constructed from durable wall and floor materials and with permanent roof. Houses will be considered complete when constructed as described above and fitted with lockable inner and outer doors and windows and connected with agreed services. Housing unit that meets minimum standards of safety, local housing codes and minimum allotment of space per HH member. will be provided to all PAHS who choose in-kind housing unit replacement regardless of the value of PAH's prior dwelling. If the PAHs prior dwelling was larger or of significant better quality or value than the basic units offered, the PAH can 1) agree with the MOWSI on optional housing plants/models; and/or 2)</p>	residence.	<p>Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>opt to receive the balance of the compensation in cash.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative.</p> <p>For PAHs who choose to have project build their houses, an agreement will be signed with the PAHs describing the house to be built, the location and the expected time of final relocation (in principle should not exceed 6 months)</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period given to vacate defined by the project schedule and prior to demolition.</p>		

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p>		
		<p>Rightful owners of the affected houses and structures who are on priority areas required by the contractors sooner than the project or the PAPS upon receipt of compensation money can construct permanent relocation homes</p>	<p><b>Option 3:</b> Provision of suitable temporary rented houses of equivalent functional spatial use to those affected and located within <b>defined radius/areas</b> until their permanent houses are complete. This is in addition to their rightful compensation for all affected assets under the RAP. They will use the temporary accommodation as residences until their relocation homes are constructed. The construction of the relocation homes will be monitored by the</p>	<p>All listed vulnerable PAPS and other PAPS who will be required to move out of the project priority areas to enable commencement of project construction activities as they construct permanent or replacement houses constructed for them at their own selected and acquired resettle land.</p> <p>Household level livelihood restoration plan as a condition of</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Assistance in identification of rental houses and negotiation of the monthly rent with the potential landlords if preferred.</p> <p>Execution of tenancy agreement for the rented houses between KWSCRP and the landlords if preferred option is renting</p> <p>Timely</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>project to ensure that steady progress is made and PAHs are able to relocate to permanent houses as quickly as possible.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced.</p> <p>For PAHs who choose to have the project build their houses, an agreement will be signed with the PAHs describing the house(s) to be built, the location and the expected time of final relocation (in principle should not exceed 6 months)</p> <p>PAHs choosing to build their own homes will, in principle relocate directly to their final relocation sites within an agreed time frame of not less than three months from the notice to vacate and receipt of compensation or as otherwise</p>	<p>compensation payment.</p> <p>All PAHs in this category must prove that the affected structure is their primary residence.</p>	<p>payment of monthly rent and utility bills for the period of time in temporary housing</p> <p>Transport to new place of abode for all movable assets as well as registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>agreed. Should the project require that they relocate sooner than the time they need to rebuild, the PAHs and the MOWSI will sign an agreement stipulating the amount of cash needed to build the home to be paid in advance of the move, identifying the new home site and establishing a maximum time at which the PAH expect to be ready to relocate permanently. The PAHs will receive the balance of their compensation upon final relocation.</p> <p>PAHs who will not be able to relocate directly to their new housing will also receive additional moving assistance and an additional subsistence allowance to compensate for any other verifiable costs of the transition (additional transport costs to work, inability to plant subsistence</p>		

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			crops, lost wages or other income, need for additional assistance of any kind).		
2.	Structures used for secondary purposes e.g. commercial/business structures	Rightful owners of the affected structures	<p>Cash compensation for all structures at replacement cost, based on professional valuation. Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period to vacate defined by the project schedule and prior to demolition.</p> <p>Compensation for loss of income for</p>	<p>Ownership established through final asset surveys.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Cash compensation to owners of affected structures that are either complete or incomplete</p> <p>All structures must have been present within the project area by the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p> <p>PAP must provide proof of business income generation at the affected structure and</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>three months or the period of the time actually required to re-establish the business elsewhere if greater 3 months' written notice to vacate the project area.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p> <p>Any other transitional costs such as extended storage, lost wages by other HH members, etc.</p>	<p>by the related business carried out at the structure through business records.</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/Registered Valuers</p>	
		Renter/Tenants	<p>Reimbursement for unexpired tenancy / lease period or the amount of deposit or advance paid by the tenant to the landlord or the remaining amount at the time of expropriation, or</p>	<p>Proof of a formal tenancy agreement for the occupancy of the affected houses has to be provided.</p> <p>In the absence of a formal agreement, a</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Business skills training and enlightenment on alternative</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>three months' rent, whichever is greater.</p> <p>Compensation for loss of income for the period of the time required to re-establish the business elsewhere: 3 - 6 months' income (or longer if justified)</p> <p>3 months' written notice to vacate the project area.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Any other transitional costs such as extended storage, lost wages, deposits and transaction fees, etc.</p>	<p>month rent receipt has to be provided.</p> <p>PAP must provide proof of business income generation at the affected structure and by the related business carried out at the structure through business records</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/Registered Valuers</p>	<p>income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Assistance in locating and negotiating replacement rental premises</p>
		Workers	Compensation for loss of income for three months or the period of the time actually required to find new employment opportunity elsewhere if greater.	Proof of income or minimum wage	Assistance to facilitate relocation with business owner or obtaining alternate employment
3.	Loss of business income/wages	Persons earning	Compensation for loss of income for	PAP must provide proof	Financial training for

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		livelihoods (income or wages) from affected assets such as stone quarrying and sand harvesting and running businesses in structures that will be affected	<p>three months or the period of the time actually required to re-establish the business elsewhere if greater</p> <p>3 months' written notice to vacate the project area.</p> <p>Taxes and fees, and registration costs for Registration of property to be paid for directly in the valuation</p> <p>Any other transitional costs such as extended storage, lost wages, etc.</p>	<p>of business income or wages generated from the affected resource and business</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/Registered Valuers.</p> <p>Workers will receive minimum wage.</p>	<p>the sustainable and prudent use of cash compensation</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Workers will receive assistance to facilitate moving with the business or obtaining similar employment</p>
4.	Sanitation facilities (Pit latrines & bath shelters).	Rightful owners of the affected structures (residential, commercial and other)	<p>Cash compensation for all structures at replacement cost, based on professional valuation.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Materials from the affected structure may be salvaged at the owner's expense</p>	<p>Cash option is available to owners of affected structures that are either complete or incomplete</p> <p>All structures must have been present within the project area by the cut-off date and identified and verified through final asset inventory and valuation</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Monitoring mechanism at main stages of resettlement.</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>within the notice period to vacate defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly</p>	<p>by NLC.</p> <p>NB: Owners already given a replacement house that already includes these facilities will not receive additional cash compensation.</p>	
5.	Moveable and other structures such as fences, livestock enclosures, and livestock water points, etc.	Rightful owners of the affected structures	<p>Cash compensation for all structures at replacement cost, based on professional valuation.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Materials may be salvaged at the owner's expense within the notice period to vacate defined by the project schedule and prior to</p>	<p>Cash compensation to owners of affected structures that are either complete or incomplete. All structures must have been present within the project area by the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Monitoring mechanism at main stages of resettlement.</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>demolition.</p> <p>Assistance with transport for their property (including livestock) and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Any other transitional costs such as extended storage, temporary shelter or higher costs of feed for livestock, etc.</p>		

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
6.	Land for Primary Residential land/plot – permanent loss	Registered owner or claimants of customary held land on which complete immovable housing structure is established for primary residence.	<p><b>Option 1:</b> Self-managed relocation (Cash compensation with relocation plans overseen)</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law</p>	<p>All PAHs in this category must prove that the affected land is their primary residence and either are PAHs who own other suitable resettlement land or have identified suitable resettlement land and have intention of buying it upon receipt of cash compensation (either through formal or traditional verification processes).</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>PAHs must give proof of ownership of other suitable parcel of land or a verifiable intention to enter into a binding/written sale agreement with a potential seller</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
					<p>of the suitable parcel of land before release of cash compensation.</p> <p>To ensure security of tenure to the resettled PAHs, the Legal Consultant will facilitate the execution of Sale Agreements between the sellers of land and the PAHs</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.</p>	

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p><b>Option 2:</b> Assisted relocation (Cash compensation held by project and land and structures identified and acquired by the project)</p> <p>RAP Implementation Consultant assist willing PAHs to identify suitable resettlement land whose value does not exceed compensation value of affected land and is within Kinango Subcounty. and to negotiate and conclude the sale agreements with sellers, transfer of cash to the sellers and successfully transfer of land ownership to the PAHs.</p> <p>Assistance in conveyancing and transferring title</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced.</p> <p>Taxes and fees,</p>	<p>All PAHs in this category must prove that the affected land is their primary residence (either through formal or traditional verification processes).</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All listed vulnerable PAHs and all PAHs who neither own other resettlement land nor have identified suitable resettlement land.</p> <p>This is the risky category of land PAHs who will require direct project intervention during RAP Implementation</p> <p>On community land (including the</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Transport and personnel to help PAHs in moving around the host communities' areas and to identify suitable land and negotiate with the potential land sellers.</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law</p>	Mwavumbo (Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.	counselling and liaison to the existing welfare support programs under the CSDO's office;
7.	Permanent loss of agricultural farming land	Registered owners or claimants of customary held lands	<p><b>Option 1:</b> Self-managed relocation (Cash compensation with relocation plans overseen)</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Assistance in conveyancing and transferring title</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration</p>	<p>PAPs must prove ownership (either through formal or traditional verification processes) at the time of NLC verification</p> <p>Acceptable Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Payment of compensation for lost assets and land made before displacement. PAHs must give proof of ownership of</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Agriculture and livestock development projects and support programs targeting the PAHs and host communities</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
				<p>costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law; Land Act (See chapter 6)</p>	<p>other suitable parcel of land or a verifiable intention to enter into a binding/ written sale agreement with a potential seller of the suitable parcel of land before release of cash compensation.</p> <p>To ensure security of tenure to the resettled PAHs, the Legal Consultant will facilitate the execution of Sala Agreements between the sellers of land and the PAHs.</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/ Registered Valuers</p>	<p>main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
					On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.	

