

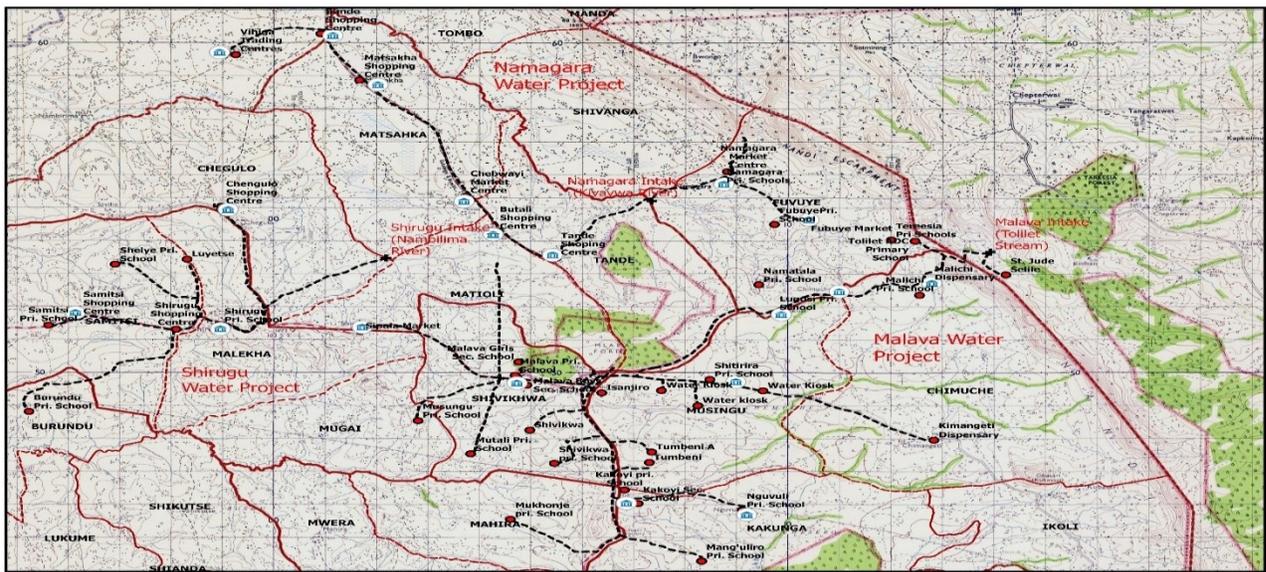


REPUBLIC OF KENYA
 Ministry of Water Sanitation and
 Irrigation



LAKE VICTORIA NORTH
 WATER WORKS DEVELOPMENT
 AGENCY

**RESETTLEMENT ACTION PLAN (RAP) FINAL REPORT FOR WATER AND
 SANITATION PROJECTS FOR THE TOWNS IN MALAVA CONSTITUENCY
 KAKAMEGA COUNTY**



FINAL RAP REPORT

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CONTRACT No.: LVNWWDA/CONS/MALAVA/2020 -2021

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EXECUTIVE SUMMARY

Lake Victoria North Water Works Development Agency (LVNWWDA) is one of the eight Water Services Boards established under the Water Act 2016 as part of the reforms in the water sector. Part of the Board's mandate is to plan, manage and develop water and sewerage services. The Board intends to rehabilitate and augment Malava Town's water supply scheme and install new water supply infrastructure to serve surrounding market centres of Namagara, Tande, Butali, Chebwai, Matsakha, Chegulo, Samitsi and Burundu. The infrastructure includes:

Project Components and Impacts

- **Malava water supply scheme:** Intake works on Tolilet River, 3,556m³/d capacity treatment works, 9.5kms of transmission pipeline, 33.5kms of distribution lines and 5No communal water points along the transmission pipeline;
- **Namagara water supply scheme:** Intake works on Kivaywa River, 2,000m³/d capacity treatment works, 3kms of raw water transmission line, 8.4kms of distribution lines, 2No. 100m³ elevated steel tanks and 3No. community water points; and
- **Shirugu water supply scheme:** Intake works on Nambirima River, 1,200m³/d capacity treatment works, 4.4kms of raw water transmission line, 17.6kms of distribution lines, 2No. 100m³ elevated steel tanks and 4No. Community water points.

RAP Rationale

The Environmental Management and Coordination Act (EMCA) 1999 and amendment of 2015 provides for the completion of an Environmental and Social Impact Assessment (ESIA) which has already been carried out, and land take and livelihoods interruption identified as one of the significant social impacts of this project.