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p><b>Option 2:</b> Assisted relocation (Cash compensation held by project and land and structures identified and acquired by the project)</p> <p>RAP Implementation Consultant assist willing PAHs to identify suitable resettlement land whose value does not exceed the total compensation and is within the defined project area and to negotiate and conclude the sale agreements with sellers, transfer of cash to the sellers and successfully transfer of land ownership to the PAHs.</p> <p>Assistance in conveyancing and transferring title.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established</p>	<p>PAHs must prove ownership (either through formal or traditional verification processes) at the time of final asset surveys.</p> <p>Acceptable Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Payment of compensation for lost assets and land made before displacement.</p> <p>All listed vulnerable PAHs and all PAHs who neither own other resettlement land nor have identified suitable resettlement land.</p> <p>This is the is also a risky category of land PAHs who will require direct project intervention</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Transport and personnel to help PAHs in moving around the host communities' areas and to identify suitable land and negotiate with the potential land sellers.</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			interests, including user rights, on community land will be compensated in accordance with Kenyan Law	during RAP Implementation On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.	through counselling and liaison to the existing welfare support programs under the CSDO's office; Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced
8	Annual Crops	Owners of crops on farm land	The project will make every effort to ensure land is taken after annual crops have been harvested. In such circumstances, no compensation for annual crops will be paid.  Where crops are planted as part of the regular farming cycle in the project area and land is required, prior to harvesting, Crop Owners receive:  Cash: damaged crops will be compensated in cash as mature	Crop owners identified through final asset surveys by NLC and verified by RAP IT	Financial training for the sustainable and prudent use of cash compensation  Household level livelihood restoration plan as a condition of compensation payment.  Agriculture and livestock development projects and support programs targeting the PAHs and host

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>crops at agreed rates determined annually based on replacement cost determined by Ministry of Agriculture based on market prices plus transaction costs</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p>		<p>communities</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p>
9	Perennial Crops (Including fruit and economically valuable trees)	Owners of crops on farm land	<p>Cash compensation based on replacement cost determined by Ministry of Agriculture and Kenya Forest Service for crops/ fruit trees and trees of economic/ medicinal value respectively based on market prices plus transaction costs</p> <p>Compensation according to defined growth stage or size categories. Statutory Disturbance Allowance of 15% of compensation amount.</p>	Crops or trees in place (rooted) at cut-off date and identified through final surveys by NLC and verified by the RAP IT	Household level livelihood restoration plan as a condition of compensation payment.
10	Loss of agricultural employment	Agricultural workers	Three months lost wages at documented level	Wage workers on agricultural parcels	Assistance to facilitate moving with

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			or minimum wage or actual work losses whichever is greater.		employer or obtaining similar employment
11	Vulnerable Support Program (Tailored)	All PAPs in the project area are considered vulnerable due to poverty and are hence entitled to livelihood restoration support. This category refers to PAHs with other forms of vulnerabilities which may require special consideration. Vulnerable individuals and families who may find it difficult to cope with the Transition e.g. the elderly (over 70 years old), physically challenged, those suffering from chronic illness; widows and children who are under 18 years	<p>Transitional hardship assistance program appropriate to specific cases and based on Project assessment, including: -</p> <p>Priority in physical mobilization and transfer to resettlement plot;</p> <p>A preference for in-kind compensation</p> <p>Assistance in the compensation payment procedure</p> <p>Resettlement near to kin and former neighbors to maintain informal support networks where feasible</p>	Identified through final census survey based on agreed vulnerability criteria relevant to Project.	<p>Special assisted transit to new land;</p> <p>Additional moving, loading and unloading assistance, if necessary;</p> <p>Other specific support related to moving process (e.g. medical assistance) identified by support case workers.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p> <p>Assistance</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
						<p>with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Follow up on orphans to make sure they identify and register in school upon relocation. The Persons with Disability (PWD) and those HIV affected access support services in areas of new settlement.</p> <p>Widows, orphans and affected vulnerable persons to be assisted through local administration and family for issuance of land registration documents;</p> <p>Relocation of the widows, orphans and vulnerable persons to be</p>

#		Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
						<p>facilitated and receive adequate notice to relocate</p> <p>Assist and monitor orphans to make sure that these children get back to school in case of relocation and ensure they are compensated</p> <p>The vulnerable such as mentally sick, people with disabilities, aged, chronically ill to access information and opportunities</p> <p>Monitor the resettlement of the vulnerable e.g. orphans to make sure they gain school transfers; the HIV affected and chronically ill have access to medication and the persons with disability are locally</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
					registered with APDK office.
12	Graves/ cemetaries	Family and community members	<p>Complete relocation of graves (exhumation, transportation and reburial) to designated cemetery around the project area or at the PAPs resettlement land as per individual preference</p> <p>Cash compensation at a rate/ grave that is determined by NLC in consultation with the PAHs and project staff. This cash is meant to assist the affected PAHs and communities to conduct customary ceremonies during the relocation of graves. This was specifically requested by the PAPS at various consultation forums.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p>	<p>Familiar graves identified during asset inventory and/or confirmed through the Cultural Heritage survey.</p> <p>Unmarked graves identified through chance-find do not qualify for ceremonial assistance and will be dealt with in accordance with the Chance Finds Procedure in the Cultural Heritage Management Plan.</p>	Contractors equipment/ excavator to relocate the graves when requested by the PAPs or community members

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
13	Non-land owners	PAHs who are informal occupants that will lose their main residential structures constructed on land that they have no legal claim on	Legal land owners of the land they occupy to share the replacement land with them so that they can build new residential structures on the land and resettle	These are relatives of the legal land owners on whose land they have been allowed to build the structures and cultivate crops/trees but they have not been given legal entitlement to the land	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level.</p>

## VALUATION METHODS

---

The valuation methodology is summarized in this section.

### 6.1.5 Valuation Process for Land and other Assets

---

The impacts that will arise from the construction of Mwache Dam access roads includes:

- Loss of land;
- Loss of trees;
- Loss of residential structures and business structures
- Loss of graves
- Loss of business income

This RAP report therefore requires compensation for loss of all assets at full replacement cost in accordance with OP. 4.12.

#### 6.1.5.1 Land - Market Research and Valuation

---

To help establish the replacement cost, the valuation team carried out market research for land, structures, crops and trees in Kwale County before commencement of valuation exercise. This exercise was primarily aimed at attaining relevant and reliable information about market transactions within and near the project area. The valuation team carried out research to elicit comparable value for land within and near the project area. The exercise was carried out together with the market research for crops and trees.

#### 6.1.5.2 Land Market Research - Objectives

---

The exercise was mainly aimed at attaining relevant reliable information about market transactions for the land within and near the project area. The collected information informed the valuation of the affected land at the comparison method.

#### 6.1.5.3 Land Market Research - Target PAPs

---

The market research exercise targeted the different land owners in the affected villages. It also targeted key informants such as the village elders, Land Office in Kwale County, legal land conveyance firms in Kwale who have knowledge of land transactions by virtue of work. Some PAPs who were affected by RAP 1 and RAP 2 also gave an account on how compensation rates are arrived at by NLC.

#### 6.1.5.4 Valuation of land using Comparison Method

---

Comparable sales method has been adopted for valuing the affected land. This is based on the open market comparison of the land to be valued with what other similar parcels of land are

currently selling for in the area but considering the differences between them. The comparability of the land is based on the use, location, site conditions and income related factors.

#### 6.1.6 Valuation of structures using current replacement approach

The valuation team together with a quantity surveyor conducted research on the different types of structures in the project area. The exercise was conducted in September 2017.

**Objectives:** The main objective of the research was to obtain reliable information about the construction cost for the different structures to enable the development of Bills of Quantities (BoQs) for the respective structures.

**Geographic scope:** The market research was conducted within the Project area in Kinango Sub County. The team extended the research outside the project area so as to obtain the market prices of the different construction materials. The information collected from the market research on the different categories of structures has informed the development of their respective Bills of Quantities (BoQ) which also includes the detailed build-up of the BoQs which have been used in the establishment of the replacement cost of the structures by the valuation team.

To establish the replacement cost, the coordinates, type of structure, construction details, built up areas, accommodation details, and occupancy status of the different structures were recorded during the data collection phase. This was aimed at establishing the replacement cost of the different structures for compensation purposes. Due to limited reliable market information within and near the Project Area, a Sales Comparison approach could not be applied in the valuation of the affected structures. As a result, the structures have been valued based on the 'reproduction cost' i.e. the cost of reconstructing an identical structure by using the same materials and design at the time of appraisal without depreciation.

#### 6.1.7 Replacement Cost Valuation of Trees

The emphasis was to ensure full replacement cost. For trees affected, the valuation adopted the local KFS (Kenya Forestry Services) rates, considering the age factor for trees.

#### 6.1.8 Valuation of graves

During public consultations, the loss of graves and burial sites were an important concern of affected people. They requested that traditional ceremonies be performed for each burial site and the costs shall include:

- (i) Foodstuffs for feeding the mourners (bull, two goats, chicken, rice);
- (ii) Exhumation and reburial costs
- (iii) Government documentation for exhumation including official certificate
- (iv) Transportation
- (v) Bereavement fee
- (vi) Hiring of tents, chairs and utensils

The PAPs also requested that compensation be made for graves. Graves have been valued and shall be compensated at an amount that shall take care of all the costs.

### **7.2.5 Valuation for business income**

Valuation for Loss of Business Incomes equivalent to three months' incomes / wages in case of permanent closure. (Loss of trade / livelihood / occupation or business incomes) and until livelihood restoration plan is implemented and livelihoods/income are fully restored.

---

## **7 COMPENSATION PACKAGES**

---

All the PAPs under RAP 3 shall be compensated in cash for the affected assets which include land, structures, trees and graves. NLC shall value the affected assets and pay for them at full replacement cost. Only small portions of land shall be acquired from the affected households for the construction of the roads. The government has no intention of buying replacement land for any PAP as there are no widespread land acquisition impacts under RAP 3. During the public consultations, it was clear that all the PAPs prefer cash compensation as is the case with RAP 1a, 1b and 2.

### **LOSS OF RESIDENTIAL LAND**

---

Households which will be losing residential land (that is land with a structure recorded as residence on the land) are eligible to cash compensation at replacement value as per the Entitlement Matrix. However, this RAP notes that not all PAHs can lay legal claim over the land they occupy and use. These PAHs are mainly adult sons of the registered owner who are still residing on land owned by their father within a homestead and who are yet to be formally transferred to the land that they occupy and use. This is the case where freehold land title has been issued to the registered owner without recognized user rights identified against those titles. This category of household therefore has claim over primary residential structures and trees but remain constrained in legally claiming the land they occupy. They remain at the mercy of the legal title holders on whose land they reside and use through customary inheritance. However, experience with the ongoing Mwache RAP 1 implementation has shown that there exist local and administrative means to enforce these rights. The family members are expected to reach an agreement on how to share the land compensation cash between the parents who are the registered land owners and the sons and other relatives who do not have legal ownership under Kenyan laws.

### **LOSS OF FARMLAND**

---

Households which will be losing farmland (i.e. without structures on it) are eligible for cash compensation at replacement value as per the entitlement matrix. Transitional support will be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.

## **LOSS OF RESIDENTIAL STRUCTURES**

---

All primary residential structures are located on land that is split into 2 parts i.e. residential and agricultural. Land use in the project affected area is also split into 2 uses where a portion of the parcel of land is used for residential purposes (homestead with primary residential structures) and the remaining portion (often the largest) serving as agricultural land. The project will give PAPs with an affected primary residence cash compensation at replacement cost as required by OP. 4.12.

## **LOSS BUSINESS STRUCTURES AND BUSINESS INCOME**

---

A total of 217 structures from 213 PAHs are affected by the project, out of which 21 are commercial structure meaning that the affected PAHs will lose business income. The project will give PAPs with an affected business structures cash compensation at replacement cost as required by OP. 4.12. Loss of income and business opportunities shall also be computed and included in the compensation package. Loss of business income shall be calculated for three months

## **LOSS OF GRAVES BURIAL SITES AND SACRED SITES**

---

At the same time, 18 graves located within parcels belonging to 10 PAHs are affected. Where the project will disturb graves and sacred sites, the project will make provisions for either the physical or symbolic relocation of graves or sacred sites. The compensation for the loss of graves will be in cash.

## **LOSS OF TREES**

---

Trees shall be compensated as per the rates provided by the KFS. Trees shall be compensated in cash.

## **SPECIAL MEASURES FOR VULNERABLE HOUSEHOLDS DURING COMPENSATION PROCESS**

---

The vulnerable groups of persons affected by the project are **35**. Those identified included elderly, physically challenged; those suffering from chronic illnesses, orphans and widows. They shall be supported by the RAP Implementation Consultant to be well prepared with necessary mandatory documents and facilitated during their interaction and engagement with NLC teams during the various pre-compensation land acquisition processes including interpretation of their compensation awards and eventually secure their compensation packages in a timely manner. In addition, the widows will need extra support in terms of land succession making sure they are not disinherited.

Different Livelihood Restoration Programmes (LRP) are proposed in this RAP to be implemented by MOWSI with the assistance of relevant government agencies and the local community leadership. LRP will include in-kind support given to PAPs in addition to the compensation they will receive from NLC for loss of their physical assets and loss of income and livelihood streams. LRP is aligned with existing resources, knowledge, skills and household experiences. All PAPs are eligible for LRP support because their livelihood is mainly agriculture-based with 25% of the PAPs operating business enterprises. Financial training is very critical particularly for the many PAPs who are operating businesses enterprises in areas affected by the roads. Secondly, all the PAPs shall receive cash compensation for their affected assets and need to be trained prior to receiving the cash. The LRP shall be implemented for a period of two years as most PAPs are not relocating to new parcels of lands. There will be minimal disruption of their livelihoods. Rap Implementation Consultant for RAP 3 is to be procured by the MOWSI.

The LRP has various elements:

- i. Agricultural capacity enhancement / Land based livelihood support;
- ii. Business Enterprise Development
- iii. Financial management training

The cost estimate for LRP is **Ksh 15,000,000**. This cost estimate is over and above the compensation budget.

**Table 30: Livelihood Support Cost Estimate**

<b>Activity / Description</b>	<b>Budget Estimate (KES)</b>
Agricultural Capacity Enhancement	10,000,000
Training on Financial Management, business development, farming	5,000,000.00
<b>Total</b>	<b>15,000,000.00</b>

---

## 9 GRIEVANCE REDRESS MECHANISM

---

Grievance redress mechanisms are necessary avenues for allowing project affected persons to voice concerns about the resettlement and compensation process as they arise and, if necessary, for corrective action to be taken promptly. Such mechanisms are important to achieve transparency in the land acquisition and resettlement processes. Arising from the above observations, the Consultant proposes that all the grievances be addressed before commencing construction.

A well-defined Grievance Redress Mechanism that provides the PAPs with an avenue of lodging complaints and concerns and receiving quick/timely response is critical. Grievance mechanisms are important to the resettlement process as they allow for RAP implementers to identify disputes in good time and allow for them to be resolved in a transparent and accountable manner. Compensation based disputes are issues also likely to occur during and after the RAP implementation program, hence it is critical to establish this system prior to implementation of the resettlement program. Lack of perceived transparency may lead to feelings of mistrust and misinformed judgements on both sides. A well established and validated grievance mechanism can also promote good relations between the project proponent and the affected community thus reducing the risk of hostilities and delays on the construction program, both before and after the contractor takes possession of the site.

### ***Subject Matter of Grievances / Expected Grievances***

The PAPs may have grievances on the value of compensation for land, movable and immovable assets, crops, human and livestock disturbance. Other grievances may arise from the loss of livelihood, disconnection of streams of income and reduction of earning capacity due to the relocation. Considering the nature of resettlement and as informed by the findings of the field studies, the type of grievances that may arise include:

- (i) Grievances on the value of compensation for land, movable and immovable assets, crops.
- (ii) Grievances between two PAPs from the same family (nuclear and extended). During the FGDs under this RAP study, the youth noted that there are some families where issues of succession have not been clearly resolved. Such situations among the PAPs may result in family feuds over who should receive compensation on behalf of the affected family;
- (iii) Grievance between two PAPs from different families;
- (iv) Grievance between PAPs and the RAP implementers. Grievances between PAPs and RAP implementers may arise if PAPs feel they are not adequately involved in the implementation process.
- (v) Grievances may arise from the loss of livelihood, disconnection of streams of income and reduction of earning capacity due to the relocation;
- (vi) Lack of appropriate timeframe for relocation;
- (vii) Livelihood restoration program packages.

The project already has a GRM which is being used to implement RAP 1a, 1b and Rap 2. This RAP 3 adopts the existing GRM for Mwache dam but the scope shall be expanded to include

representation for PAPs affected by Mwache dam access roads. The objective of RAP Grievance Redress Management (GRM) is to provide a set of clear and traceable procedures by which any grievance arising from or in connection with this RAP can be reported by an affected person/household, and then heard and resolved mainly through an informal, alternate dispute resolution process that is consistent with best practice and the requirements of OP. 4.12. before pursuing legal formal justice (judicial process). Judicial process still remains the right of every affected person/household in this RAP.

### **NEED FOR GRIEVANCE REDRESS MECHANISM**

The Grievance Redress Mechanism involves formation or operationalizing of Grievance Redress and Resettlement Committees. The main objective is to provide a step-by-step process of registering and addressing the grievances. It is expected that this mechanism will ensure redress of disputes through participative process. An effective mechanism to redress grievances requires:

- that grievances do not linger on and become contentious issues between project authorities and the affected community and result in opposition to the project;
- PAHs and the overall community appreciate efforts by the project authorities to reach out to hear concerns, proactively address and resolve issues; and
- PAHs particularly demonstrate willingness to support and benefit from the implementation of proposed mitigation measures.

### **ESSENTIALS IN GRIEVANCE REDRESS**

- Acknowledge dissatisfaction: Accept that the displacement due to a development shall generate grievances, rather than ignore or turn away
- Effective listening: Careful listening to elicit information regarding the grievance shall help to accurately define the problem
- Separate facts from fiction: Ask for facts and record it (preferably by the PAH himself). If illiterate, provide support as necessary;

- Quick turn-around: Take optimum time to analyse ascertain and decide and finally communicate the decision to the PAP. Keep communicating with PAHs in case of delays
- Follow-up: If decision requires a follow up action, take it soonest to instill confidence in the PAP regarding the grievance mechanisms and process
- Grievances will be recorded by using a Grievance Form (in local language, also available in Kiswahili and English). Grievance forms will be available for recording complaints and will contain details regarding the grievance as well as the name and address of the applicant, application date, type of application and the name of the persons receiving the grievance. The forms will be logged in a register where they will be tracked through to a suitable resolution. Grievances can be submitted orally (and will be recorded) or in written form;

### **GRIEVANCE REDRESS MECHANISM PLAYERS**

---

The key players in the grievance redressal process are among others:

- PAHs themselves
- Influential persons in the project affected village (could be non-PAHs)
- Kwale County Government
- National Government
- KWSCR/MOWSI
- Coast Development Authority
- National Land Commission
- Environment and Land Court

### **PRINCIPLES OF GRIEVANCE REDRESS MECHANISM**

---

Principles in formulation of effective grievance mechanism are that the mechanism is:

- Devised keeping in mind the socio-cultural setting such as making use of village elders too in resolution of disputes;
- Take cognizance of impacts on female PAHs and ensures their adequate representation;
- Is independent of the implementing agencies to allow affected individuals to voice concerns and seek redressal;
- Is accessible and is well-supported by an effective information dissemination mechanism to prevent occurrence of a grievance in the first place due to lack of information;
- Is timely and responsive i.e. its recommendation and decisions are implemented by the project authorities; and
- Is transparent

The Grievance Mechanism provides affected parties with a mechanism to express any issues and problems that they may have with the compensation and resettlement process for the Project in a way, which is free of cost and without retribution. Affected parties will also have ultimate recourse to the courts in accordance with the provisions of Kenyan law. To ensure that the basic rights and interests of project affected people are protected, that their

concerns are adequately addressed and that entitlements are delivered, a grievance procedure is outlined below.

## **GRIEVANCE MANAGEMENT LEVELS AND ROLES**

---

A five (5) level grievance management is provided for in this RAP to ensure amicable review and settlement of grievances. The roles will include among others the following:

- Help ensure that local concerns raised by PAHs as regards resettlement and compensation are promptly addressed.
- Resolve manageable disputes that may arise relating to resettlement and compensation process. If it is unable to resolve, help refer such grievances to the next level as described in the grievance redress mechanism.
- Ensure that the concerns of vulnerable persons such as the disabled, widowed women, orphaned children affected by the sub project are addressed.
- Report, refer, follow up and resolve complaints for all PAHs
- Facilitate conflict resolution and addressing grievances;

### **9.1.1 First Level: Elders Land Disputes Resolution Committee**

**Mandate:** To be the primary recipients and resolution focal points of land and resettlement related grievances/ disputes from PAPs and other local stakeholders.