The Resettlement Action Plan (RAP) report therefore seeks to address the adverse impact of land take and livelihoods disruption occasioned by the proposed project.

The overall aim and purpose of the RAP is to document cases of livelihoods disruption, propose alternatives of minimizing interruptions to people's property and propose adequate compensation at full resettlement as would arise from implementation of the proposed water supply project.

Specifically, the Resettlement Action Plan seeks to: carry out a census of the people who will be affected by implementation of the proposed project, carry out valuation of land and assets affected by the proposed project and are eligible for compensation and prepare an entitlement matrix for the Project Affected Persons (PAPs).

The RAP study commenced with a review of relevant legislations such as the National Land Policy (NLP), The Land Act, 2012, the Land Registration Act, 2012, and the Land Adjudication Act among others.

Baseline data for the area was reviewed with the aim of understanding the household and

community character of the PAPs. On the basis of the baseline data, the socio- economic setting of the proposed project sites was established.

Household questionnaires were administered to 100% of the PAP households on the proposed project component sites. Collection of field data was combined with the role of further public awareness about the project.

Such baseline data included but was not necessarily limited to the following: PAPs' gender, age, household size, livelihood sources, water sources, education levels and PAPs' perception of the proposed project.

For purposes of this study, a household refers to all the people living within the same building as a family where they share common resources, cook and eat from the same pot. Such a household is headed by one person – the household head. In this context the household head will be the recipient of compensation since he/she is responsible for construction and/or relocation.

RAP methodology

The preparation of Resettlement Action Plan (RAP) entailed verification of PAPs, the affected assets, the socio-economic baseline data of the PAPs, the scope and the magnitude of the social impacts 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 report is based on final designs of Malava water supply project prepared by the Batch Associates Consultants. The RAP was prepared in four stages including:

Stage one: Literature review

The literature review covered the following:

- i. Constitution of Kenya 2010
- ii. National Land Commission Act,
- iii. Land Registration Act
- iv. Community Land Act,
- v. Water Act
- vi. World Bank ESS 1-10
- vii. KWSCRIP Resettlement Policy Framework
- viii. Feasibility Study and Detailed Design Reports

Stage two: Consultation meetings and forums

The Consultant paid a courtesy call to Deputy County Commissioner, Malava and held a consultative meeting to brief Commissioner on the assignment and the activities to be undertaken. The meeting took place on 25th August 2021. Community Sensitization meeting were held in each of the Location affected by the project. During the introductory meetings, the RAP Consultant team was introduced by the host chiefs after which the Consultant gave a brief background of the Project

and informed the participants that Batch Associates had been contracted by LVNWWDA to update the RAP for the tertiaries in Malava water supply project.

Stage Three: Field surveys – inventory of affected assets and socio-economic profiling of PAHs.

The socio-economic survey was conducted between 26th August to 5th September 2021 alongside the census. Many consultations forums were held with PAP communities and relevant individual stakeholders instrumental in RAP preparation and implementation.

Stage four: Report preparation

This entailed valuation of affected assets, social economic data analysis and generating cadastral maps clearly illustrating all the parcels of land that will be acquired. The cadastral mapping was generated from intensive ground surveying technique and Geographical Information System (GIS) system.

Legal Framework

The RAP has been prepared in line with relevant National legislations and International best practices. The Bank's Operational Policy 4.12: Involuntary Resettlement is triggered by the project since the construction of tertiary canals and related access roads will take up land, affect structures, graves, crops and trees. Key National legislations that guides land acquisition in Kenya include; Constitution of Kenya 2010, National Land Commission Act, Land Registration Act, Community Land Act and Water Act. The Constitution of Kenya 2010 requires that there should be just compensation to those affected by projects. World Bank ESS requires full replacement costs. This RAP requires that full replacement cost be paid as compensation for land to be acquired and all improvements on it including structures, crops, and trees affected for all the PAHs as per the World Bank ESS.

Summary of Impacts

The construction of tertiary canals and roads will physically and economically affect 11 households. All the 11 households will lose a small portion of their land totaling to on 13.4448 acres.