The Duruma community is deeply traditional and observes a historical way of life based on clanism. Duruma are part of the Mijikenda and comprise of 14 clans who are guided by Council of Elders. The Council of Elders is a supreme body that plays a significant role among the Duruma and is respected. They have the mandate to resolve conflicts including land related conflicts; natural resources related conflict e.g., pasture; interclan conflicts; among others. The Council of Elders also presides over rites of passage including circumcision, marriage rights among others.

Council of Elders decisions are strongly respected. In case a person defies their decision, the person will be fined and/or banned from attending any social functions e.g., burials, marriages or any other function that brings the community together. The person may be excommunicated from the community.

The Elders Land Disputes Resolution Committee will be composed of people of good reputation and who have knowledge of customs and culture of the Duruma. Each of the two clans i.e., Arima and Amwezi constitute their individual council independent of the other. These two separate councils can only congregate together during a major occurrence that affects all the Duruma.

Council members are not elected, as long as one has a good reputation in the society and is regarded as impartial then he is welcomed in the council. Women were traditionally not part of the council but have over the years broken this norm and become members as witnessed in the ongoing RAP 1 implementation process. There is no term limit in being a council member, one

serves until they are too old and retire on their own volition or when they die. The other way to be removed a member from the council is if a person's reputation becomes negative, then the council members will not involve them in council matters. The person may not be formally informed that he is no longer a council member, but will not be informed of meetings and decisions made, basically he is sidelined.

This RAP prefers the first level of grievance or conflict redress on land related issues as a result of this project to be handled by the Council of Elders as an organ that has as part of Duruma culture been handling land related disputes.

In the current RAP 1 implementation process, women have been found to make impartial, dependable and decisive council members and indeed chairpersons of certain GRCs. Some First level GRCs that are led by women have been very active and hence important support in grievance resolution. At the onset of the RAP implementation process, all the GRC Members including those at this level will be trained and equipped with tools and skills to hear, record, determine and communicate their resolutions to the RAP Implementation Consultant. Grievances not resolved by the Council of Elders will be taken to the second level. A record of any/all grievances received and handled will be kept at all phases of the implementation process.

#### **9.1.2 Second Level: Sub Location Grievance Redress Committees (SLEGRC)**

**Mandate:** Addressing resettlement grievances raised by PAPs and other local stakeholders at sub-location level or as received from Elders Land Disputes Resolution Committee.

The SLRGRC will be formed in each of the affected sub-location (6 committees). The Assistant Chiefs and the Village Administrators will be members of each SLRGRC in his sublocation/villages and will be responsible of escalating any matter that cannot be resolved at the sub location/village level to the Chief of his location and the Ward Administrator respectively for their further attention and resolution.

Composition of the member is as follows:

1. Assistant chief
2. Village Administrator
3. Village Elders
4. One project affected youth,
5. One project affected woman,
6. One project affected male
7. A representative of vulnerable PAHs,
8. CDA Social Development Expert
9. KWSCRCP Coast Region PIU Social Specialist
10. Contractor's Social Expert
11. RAP Implementation Consultant RAP Expert
12. Project affected representative of the business community
13. Project affected representative from a religious institution

### 9.1.3 Third Level: Kinango Sub-County Grievance Redress Committee (SCRGRC)

**Mandate:** Addressing resettlement grievances unresolved by the SLRGRC, which have been escalated by PAPs

The SCRGRC will be formed at Kinango Sub-County level only (1 committee). It will not deal with any new grievance directly from any aggrieved party but will handle referred grievances; heard and handed down from the 6 sub locational level committees.

Composition of the member is as follows:

1. Deputy County Commissioner Kinango
2. Assistant County Commissioner, Kasemeni/Mwavumbo Wards
3. Sub-County Administrator
4. County Surveyor
5. County Land adjudication officer
6. One project affected Vulnerable PAH
7. Representative from a CBO
8. Representative from an NGO
9. Representative from a Religious Institution
10. KWSCRCP Coast Region PIU Social Specialist
11. CDA Social Development Expert
12. RAP Implementation Consultant RAP Expert
13. NPMU Social Safeguard Specialist

### 9.1.4 Fourth Level: County Arbitration Committee

**Mandate:** Addressing resettlement grievances unresolved by the SCRGRC. The committee will be formed when need arises.

Composition of the member is as follows:

1. County representative
2. National Government representative
3. County Legal Officer
4. KWSCRCP Coast Region PIU Social Specialist
5. NLC County Co-ordinator
6. CDA Social Development Expert
7. RAP Implementation Consultant RAP Expert
8. PMU Social Safeguard Specialist

### 9.1.5 Fifth Level: Resort to Justice

The Environment and Land Court provides the avenue for legal recourse for aggrieved persons and will be the final level for grievances unresolved.

#### **APPOINTMENT OF GRIEVANCE REDRESS AND COMMITTEE MEMBERS**

Membership to committees will be elected by each category of PAHs except the assistant chiefs' locational chiefs, sub county administrators, county administrators, contractors, Mwache Dam PIU who will be automatic members of the team by virtue of their positions. Each committee will elect their chairperson and a secretary. The members of the GRCCs will be appointed through an election process with all the affected PAHs in the project area participating. Mwache Dam PIU and the local administration including national and county government will facilitate the elections. The GRCCs will be constituted/established following the approval of the RAP by the client and World Bank.

#### **GRIEVANCE REDRESS AND COMPENSATION COMMITTEE MEMBERS REMUNERATION**

All the members of the GRCCs established at the different levels will perform their duties on a voluntary basis. There will be no remuneration other than costs associated with transport, communication, meals and sitting allowance.

The financial rates for the above costs will be decided upon jointly between KWSCRP and committee members. This RAP has included a budget estimate for the associated cost under the RAP implementation budget line item (administration costs). Similarly, the terms of the GRCCs will be decided upon through joint consultations between KWSCRP and the GRCCs.

#### **CAPACITY-BUILDING FOR GRIEVANCE OFFICER AND GRIEVANCE COMMITTEE**

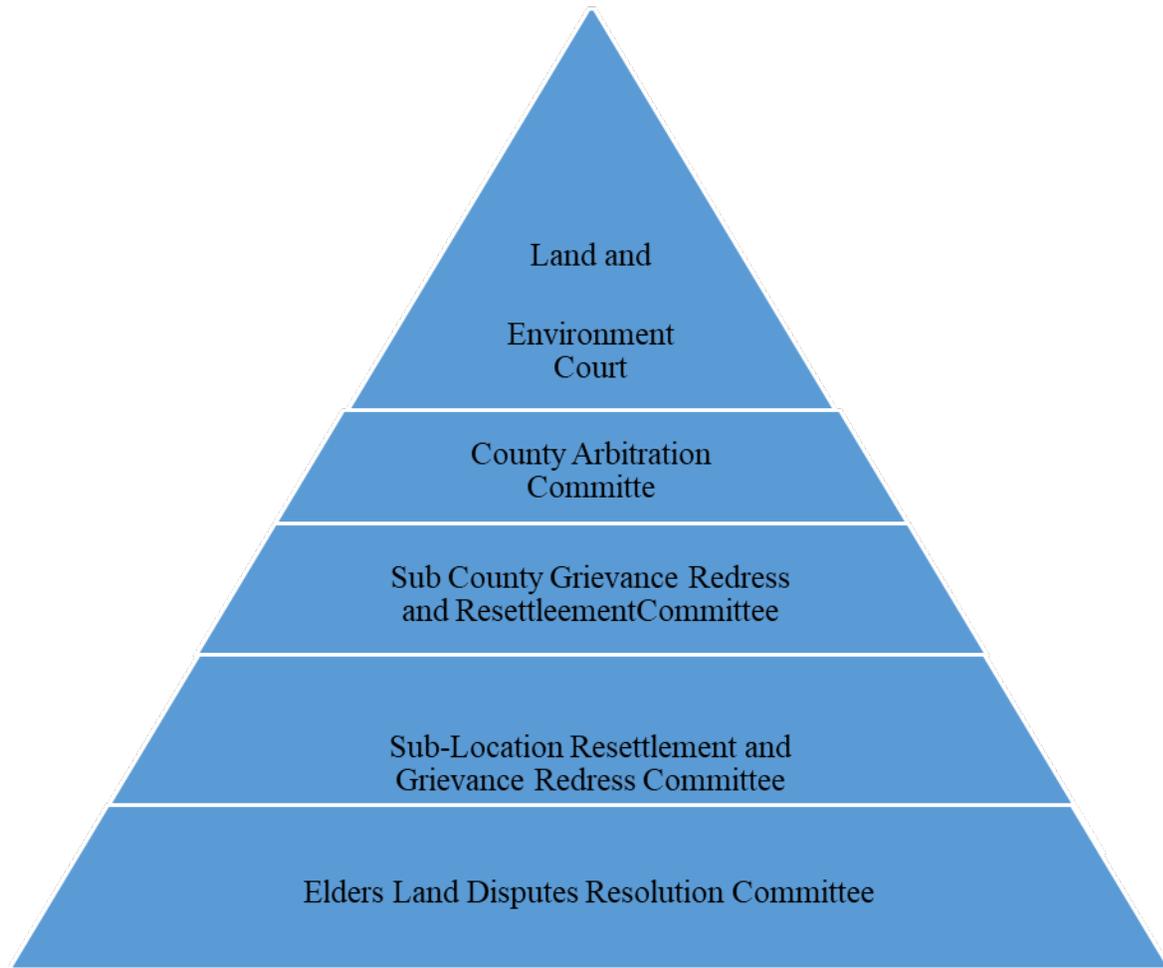
The Grievance Committee members will also need to be oriented to the grievance management system suggested in the RAP as adopted from the RPF. The capacities of the Grievance Committee members will also need to be built around issues of conflict identification, conflict information analysis and conflict resolution as provided for in the land legislation. KWSCRP/NPMU and the RAP Implementation Consultant will design capacity building materials and will conduct training for the grievance redress committee members.

#### **NATIONAL LAND COMMISSION**

The NLC has a grievance redress process mainly triggered at the time of award of compensation following public hearings. If a PAP is dissatisfied with the awards given by NLC, they have a right to appeal and NLC would look into the matter and determine justification. In the event that a PAP is not satisfied with the appeal made to NLC and the resolution thereof, then dispute is resolved by resorting to the legal justice system where PAP could go to the land and environment court.

#### **GRIEVANCE REDRESS HIERARCHY**

The hierarchy and relationship of the various GRRC are depicted in the below. PAHs can resort to the justice system at any time without passing through any of the described GRRC.



*Figure 20: Pyramid showing the various grievance resolution pathways*

#### **GRIEVANCE REGISTRATION AND MONITORING**

---

The grievance mechanism shall be accessible to all affected parties, including vulnerable people. A Project grievance register and formalised grievance process will be developed and implemented for all RAPs developed. The process is structured according to recommended good practice, as described above and will comprise the following steps.

Table 30: *Grievance Mechanism Steps*

Steps	Description of Steps
<p><b>Step 1: Establishing and Publicizing Grievance Management Procedure.</b></p>	<p>The grievance procedure needs to be available and accessible to all affected communities and therefore once established will need to be publicized and communicated within Project Affected Households.</p> <p>Consultation on the workings of the procedure will take place with communities and stakeholders at village, sub county and county across the Area of Influence (AoI) and with institutions in selected locations in the AoI.</p> <p>A range of different approaches will be used for this communication as deemed appropriate, including face to face meetings and group (e.g. village) meetings.</p> <p>In addition, information materials such as a brochure or flyer, describing the process will be produced and distributed by hand and via posting in publicly accessible locations in the Project AoI.</p> <p>The contact details of the Operator’s Project Community Liaison Officer (CLO) and Grievance Officer (GO), secretary of sub location, ward, sub county and county level Grievance Redress Committee will be provided clearly on this notice as the key points of contact for receiving grievances.</p>
<p><b>Step 2: Receive and Track Grievances</b></p>	<p>Grievances can be submitted in writing, telephonically, email, mail, SMS, webpage, or face-to-face/presented verbally to the Project CLO or Grievance Officer or secretary of sub location, sub county and county level Grievance Redress Committee. The uptake channels will be publicized and advertised via local media, the operator, and secretary of ward, sub location, sub county and county level Grievance Redress Committee.</p> <p>Grievances shall be made in local language, in Kiswahili or English.</p> <p>All grievances shall be logged using a Grievance Form. The operator/proponent will log, document and track all grievances within a Grievance register to be managed and updated by the Grievance Officer with oversight from the Project CLO and secretary of ward, sub location, sub county and county level Grievance Redress Committee.</p> <p>This RAP has developed a series of sample forms to be used for recording grievances and the actions taken (list below) and provided in annex: viii.</p> <ul style="list-style-type: none"> <li>• Grievance Statement Form.</li> <li>• Grievance Receipt Acknowledgement Form.</li> <li>• Grievance Investigation Form.</li> <li>• Grievance Investigation Outcome Form.</li> </ul> <p>The database shall be monitored regularly for recurring grievances so that appropriate standardized mitigation can be developed. The following</p>

Steps	Description of Steps
	<p>information shall be recorded for each grievance:</p> <p><b>Grievance case number;</b>  Complainant’s name and contact details</p> <ul style="list-style-type: none"> <li>• Date of complaint;</li> <li>• Name and contact details are necessary for interaction around the resolution of the grievance.</li> </ul> <p>Anonymous submissions will be permitted, but the party submitting should understand that direct response will not be possible.</p> <p><b>Details of complaint;</b></p> <ul style="list-style-type: none"> <li>• History of other complaints / queries / questions (if known);</li> <li>• Resolutions discussed and agreed with the party(ies) in question;</li> <li>• Actions implemented (including dates) and;</li> <li>• Outcome of the actions implemented. For complaints in person, typically the responsible sponsor staff (CLO, GO or secretary of sub location, ward, sub county and county level Grievance Redress Committee.) shall either complete himself or help the complainant with the completion of a feedback form. For complaints by phone, sponsors staff shall register the complaint themselves using the feedback format.</li> </ul>
<p><b>Step 3. Acknowledging Receipt of a Grievance</b></p>	<p>The sponsor shall formally acknowledge receipt of any grievance as soon as possible, and within a standardised time period.</p> <p>An initial response should be provided not more than (5) five days from the date it was submitted and shall inform the complainant about the timeframe in which a response can be expected.</p> <p>A full response should then be provided no later than a month from receipt and acknowledgment of the grievance. The acknowledgement must be sent in written form although it can be anticipated by phone depending upon the complainant.</p> <p>The process of acknowledgement shall include responding to the complainant, using appropriate communication channels, about the following issues: -</p> <ul style="list-style-type: none"> <li>• Explaining next steps;</li> <li>• Providing a target date for resolution of the issue or, if necessary, the full response to the feedback; ideally, acknowledgment of a grievance to the complainant should include the name of the person assigned to resolve the issue.</li> </ul>
<p><b>Step 4: Investigate Grievances: -</b></p>	<p>Operator/proponent and relevant grievance redress committees will investigate fully all grievances submitted, and where necessary will involve other departments, contractors and senior management in the process in order to fully understand the circumstances that led to the grievance being raised.</p> <p>This investigation should be performed in a timely manner to avoid</p>

Steps	Description of Steps
	<p>delaying the resolution of a grievance. Project will aim to resolve any grievances within 30 days from the date that of receipt. This timeframe can be extended to 90 days for more complex grievances, if required.</p> <p>The following steps shall be performed as part of an investigation to avoid delaying resolution of a grievance:-</p> <ul style="list-style-type: none"> <li>• Obtain as much information as possible from the person who received the complaint, as well as from the complainant to gain a first-hand understanding of the grievance. In addition, an appropriate liaison official (CLO, GO and members of grievance redress and resettlement committees,) must be present during any interactions with the stakeholder registering a grievance.</li> <li>• Undertake a site visit, if required, to clarify the parties and issues involved. Gather the views of other stakeholders, if necessary and identify initial options for settlement that parties have considered.</li> <li>• Determine whether the grievance is eligible for consideration and valid.</li> <li>• Eligible grievances include all those that are directly or indirectly related to the Project and that fall within the scope of the Grievance Mechanism as outlined above.</li> <li>• Ineligible complaints may include those that are clearly not related to the Project or its contractors’ activities, whose issues fall outside the scope of the Grievance Mechanism procedure or where other community procedures would be more appropriate to address the grievance.</li> <li>• If the grievance is deemed ineligible it can be rejected however a full explanation as to the reasons for this must be given to the complainant and recorded in the Grievance Database.</li> <li>• If the grievance is eligible, its risk level should be determined using the significance criteria. This will help to determine whether the grievance can be resolved immediately or requires further investigation and whether senior management will need to be informed of the grievance.</li> <li>• If the grievance concerns physical damage, (e.g. fishing boat, crop, house, community asset) a photograph should be taken of the damage and its exact location recorded the as accurately as possible.</li> <li>• Inform the complainant of the expected timeframe for resolution of the grievance.</li> </ul>

Steps	Description of Steps
<p><b>Step 5: Respond, Resolve and Close Out: -</b></p>	<ul style="list-style-type: none"> <li>• Enter the findings of the investigation in the Grievance Database.</li> </ul> <p>A response should be provided to the complainant in all cases, by the CLO or secretary of sub location, ward, sub county and county level Grievance Redress Committee.). This may only consist in a simple clarification of a technical issue.</p> <p>Responses can be either oral or written, depending on whether the grievance was received orally or in writing.</p> <p><b>Ineligible Claims:-</b> If a claim is rejected as ineligible (not considered to be related to sponsor or its contractor’s activities) or without basis the and the response is that the grievance does not require action by the operator to resolve it, it should still be documented and included in system for grievance tracking for further reference. The message that the Project does not intend to provide a response, should be handled sensitively to the complainant.</p> <p><b>Eligible Claims Preliminary Response.</b> In the case of all eligible complaints, project will provide an initial response within a stipulated period of time and propose the next steps and actions for resolution. The CLO/GO or secretary of sub location, ward, sub county and county level Grievance Redress Committee.) will then communicate the results of the assessment and the status of their claim to the complainant.</p> <p><b>Final Response: -</b> This response should provide clear information on the proposed final corrective action and detail any related commitments made by both parties. It should obtain the written agreement of the complainant. If the complainant is not happy with the proposal, they should be free to seek resolution through a formal external dispute resolution mechanism.</p> <p><b>Appeal Process: -</b> The grievance process will include an appeal process with the involvement of third parties to mediate in cases where no agreement is reached to the satisfaction of the affected person. If deemed necessary this may include forming a grievance committee with participation of local representatives and involving a third party in the process of grievance resolution.</p> <p>The mechanism will not impede access to judicial or administrative systems.</p> <p><b>Close out: -</b> A complaint is closed out when no further action can be or needs to be taken. When closing out, it is important to ensure full proof of close out based on fully documented evidence of the resolution process including:</p> <ul style="list-style-type: none"> <li>• Written internal record internally, with the date and time it took place,</li> </ul>

Steps	Description of Steps
	<p>and sign off by responsible staff sign off;</p> <ul style="list-style-type: none"> <li>• Photographs if relevant documenting the resolution; and</li> <li>• Written confirmation of the complainants’ agreement with the resolution.</li> </ul> <p>The final close out status of the complaint e.g. open (under investigation), resolved (resolution has been agreed), unresolved (not possible to reach an agreed resolution and case has gone to external dispute resolution), abandoned (complaints where the complainant is not contactable after a certain period and complaint becomes null and void), must be recorded in the Grievance Register.</p> <p>Closure of a grievance does not automatically mean that the complainant is satisfied with the action taken (i.e. in cases where a complaint is not justified). Closure means that the complainant agrees that action has been taken by operator to address the grievance without being necessarily satisfied with the outcome.</p> <p>These committees will seek to resolve PAPs issues quickly in order to expedite the receipt of entitlements, without resorting to expensive and time-consuming legal process in the Environment and Land Court that may delay the implementation of project. Appeals to the court will only be occasioned if the grievance procedure fails to provide a result.</p>
<p><b>Step 6:</b> <b>Monitor, Report and Evaluate</b></p>	<p>Operator will monitor grievances routinely as part of the broader management of the Project. This entails good record keeping of complaints raised throughout the life of the construction and operation of the Project.</p> <p>On receipt of grievances, electronic notification to management must be distributed. Grievance records must be made available to management at all times. Monthly internal reports will be compiled by the Grievance Manager and distributed to the management team.</p> <p>As part of the grievance monitoring the operator will implement a process to analyse grievances. This will ensure wider actions are taken where required to solve root problems causing grievances rather than just individual grievances. Operator will also develop performance indicators to evaluate the grievance management process.</p>

**HEARING OF COMPLAINTS: WHERE AND BY WHOM**

---

Every complaint and appeal shall be heard by a GRC without any procedural technicality, but in a manner that is consistent with normal, traditional way of resolving contested matters minus any manifest bias and exclusionary practice. All hearings shall be open, unless the nature of the dispute is such as would warrant some restriction of public access to the proceedings, except that such restriction shall be very rare and then only in exceptional cases. A complaint shall have a

right to prove his/her case entirely through the testimonies of others (without him/her testifying directly).