Table 1: Summary of Impacts

Number of parcels	Number of PAPs	Land sizes to be acquired (Acres)
North Kabras/Malava/71	1	4.3
North Kabras/Malava/ 396	1	0.8
North Kabras/Malava/ 707	1	2.4
South Kabras/Chemuche/2961	1	0.3
South Kabras/Samitsi/1596	1	0.025
Nandi/Kaptich/67	1	0.245

Nandi/Kaptich/69	1	0.0468
Nandi/Kaptich/ 72	1	0.208
Nandi/Kaptich/73	1	0.7
Nandi/Kaptich/73	1	4.3
Nandi/ Soimining /412	1	0.12
Total	11	13.4448

Public Participation and Consultation

Field data collection at any point on all the project component sites was preceded by making contact with the relevant area government administrators such as the chief, and/or sub- chief/village headmen popularly known as Mukhasa. Other key persons contacted were heads of religious and educational institutions, Members of County Assembly and Sub County Administrators. These community opinion leaders played the role of providing information about the community and its culture while also helping to organize community and stakeholders meetings.

Methods that were applied in stakeholders' consultation included interviews, and stakeholders/community meetings. Outcomes of these consultations revealed that the project host community welcomes the proposed project. It is perceived as a worthwhile investment that will solve the challenge of access to safe drinking water in the project area. They also anticipate both positive and negative impacts, and they reported not having a problem with project implementation as long as the negative impacts can be mitigated. Offering local residents jobs, ensuring just compensation for affected property/land owners, and engaging the host communities during the lifespan of the proposed projects are key points that were emphasized by the respondents.

Project Impacts

The schemes will involve impacts on land, productive assets, and livelihoods through temporary use of land for construction purposes, permanent acquisition of land for intake works and treatment works, imposition of rights to construct and operate a pipeline under existing ownership for the pipeline alignment and imposition of restrictions on land use adjoining the pipelines.

Land and related livelihood impacts of the water supply scheme will include: temporary loss of use of cultivated land, with resultant loss of income for owners/users for the construction period, permanent loss of land and the related income to the intake works and treatment works, impairment of livelihoods in areas adjacent to the pipeline that are affected by restrictions on use, loss of trees/perennial crops in the 5m metre construction corridor and loss of annual / seasonal crops in-ground at the time land is occupied for construction.

The proposed schemes' land requirements are as follows:

- Malava Water Supply scheme: - 4.2 acres for the Water Treatment Plant;
- Namagara Water Supply Scheme: - 3.0 acres for the TW and 0.7 acres for the IW;
- Shirugu Water Supply Scheme: - 3.0 acres for the TW and 0.4 acres for the IW;
- 0.006 acres each for storage tanks at Tande, Chebwai, Chegulo and Matsakha;

- A 5m width construction corridor for the pipeline ROW (this is temporary and only for the construction period); and
- Land for the construction camp(s), materials and equipment storage.

Minimizing resettlement, disturbance and losses

Efforts have been made to align the water pipeline within road and riparian reserves as much as possible. This is in an effort to avoid or minimize the impact to people's property and therefore resettlement and disturbances arising from land acquisition. It is proposed that all those who will be affected by the project be compensated before project commencement.

The Socio-economic study

The socio-economic study, census, and valuation of affected assets of the PAPs was carried out between August and September 2021. The socio-economic survey was done using a structured household questionnaire to collect data on:

Gender, age, household size, religion, livelihood sources, and sources of water, education levels, sanitary facilities and PAPs' perception of the proposed project.

From the socio-economic study, the Consultant established the following:

Malaria is the most common type of disease in the project area. Other diseases reported include, typhoid and diarrhea. Majority of the respondents get health care services from the health centers while a few others go to the nearest dispensary. Majority, 98 % of the respondents are Christians. Muslims accounted for less than 2 %. Sixty per cent of the respondents earn a monthly income of between KES. 10,000-15,000. Crop farming is the main economic activity in the study area accounting for 69.3 % of the respondents. Livestock farming (1.1%), Business (19.3%), Formal employment 9.1 % and mixed farming 1.1 %. Majority of the respondents were married. Majority 64.3 % of the respondents were male while 35.7 % were female.

Resettlement Plan and Entitlements

The process and procedures of land acquisition for the proposed water supply project will principally be governed by local land laws including; the Land Act 2012, Land Registration Act 2012, National Land Commission Act 2012 and the Constitution of Kenya, 2010. The World Bank Involuntary Resettlement Policy (ESS) has also been considered in dealing with PAP's in the riparian/road reserve as a best practice in RAP preparation.

Valuation and Compensation Methodology

The basis of valuation under the local legislation is The Land Act No. 6 of 2012 and The Valuers Act Cap 532.

The Land Act requires the National Land Commission (NLC) to formulate rules to guide valuation

for compulsory acquisition purposes. However, the contemplated regulations have not been published and hence the valuation relied on the provisions of the Land Acquisition Act Cap 295 of the Laws of Kenya. Under the regulation, the valuation and consequent compensation shall be composed of the following:

- Market value of the land as at the date of publication in the Gazette of the notice of intention to acquire the land;
- Damage sustained or likely to be sustained by persons interested at the time of the Commissioner’s taking possession of the land by reason of severing the land from his other land;
- Damage sustained or likely to be sustained by persons interested at the time of the Commissioner’s taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings;
- If, in consequence of the acquisition, any of the persons interested is or will be compelled to change his residence or place of business, reasonable expenses incidental to the change;
- 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 Commissioner takes possession of the land; and
- Additional 15% to the market value, by way of compensation for disturbance. The compensation value is hinged on the determination of the open market value. According to International Valuation Standards (IVS), 7th edition of 2005 Standard 1, open market value is defined as “— the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion”.

The assets being acquired and/or destroyed by the proposed works include land, crops and trees. The basis of valuation for each class of assets is as follows:

- a) Land- market comparable approach in which the recent sale price of similar parcel of land or plots is analyzed to arrive at the open market value. The data for such an analysis is obtained from local agents, valuers and records at the respective Land Registry.
- b) Crops, trees and vegetables – income capitalization approach in which, the income earning ability of the asset being valued is ascertained and capitalized using a market-driven discount rate for the remaining economic life of the asset. The productivity of each crop and the sale price per relevant unit of measurement was ascertained from discussions and review of records from local farmers and marketing agents. The earning capacity of the plant/crop/tree was capitalized using the opportunity cost of money (being the risk-free investment- bank deposit) for the entire productive life of the plant to arrive at its market value. Where the plant was sold upon maturity, the current sale price was adopted, bearing in mind the remaining period to maturity.

Grievance Redress mechanisms

Grievance redress forms a critical part of any resettlement and/or compensation program. In this project, grievance management will be handled by a Project Grievance Redress Committee (PGRC) which will include representatives of the PAPs, Lake Victoria North Water Services Board, and the local administration.

This RAP provides for a formalized grievance redress mechanism to help reduce any complaints and grievances from the PAP's and to enhance the acceptance of the proposed compensation program through people participation and support.

In the event that disputes are un-resolvable via the committee, PAPs will seek resolution from the National Land Tribunal, the high court or any other relevant courts in Kenya with jurisdiction on the same.

The Consultant recommends that the implementing party be tasked with sensitizing PAPs on responsible use of compensation money as the chance of misuse by some household heads cannot be ruled out. The objective is to minimize disruptions and restore PAPs' livelihoods, if not to make them better.

Institutional Framework for RAP Implementation

The implementation of the RAP requires collaboration from all the stakeholders. This would require a properly constituted structure for the administration of the same. The proposed project involves land acquisition, resettlement and compensation of project affected people for the loss of their land, structures, and trees/crops. The RAP will be implemented by LVNWWDA in consultation with the County Government of Nandi and Kakamega. The Ministry of Interior and Coordination of National Government shall also support the RAP implementation.