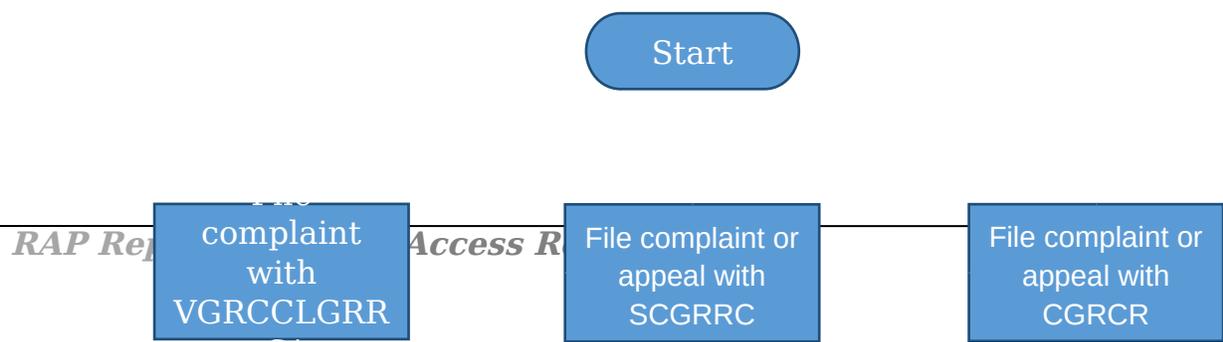
The Complaint will usually be the first to speak, but the GRC may, unless substantial prejudice would result, change the order of presentation if doing so would facilitate the ultimate resolution of the dispute. All decisions by a GRC shall be explained orally at the end of the hearing, but reflected in writing, no matter how concise. A copy of the decision shall be given to every party, and a copy kept by the GRC.

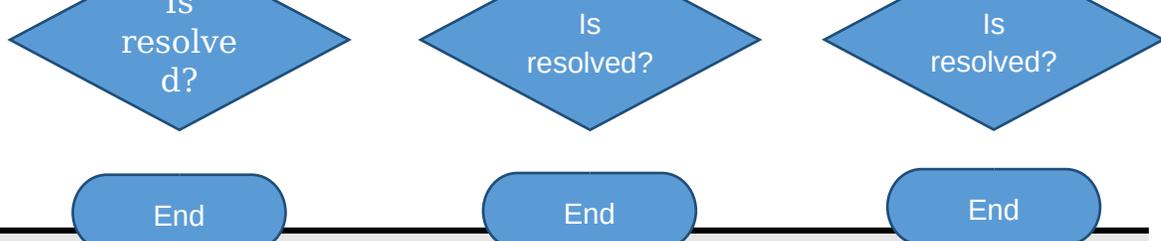
### **APPEAL PROCEDURES**

---

This RAP provides the right of appeal by any complainant to next grievance level committee(higher) if dissatisfied with the decision made by the committee where complaint is registered.

*Figure 21: Process of filing complaints and the taking, hearing and resolution of appeals.*





**10 INSTITUTIONAL FRAMEWORK FOR RAP IMPLEMENTATION**

This RAP will be implemented within the existing Institutional implementation arrangement for Mwache Dam Project. A mix of institutions—government agencies at the County, Sub County and national levels, specialized technical agencies and consulting firms recruited by KWSCRP would be involved in the implementation.

A complex Project such as the Mwache Dam Project with its wide range of the RAP requires a mix of institutions to implement. The RAP will be implemented through one of the following options: File petition High Court, File appeal with Supreme Court.

The intended implementation arrangement will involve a range of key actors at different levels, representing different entities, require an overall coordination for Project implementation (see below), in order to ensure efficient implementation. A mix of institutions – government agencies at the County, Sub County and National levels and specialized technical agencies would be involved in RAP implementation.

**NATIONAL GOVERNMENT- MINISTRY OF WATER AND SANITATION AND IRRIGATION AND IRRIGATION AND IRRIGATION**

Ministry of Water & Sanitation and Irrigation (MOWSI), State Department of Water, through Kenya Water Security and Climate Resilience Project (KWSCRP) will be responsible for the overall RAP coordination. The Mwache Dam Project is owned by the Government of Kenya through the Ministry of Water & Sanitation and Irrigation and shall be responsible for mobilization of financing from The National Treasury (NT) for this RAP. MOWSI will request National Treasury to allocate funds for this RAP and will thereafter give the funds to NLC to compensate all the identified PAHs in accordance with the National Land Commission (NLC) Act 2012.

**KWSCRP- NATIONAL PROJECT MANAGEMENT UNIT AND COAST PROJECT MANAGEMENT UNIT**

The KWSCRP has a full time Social Safeguards Specialist based at the NPMU office in Nairobi and full-time Social Development Officer, Communication Expert and Social Safeguards Expert based at the Coast PMU Office in Mombasa. These 4 experts have directly been supporting and supervising the RAP Implementation Consultant in implementing the Mwache Dam RAP 1 and the preparation of RAP 2 and hence have in-depth knowledge of the social setting of the Duruma community and their complex land tenure system. They are therefore well prepared to support the PAP community during the RAP 2 Implementation phase to ensure they have a safe landing in their new resettlement areas. This PMU team of experts will provide the management and technical support and supervision necessary to ensure successful RAP implementation. PMU is headed and all coordination meetings chaired by the Project Manager.

## **RAP CONVEYANCE CONSULTANT**

---

The project has engaged a legal conveyance consultant to address the issues with respect to land ownership rights which have significance on the ability by NLC to award and pay compensation. The Consultant is required to assist all Project Affected Households (PAHs) with succession issues (if necessary) alongside other legal related issues that may arise. The RAP Conveyance consultant reports directly to the KWSCRPNPMU.

### **RAP Implementation Team**

The project will recruit a RAP Implementation Team (firm of experts) who will among other tasks lead in development of and implementing household level Livelihood Restoration Plans (LRPs) and communal LRPs in cases where a number of PAHs decide to relocate and resettle together; Provide support and assistance in relocating PAHs in accordance with their preferences and the commitments outlined in the RAP; Provide financial training to PAHs prior to receipt of cash compensation to help manage their compensation; Provision of business and vocation training opportunities to the PAHs; Ensure that livelihood support activities capitalize on the project benefits to the community, such as improved access roads, provision of irrigation and potable water to be provided under the project; Ensure that additional assistance is available and provided to people vulnerable to disproportionate harm due to the project; Prepare a working schedule for RAP implementation with appropriate budgetary provisions and coordinate with all other actors in the project area to ensure that the RAP implementation is sequenced with the needs of the project construction schedule. The RAP Implementation Team will report directly to the KWSCRPNPMU. The RAP Implementation Team will also assist the RAP Implementation Steering Committee to adjudicate difficult claims and advise the NLC on a schedule of payments.

## **RAP IMPLEMENTATION STEERING COMMITTEE**

---

The large number of actors involved in the implementation of this RAP and the atypical arrangements under which cash compensation will be released under this RAP; there is a significant requirement for multi-stakeholder coordination and decision making. As such, RAP implementation will be overseen by a steering committee chaired by the Governor of Kwale County with the KWSCRPNPMU providing the secretariat. The committee will include CDA, Kwale county, KWSCRPNPMU, the NLC, the ministry of lands and planning, and the RAP implementation team. The steering committee will provide a forum for coordination and resolving problems associated with RAP implementation. In addition, the Committee will provide the RAP Implementation Team with guidance on how to proceed in any instances where they are unable to complete a Livelihood Restoration Plan for a particular household as a condition of release of cash compensation.

## **SAFEGUARDS IMPLEMENTING UNIT**

---

In addition, a Safeguards PIU has been constituted with the mandate of specifically managing and supporting the Mwache Dam RAP implementation related activities on a full-time basis. The Safeguards PIU team will have 44 members who include all the above-described staff from the

PMU, staff sourced from the CDA PIU, Kwale PIU, RAP Implementation and RAP Legal Conveyance Firms of Experts and Grievance Redress and Resettlement Committees.

The Safeguards Project Implementing Unit will be the main RAP implementing unit and will be headed by the NPMU Social Safeguard Specialist. It was formed after it became clear that there will be many interrelated activities during RAP implementation phase and due to the anticipated need to timely initiate and manage the key RAP implementation activities, which will have to be performed prior to the start of construction/civil works. The PIU now awaits the clearance of the RAP so as to start its implementation.

The RAP Implementation Firm will have overall responsibility of carrying out the day to day field activities of ensuring timely compensation and physical movement and resettlement of the affected households. One of the surveyors of the firm continuously work with NLC both at the head office in Nairobi and Kwale offices to ensure timely authentication of affected land ownership and processing of PAP payments. The sociologists will ensure that all the PAPs understand and provide the all the necessary documents required by NLC to enable processing of PAP payment.

Another team of Safeguards PIU surveyors and sociologists will support the PAPs in the various ways as per the RAP entitlement matrix under the guidance of the firm's team leader and supervision of the Social Safeguards Specialist. With regard to the implementation of the RAP, the PIU has the following responsibilities.

### **COMMUNICATION AND COORDINATION**

---

- Overall coordination with national and county government and with local authorities and funding agency with regard to the Project's social and environmental issues
- Implementation of the RAP and establishment of good and operational relations to affected communities
- Communication and cooperation with County administrations as key actors with implementation of livelihood restoration programs
- Communication and cooperation with local resettlement committees as key actors with implementation processes (i.e. compensation process, monitoring, identification of vulnerable people)
- Communication and cooperation with the institutions involved in the compensation process and into training measures for affected people

### **MANAGEMENT OF RAP IMPLEMENTATION**

---

- Ensure and monitor overall social and environmental due diligence within RAP implementation (national requirements, lenders requirements)
- RAP Key Implementation Processes
  - o Oversee and coordinate compensation process
  - o Operate Grievance Mechanism
  - o Operate Monitoring
- Manage staff recruitment processes and contracting processes of external service providers
- Design of overall training plan for RAP implementation staff, oversee and coordinate implementation of plan

### **CHANGE MANAGEMENT**

---

Communicate necessary changes of approach, particularly where substantial and material changes to the RAP might be envisioned or necessary (i.e. as consequence of monitoring results) to CDA and PMU (see below) for final decision-making

## **CAPACITY BUILDING**

---

Facilitate and guide capacity building for authorities on different levels with regard to due diligence of Project management and due consideration of environmental and social safeguards.