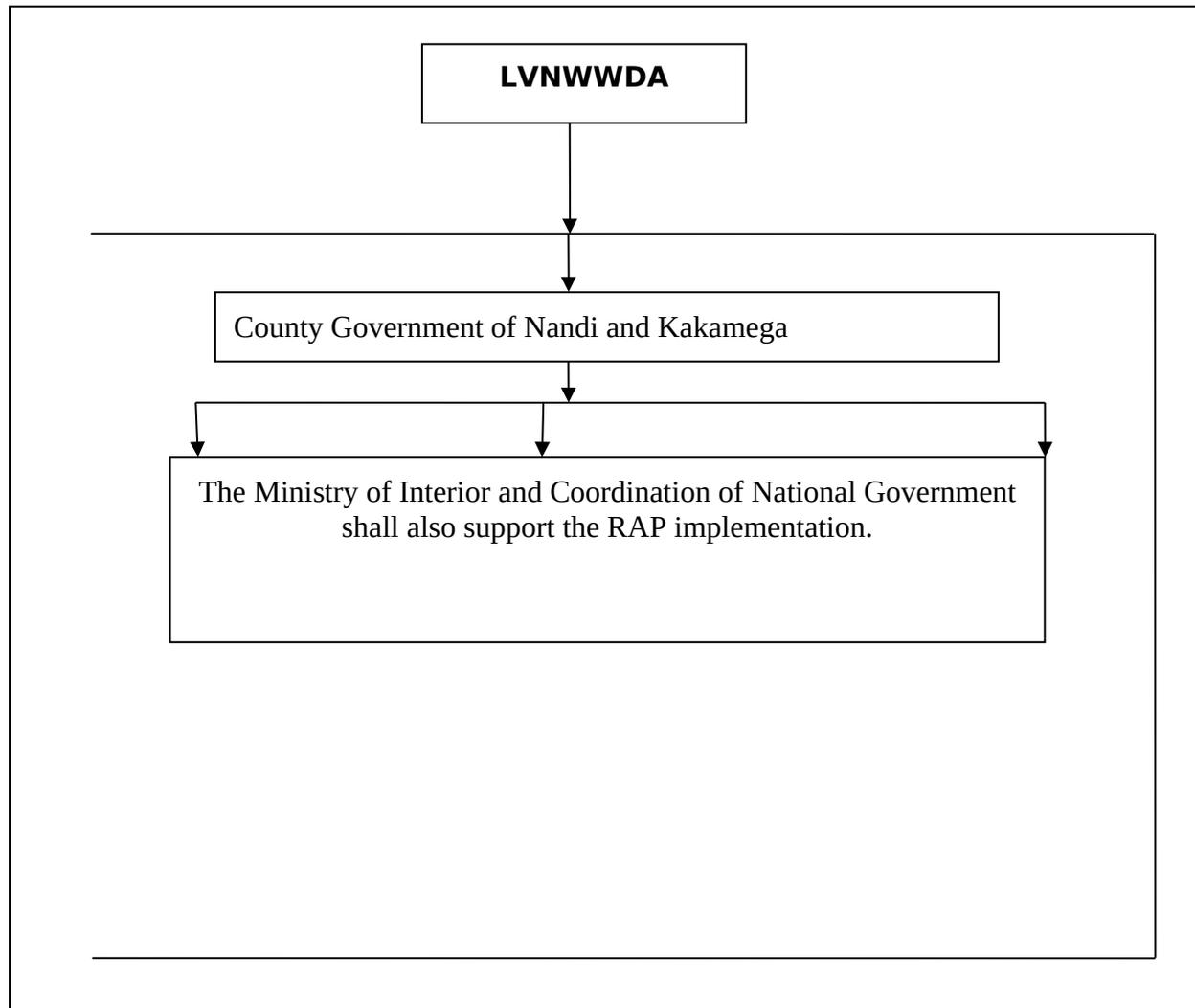


Figure 1: Institutional Framework for RAP Implementation

RAP Implementation Schedule

The RAP implementation period and timelines will at least be 1 years particularly the livelihood restoration programs which will last beyond the project construction phase.

Monitoring and Evaluation

Internal monitoring

Monitoring will be carried out on a continuous basis by the LVNWWDA who will collect and record the information of resettlement activities.

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.

Hard copies will be made available at LVNWWDA offices

RAP budget

The total budget for resettlement compensation is Kshs. 16,138,675 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 LVNWWDA.

Table 2: RAP budget

Items	Cost
Compensation	14,138,675
Grievance redress	1,000,000
Public meetings	1,000,000
Succession and Conveyancing	1,000,000
Total	17,138,675

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LIST OF ACRONYMS

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
GPS	Geographical Positioning System
GRM	Grievance Redress Mechanism
HH	Household Head
HIV	Human Immuno Virus
ID	Identity card
KCSE	Kenya Certificate of Secondary Education
KNBS	Kenya National Bureau of Statistics
KRA	Kenya Revenue Authority
LRCC	Locational Resettlement and Compensation Committees
LRP	Livelihood Restoration Programmes
M&E	Monitoring and Evaluation
NGOs	Non-governmental organizations
NLC	National Land Commission
PAPs	Project Affected Persons
RAP	Resettlement Action Plan
SCSDO	Sub County Social Development Officers

ANNEXES

- Annexes i: Public Consultation meetings attendance lists
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- Annex iv: Minutes of meetings
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1.0 INTRODUCTION

1.1. Background

Lake Victoria North Water Works Development Agency(LVNWWDA) is one of the eight Water Services Boards established under the Water Act 2002, as part of the reforms in the water sector. The mandate of the Board is to: contract, monitor and enforce agreements between the Board and water service providers in accordance with regulations set by the Water Services Regulatory Board; ensure effective and economical provision of water services within its area of jurisdiction; monitor and acquire assets; plan, manage and develop water and sewerage services; and take custody of water services provision assets on behalf of the national government.

The Board intends to rehabilitate and augment Malava Town's water supply scheme and install new water supply infrastructure to serve surrounding market centres of Namagara, Tande, Butali, Chebwai, Matsakha, Chegulo, Samitsi and Burundu; through funding from the Government of Kenya. This is one of the flagship projects the Board has earmarked for implementation under the Kenya's Vision 2030.

1.2. Scope of Resettlement Action Plan

This Resettlement Action Plan (RAP) has been prepared for Lake Victoria North Water Works Development Agency and it describes:

- The people who will be affected by the proposed project i.e. the Project Affected Persons (PAPs);
- The measures that will be taken to address the displacement of PAPs that will result due to acquisition of land for construction of the intake works, the water treatment plants, water pipeline, storage tanks and distribution lines;
- A socio-economic baseline which describes the PAPs' current socio-economic situation;
- Census survey of affected persons and valuation of assets;
- Description of compensation to be provided;
- Institutional responsibility for implementation of the RAP;
- Procedures for grievance redress;
- Arrangements for monitoring and evaluation during implementation; and
- A budget and timelines for the exercise.

1.3. Objectives of the Resettlement Action Plan

This Resettlement Action Plan is prepared to ensure that the livelihoods of the persons impacted by the project are maintained or made better and that the project does not impoverish PAPs.

The Resettlement Action Plan seeks to achieve the following:

- a) To identify the Project Affected Persons (PAP's) and parcels of land that will be acquired for the project's intake weirs, water treatment plants, water pipelines, storage tanks and distribution

- c) Carrying out a socio-economic survey of the PAPs using a structured household questionnaire. The questionnaire covered the households' baseline information on age, gender, livelihood sources, education levels, household size, water sources, sanitary facilities in use and PAPs' perception of the project;
- d) Development of an inventory of the affected assets and livelihood activities at the sites proposed for intake works, WTPs, storage tanks, access roads, water pipeline and distribution routes;
- e) Assessment of the appropriate institutional framework for implementing the resettlement action plan including identification of agencies responsible for delivery of compensation measures and provision of services, to ensure appropriate coordination between all relevant stakeholders involved in implementation of the project and the RAP;
- f) Costing and budgeting of all RAP activities;
- g) Development of a Grievance Redress Mechanism to ensure procedures for dispute resolution and conflict management are available in the course of project implementation. This includes both judicial and traditional community grievance redress mechanisms;
- h) Development of an implementation schedule covering all RAP activities from preparation through implementation including target dates for the achievement of expected benefits to those who need to be compensated; and
- i) Description of the monitoring plan of RAP activities which will be undertaken by the implementing agency, supplemented by independent monitors as considered appropriate to ensure successful implementation.

1.6. Guiding Principles for the RAP

The update of the RAP was guided by the following principles:

- a) Involuntary resettlement and land acquisition will be avoided where feasible, or minimized, where it cannot be eliminated;
- b) Where involuntary resettlement and land acquisition are unavoidable, resettlement and compensation activities will be conceived and executed as sustainable development programs, providing resources to give PAP's the opportunity to share project benefits;
- c) PAPs will be meaningfully consulted and will participate in the planning and implementation of the project;
- d) This RAP applies to all PAP's regardless of the total number affected, the severity of the impact and whether or not they have legal title to the land. Informal or customary tenure is to be treated in the same manner as formal, legal titles;
- e) PAP's 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;

- f) They will also be provided prompt and effective compensation for loss of assets and access attributable to the project investments;
- g) All PAPs will be identified and recorded as early as possible, preferably at project investment identification stage, in order to protect those affected by the project and prevent an influx of illegal encroachers, squatters, and other non-residents whose intent is to take advantage of such benefits; and
- h) Compensation among other issues are to be discussed with individual land owners.