## **NATIONAL LAND COMMISSION**

---

The National Land Commission (NLC) is an independent constitutional agency that has statutory powers to undertake compulsory acquisition of private or community land for public purposes or public interest. It performs these functions on behalf of the national government and county governments. The specific powers and functions of the NLC are set out in the National Land Commission Act 2012, and the Land Act 2012. Key roles of NLC in the implementation of this RAP will include:

### **10.1.1 Summary Roles of NLC**

- Provide approval to request made by KWSCRPMU/Mwache Dam-PIU to acquire land for the Project;
- Gazette all the PAHs
- Notify PAHs in writing of the intention to acquire land;
- Conduct asset valuation of all assets
- Assist in resolving disputes related to compensation;
- Undertake public consultation on intended acquisition;
- Undertake actual payment of entitlement awards to PAHs
- Acquire land on behalf of client;

As noted previously, under this RAP the NLC will not release funds to PAHs until the minimum conditions for payment have been met in the form of a household level livelihoods restoration plan detailing all assistance to be provided under the project.

## **GRIEVANCE REDRESS AND RESETTLEMENT COMMITTEES**

---

The Grievance Redress and Resettlement Committees will also form part of the RAP implementation institutions.

## **MINISTRY OF LANDS**

---

The Ministry of Lands through the Registrar of Lands at Kwale County Lands Office will be responsible in issuance of all the titled lands to the PAHs based on the completion of the adjudication process.

---

## **11 RAP IMPLEMENTATION SCHEDULE**

---

The estimated construction duration is 24 months. However, the RAP implementation period and timelines will be approximately 1 year while some Stakeholder Engagement, Livelihood Restoration and Monitoring and Evaluation may last beyond the actual resettlement activities of 1 year.

The schedule will be updated as required and additional tasks added where necessary. All activities in RAP implementation are listed below but these activities and schedules are estimated in terms of timelines and chronology. A RAP implementation consulting firm hired by the KWSCRIP will prepare the actual RAP Implementation Schedule guided by tasks in a ToRs and the activities cited below as part of the inception phase.

### **DISCLOSURE OF RAP**

---

The RAP will be disclosed in English and the executive summary will be translated into Kiswahili and Duruma languages on the website of the following institutions namely: -

#### **RAP Disclosure Websites**

- Coast Development Authority
- Ministry of Water & Sanitation and Irrigation
- County Government of Kwale
- World Bank external affairs website

Hard copies will be made available in the same offices with additional copies availed at the following sites:

#### **RAP Disclosure Offices (hard copies)**

- Office of contractor
- Office of Institutional Support Consultant (ISC)
- Kwale Sub County Office
- All locational offices affected by the project
- All divisional offices affected by the project

The RAP will be disclosed to the PAPs in Kiswahili, Duruma and English Languages as appropriately needed during meetings organized for RAP disclosure purposes at the village level. In addition, hard copies of the Executive Summaries will be distributed at the household level in either Kiswahili, Duruma and English Languages and PAHs will be left with at least a copy in the language of their preference.

---

### **OPERATIONALIZE GRIEVANCE MECHANISMS**

---

Grievance Redress and Resettlement Committees (GRRCs) at all the levels (village, location, sub county, county) will be established and operationalized and provided with training as required to execute their tasks.

### **CONDUCT TRAINING PROGRAMME FOR OFFICIALS**

---

Capacity building of PIU team, members of county and sub county administration officials, local administration officials, and PAHs' representatives will be carried out on various issues such as: delivering entitlement to the affected people; handling of grievances at periodic intervals. Orientation and refresher trainings periodically would be provided through the implementation period. This will be done by RAP Implementation Consultant.

### **OTHER RAP IMPLEMENTATION ACTIVITIES**

---

#### **NLC Land Acquisition Process:**

**Hold level meetings: Compensation and Relocation Committees** (along with the Social Experts from CDA, KWSCR, Kwale County) NLC as mandated by NLC Act will hold village, sub county and county level consultations to inform PAHs regarding entitlements, compensation, grievances etc. Entitlements will be disclosed privately to each PAH by NLC as provided for by NLC Act.

**Preparation of compensation entitlements:** Based on the construction schedule, NLC with support from NPMU/PIU and resettlement and compensation committees shall prepare entitlement certificates for PAHs (letters of awards).

**Preparation of RAP database:** A RAP database would be prepared and maintained at County and sub-County levels, NLC as well as KWSCR and CDA offices. All information regarding PAPs/PAHs such as quantum of land lost, trees, structures and other assets; information on each PAP such as income levels by source, occupation, livestock holdings, etc. shall be recorded. The RAP database would enable effective monitoring and evaluation, besides enable generation of periodic reports for submission to KWSCR/MOWSI and World Bank.

**Develop special assistance plans for PAHs:** KWSCR and PIU and RAP Implementation Consultant shall develop special assistance plans for the identified vulnerable households. Prior to preparation, the number of vulnerable households should be updated and finalized owing to: balance numbers identified from the survey of previously un-surveyed areas, any event such as death leading to change in vulnerability status.

**Payment of compensation and vacation of land:** All payment of compensation will be made by NLC as provided by NLC Act. Payments will be made directly to PAP's bank account no later before the date by which the land must be vacated. Upon payment by NLC, PAHs will be given 30 days' notice as provided by NLC to vacate site before possession of site by client. The 30-day notice before vacation of site is to allow PAHs to prepare adequately for relocating if necessary.

**Counsel on the judicious use of compensation amount:** NLC, KWSCR, PIU, County and Sub Administration, local administration (chiefs, assistant) and RAP Implementation Consultant shall counsel PAHs individually or in groups as required on the judicious utilization of compensation money.

**Relocation of PAHs to a new location:** The PAHs will be given a specific time period to relocate from their current location to the new location.

**Internal Monitoring:** The internal monitoring programme under PIU will commence soon after RAP approval. It shall record: a) progress made and record project inputs and the number of persons affected and compensated; and b) measure progress with involuntary resettlement against scheduled actions and milestones, using input and output indicators.

Report with comments about activity progress will be prepared each week towards the monthly report and detailed quarterly will be sent to the KWSCR. The monitoring results will be shared with the PAS/communities and accessible to all stakeholders.

At the end of the fourth financial quarter a full annual report will be prepared including information on all project/output indicators and with a detailed analysis of achieved results and experience gained. Information compiled bi-annually shall be presented to the World Bank.

**Implement Income Restoration Activities:** The RAP Implementation Consultant shall: update income and household data for inputs into the RAP database following which it shall carry out a skill assessment of PAHs interested, undertake a market assessment with respect to demand and potential, identify training sources and preparation of business plans, etc.

**Annual External Evaluation:** RAP Implementation Consultant will undertake external audit on an annual basis to assess whether the project has met with the RAP objectives as a whole.

**Submission of RAP Implementation Completion Report:** Upon completion of all Implementation activities, RAP Implementation Consultant will prepare completion report.

---

## 12 MONITORING AND EVALUATION

---

Monitoring arrangement for the Mwache Dam project will continuously be updated in consultation with various parties involved; the affected peoples by the project, contractor, GoK, and the World Bank. The monitoring process will follow culturally sensitive approaches that take into account differences in social locations, culture and livelihood systems. A key aspect of monitoring processes is to conduct meaningful consultations with affected people, during internal monitoring and independent monitoring by external monitoring groups.

Monitoring of grievance resolution from all affected peoples is reflected through the grievance committee at different levels. Records of complaints and grievances will be kept and semi-annual monitoring reports will provide information on key issues raised by affected people.

### ADAPTIVE MANAGEMENT APPROACH

---

This RAP will employ adaptive management approach in undertaking monitoring, supervision and evaluation throughout the implementation phases. Adaptive management is an explicit and analytical process for adjusting management decisions to better achieve management objectives. It is a learning tool which recognizes that knowledge about natural resource systems is uncertain, that not every scenario can be foreseen and that people change their minds during project implementation. Therefore, some management decisions are best taken in a way that allows to reduce the risk arising from that uncertainty. Trials and iterative adaptations of plans based on monitoring and lessons-learned.

The concept of adaptive management is readily understood because it represents “learning by doing”. However, actually implementing adaptive management is neither simple nor intuitive. This complexity stems from the large number of interconnected potential scenarios and related uncertainties. Advanced technologies can support organize the relevant information, simplify the analysis of the scenarios, and assist in the search for optimal solutions.

Key features of adaptive management are:

- Iterative decision-making (evaluating results and adjusting actions on the basis of what has been learned).
- Feedback between monitoring and decisions (learning).

### INTERNAL MONITORING AND REPORTING

---

The RAP requires Mwache Dam/PIU to engage in continuous-active and comprehensive self-monitoring of the activities related thereto all adverse impacts, and compliance. Starting from the beginning of preliminary works and consequent construction phase Mwache Dam PIU will be responsible for monitoring the infrastructure construction of the resettlement

areas and will establish a monitoring group for this purpose. The monitoring staff will report regularly to the KWSCRIP safeguards unit of the NPMU. Self-monitoring and reporting by the Mwache Dam PIU to KWSCRIP is intended to be the chief (but not exclusive) means of ensuring compliance by the Mwache Dam PIU with its obligations.

### 12.1.1 Monitoring of Construction Activities

The Mwache Dam PIU will undertake, on daily basis, a compliance monitoring of the contractors' environmental and social activities as per the RAP, Environmental, Health, and Safety guidelines, the approved Environmental Management and Monitoring Plan, sub plans and site-specific environmental plans prepared by the contractors. The contractors are also required to report to the developers about their progress, their monitoring system and their monitoring data on a monthly basis.