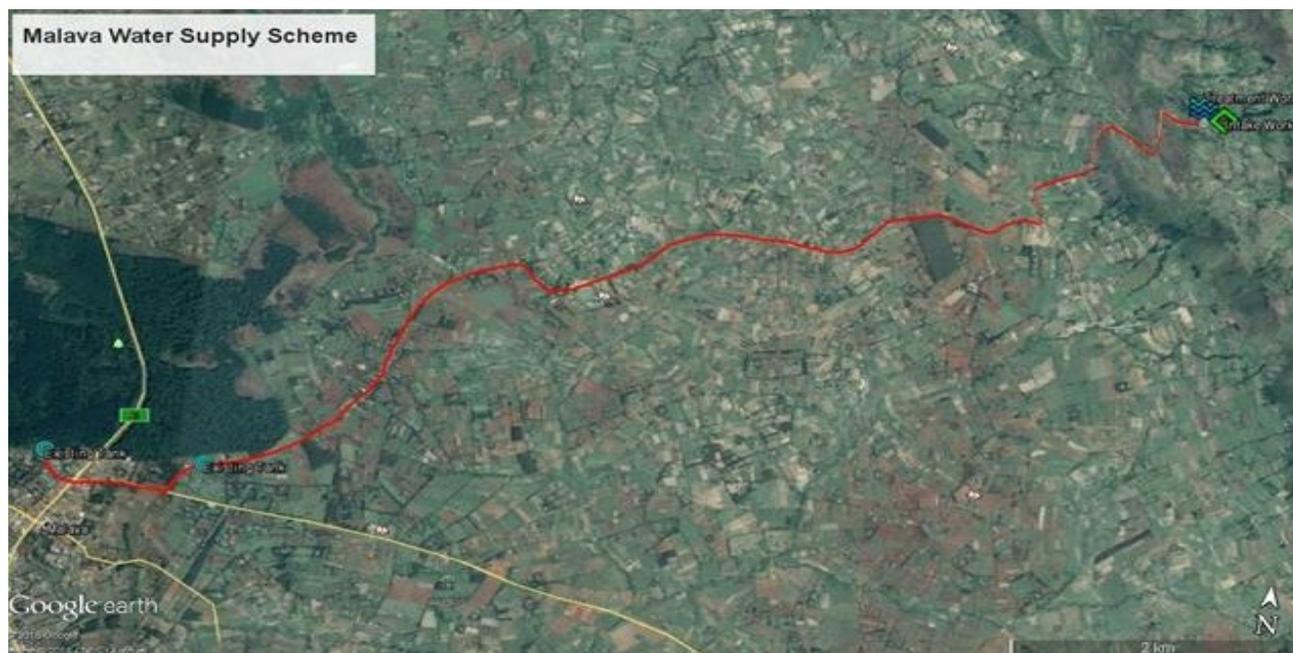
2.0 PROJECT DESCRIPTION

2.1 Geographical locations of the proposed project

2.1.1. Geographical location of the Malava Water Supply Scheme

The scheme straddles the administrative boundaries of Nandi and Kakamega Counties: The Intake Works (UTM 36N 713850m E, 53659m N) and Treatment Works (UTM 36N 713563m E, 53673m N) are located in Koiban sub-location, Kipngoror location of Nandi North Sub County, while the pipeline and distribution network are located in Kabras Central and Matete in Malava and Lugari Sub Counties respectively.

Figure 2: Arial map of Malava water supply scheme



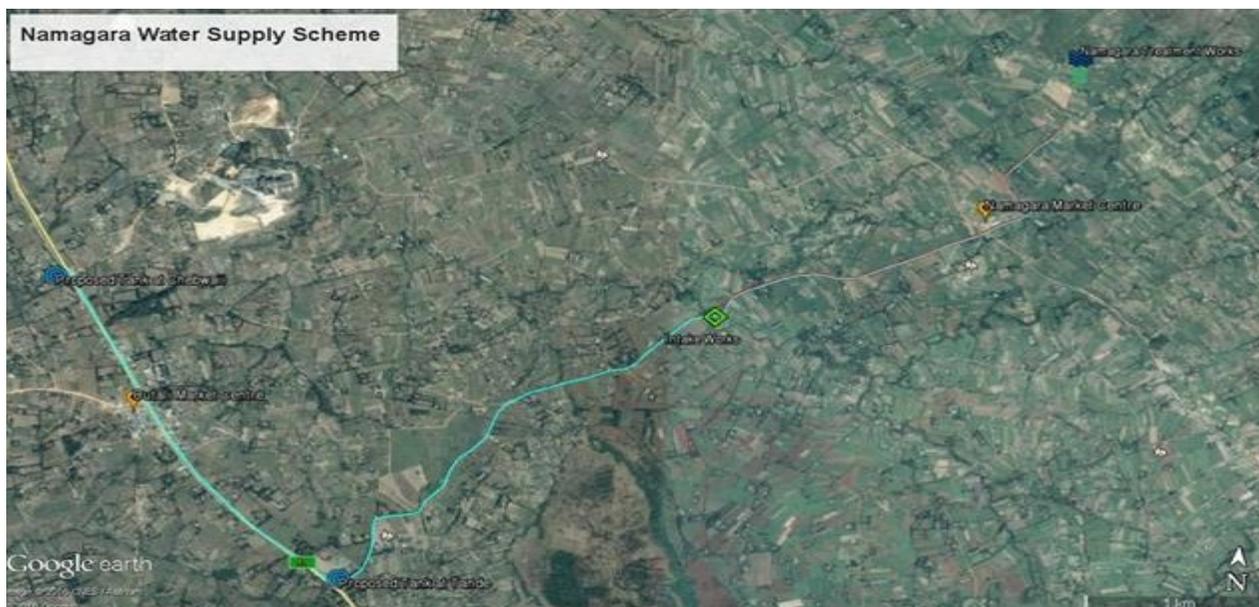
location of the Namagara Water Supply Scheme