### 12.1.2 Monitoring of Resettlement Activities and Measures

To closely follow actual social impacts by the resettlement activities, including compensation of affected households, appropriate monitoring and feedback of monitoring outputs will be conducted. The project aims to have all resettlement and livelihood restoration activities well in place before impacts occur during project operation phase providing affected households with opportunities for cropping. The Mwache Dam PIU will monitor not only its own progress in resettlement and compensation activities for affected households against an agreed schedule, but also the changes in household income (cash and imputed) from affected land uses, as well as from livelihood restoration and development activities.

Table 31: RAP Monitoring Indicators

Item	Indicator	Variable	Impact Aspect
Land	Utilization of the land  Acquisition	<ul style="list-style-type: none"> <li>Land Ownership (Private, Government or Community)</li> <li>Type of land use (Farming, Residential, Fallow)</li> <li>Area of land acquired</li> <li>Area of land acquired for project infrastructure developments</li> <li>Size of land being used as compared to before</li> </ul>	Loss of Agricultural Produce  Loss of homestead  Size of remaining for intended purpose
Structures/ Buildings	Acquisition of buildings	<ul style="list-style-type: none"> <li>Building type, quality and use (residential, commercial etc.)</li> <li>Number, type and size of buildings (residential or Commercial)</li> <li>Standard of building constructed compared to previous one</li> </ul>	Displacement of PAHs Displacement of sources of income

Item	Indicator	Variable	Impact Aspect
	Acquired structure	<ul style="list-style-type: none"> <li>• Number, type and size of other private structures acquired</li> <li>• Number, type and size of other community structures acquired</li> <li>• Standard of the new structure</li> <li>• Use of the acquired structure</li> </ul>	Loss of use of structure
Trees and Crops	Acquisition of Trees	Number, size and type of trees cut	Loss of canopy Loss of income from sale
	Loss of Crops	Type of crop and acreage of crop loss	Loss of food crop
Compensation, Re-establishment and Rehabilitation	Compensation, Resettlement and Restoration of affected persons	<ul style="list-style-type: none"> <li>• No. of compensated PAHs, type of loss and amount paid</li> <li>• No. of constructed replacement buildings</li> <li>• Number, type and size of replacement houses constructed</li> <li>• Period between compensation and beginning of civil works</li> </ul>	Disruption of settlements
	Government and Community Resources	<ul style="list-style-type: none"> <li>• Number of community buildings replaced</li> <li>• Number of Government, Community land compensated</li> <li>• Number of seedlings supplied by type for community trees</li> <li>• Number of trees planted and their survival rate</li> </ul>	Disruption of community services
Consultations	Consultation programme operation	<ul style="list-style-type: none"> <li>• Number of public consultations related to resettlement held and their minutes</li> <li>• Type of issues raised at public consultation meetings</li> <li>• Number of participants attending public consultation meetings related to resettlement</li> </ul>	
	Information	<ul style="list-style-type: none"> <li>• Level of access to information by PAHs</li> <li>• Number of communication documents provided to PAHs and their subject matter (Health, Education, Security etc.)</li> </ul>	
	dissemination	<ul style="list-style-type: none"> <li>• The extent of information flows</li> </ul>	

Item	Indicator	Variable	Impact Aspect
		<ul style="list-style-type: none"> <li>between grievance committees and Mwache Dam/PIU</li> <li>RAP/Entitlement information access by PAHs</li> <li>Number of people seeking information on resettlement and compensation</li> </ul>	
	Grievances resolved	<ul style="list-style-type: none"> <li>Number of grievances registered by type</li> <li>Number of grievances resolved</li> <li>How quickly the grievances were resolved</li> <li>Number of cases referred to court</li> </ul>	
Training	Operation of training programme	<ul style="list-style-type: none"> <li>Number of youth, women PAHs trained</li> <li>Number of training grievance committees has undertaken</li> <li>Number of affected populations trained on livelihood restoration</li> </ul>	
Livelihood Restoration	Livelihood improvement	<ul style="list-style-type: none"> <li>Employment status of economically active members of PAHs</li> <li>Level of skills of PAHs members</li> <li>Earnings/income by source, separating compensation payments of PAHs</li> <li>Pre- and post-disturbance changes to agriculture and off-farm income-earning activities</li> <li>Amount and balance of income and expenditure</li> <li>Access to income-generating natural resource base (wood, grass, sand, stones)</li> <li>Number of vulnerable persons benefiting from livelihood restoration programs.</li> <li>Status of vulnerable people as compared to their initial situation.</li> <li>Number of people or groups assisted to improve their</li> </ul>	

Item	Indicator	Variable	Impact Aspect
		livelihood	
Management	Staffing	<ul style="list-style-type: none"> <li>• Number of KWSCRП officials available by function for resettlement</li> <li>• Number of local organizations by function</li> <li>• Number of office and field equipment by type</li> </ul>	
	Procedures in operation	<ul style="list-style-type: none"> <li>• Census and asset verification/quantification procedures in place</li> <li>• Effectiveness of compensation delivery system by NLC</li> <li>• Number of land transfers effected</li> </ul>	

## EXTERNAL MONITORING AND REPORTING

### 12.1.3 RAP Implementation Consultant

The project will recruit a RAP Audit Consultant (firm of experts) who will conduct external monitoring as part of its core function. The RAP Audit consultant will undertake **Compliance and Completion Audit**. The purpose of the compliance/completion audit is to determine whether the Project has met its RAP commitments and can be released from further responsibility. Hence, the independent compliance and completion audit will focus on the assessment of compliance with the commitments of this RAP, the relevant Kenyan legislation and the WB Policies.

The purpose of the compliance/completion audit is to determine whether the Project has met its commitments and can be released from further responsibility. Hence, the independent compliance and completion audit will focus on the assessment of compliance with the commitments of this RAP, the relevant Kenyan legislation and the WB Policies. The compliance and completion audit will be performed about one year after completion of RAP implementation, including the completion of the livelihood restoration programs. The compliance reviews will concentrate on: -

- Overall compliance with applicable legislation, international requirements and commitments of this RAP
- Compliance with the eligibility criteria described in this RAP
- Actual delivery of entitlements as described in this RAP
- Compliance with implementation mechanisms described in this RAP
- The completion audit will assess all activities needed to achieve compliance were implemented and whether compensation (and resettlement) can be deemed complete.

A key objective of this RAP is that compensation and livelihood restoration measures should lead to sustainable restoration or enhancement of affected people's quality of life and income levels. At the time when affected people's quality of life and livelihoods can be demonstrated to have been restored, the RAP process can be deemed as completed. The RAP completion audit will be conducted upon completion of compensation of all the PAHs.

#### **12.1.4 Disclosure of Monitoring Reports**

KWSCRCP will consolidate monitoring internal with key findings from the on-going monitoring and agreed actions taken to address any issues arising during the monitoring period. This monthly progress review will ensure that important issues are immediately rectified. KWSCRCP will prepare quarterly monitoring reports, the monitoring indicators and format to be agreed with the World Bank, on Mwache Dam implementation and submit this to World Bank for review.

##### **Independent Environmental and Social Panel of Expert**

The KWSCRCP has recruited Environment and Social (E&S) Panel of Experts who will work with the Dam Panel of Experts (DPE) to: ensure due diligence and E&S risk management on the projects; (b) provide independent review of safeguards documents and advise in safeguards preparation and implementation (c) provide high level independent advice and guidance to support objectivity and credibility in the E&S risk management process, and (c) share technical expertise and knowledge and so contribute to dialogue amongst consultants, the Government of Kenya (National and County), KWSRCP/NPMU, PIU and other relevant stakeholders.

---

## 13 RAP BUDGET

---

### RAP budget

The total budget for resettlement compensation is Kshs. **214,548,140** including disturbance allowance and livelihood restoration, conveyancing and succession and grievance redress. In addition, administration cost of 15 per cent for the RAP implementation and monitoring and evaluation has been considered. All costs associated with this RAP as highlighted in Table 12 below will be met by KWSCRPMU. However, the total costs of the RAP are bound to change as the unit prices will further be reviewed by NLC at the early stage of implementation to reflect the market prices and/or value and hence full replacement cost at that time.

**Table 32: RAP budget**

<b>Total RAP cost</b>	<b>Total PAHs</b>
Land	88,607,505
Structure	14,466,000
Loss of business income	180,000
Trees	6,801,800
<b>Sub- total 1</b>	<b>110,055,305</b>
Disturbance allowance (15%)	16,508,295
<b>Sub-total 2</b>	<b>126,563,600</b>
Livelihood restoration programme	15,000,000
Conveyance /succession lawyer	30,000,000
Independent completion audit	10,000,000
Facilitation for Grievance Redress committee	5,000,000
<b>Sub-total 3</b>	<b>60,000,000</b>
<b>Sub -total 2 + Sub-total 3</b>	<b>186,563,600</b>
Contingency (15% of total RAP cost)	<b>27,984,540</b>
<b>Grand total</b>	<b>214,548,140</b>

## **REFERENCES**

---

2019 Kenya Population and Housing Census Volume 1 A Population Distribution by Administrative Units; August 2020; by KNBS

Kwale County Integrated Development Plan (2018 – 2022)  
Constitution of Kenya, 2010

IFC (2002), Handbook for Preparing a RAP, International Finance Corporation, 2121 Pennsylvania Avenue, NW, Washing, DC 20433 USA.

RAP Report 2

RAP Report 3

RAP Reports 1

Republic of Kenya, Ministry of Lands, Sessional Paper No.3 of 2009 on National Land Policy, August 2009.

Republic of Kenya, The Land ACT, 2012

Republic of Kenya, The Land and Environmental Court Act 2011.

Republic of Kenya, The Land Registration Act 2012

Kwale County Agricultural Sector Development Strategy: 2013 – 2022 by Kwale County Government

Well – Being in Kenya a Socio- Economic Profile: 2020; by KNBS

World Bank (2004), Involuntary Resettlement Policy 4.12 (Revised April 2004).

**ANNEXES**

**ANNEX: I -VALUATION ROLL**

**ANNEX: II -CADASTRAL MAPS**

**ANNEX: III- LAND TITLE SEARCHES AND CONFIRMATION LETTERS**

**ANNEX: IV-MINUTES OF MEETINGS**

**ANNEX: V- ATTENDANCE REGISTER FOR MEETINGS**

**ANNEX: VI-RAP IMPLEMENTATION SCHEDULE**

**ANNEX: VII-CENSUS AND SOCIO-ECONOMIC SURVEY TOOLS**

**ANNEX: VIII- SAMPLE GRM FORMS**

**ANNEX: IX- SAMPLE PHOTOS**