The scheme is located in Kabras North Division of Malava sub-county (part of the pipeline and storage tanks) and Matete Division of Lugari sub-county (Intake and treatment works)

The figure overleaf shows the layout of the scheme from the intake works on Kivaywa River to consumers in Namagara, Tande, Butali and Chebwai market centres.

2.1.2.
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Figure 3: Namagara Water Supply Scheme



2.1.3. Geographical location of the Shirugu Water Supply Scheme

The scheme is located in Kabras Central, Kabras North and Kabras West Divisions of Malava Sub-County, Kakamega County.

The figure below shows the layout of the scheme from the intake works on Nambirima River to consumers in Shirugu, Samitsi, Burundu, Chegulo and Matsakha market centres.

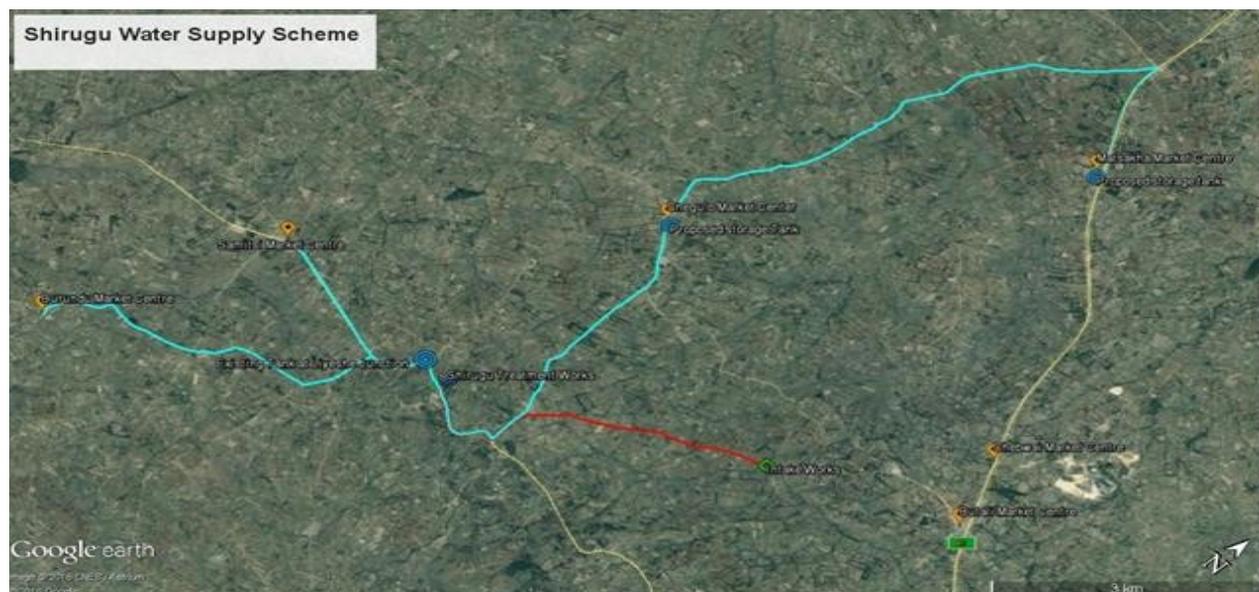


Figure 4: Aerial map of Shirugu water supply scheme

2.2 Project activities

LVNWWDA intends to rehabilitate and augment Malava Town's water supply scheme, and install new water supply infrastructure to serve surrounding market centres of Namagara, Tande, Butali, Chebwai, Matsakha, Chegulo, Samitsi and Burundu as shown below:

2.2.1. Malava town water supply scheme

The scheme is comprised of the following:

- Intake Works (IW) comprised of a concrete weir and inlet chamber of dimensions 1.2 x 1.2 x 1.8m deep on Kivaywa River (at this point known as Tolilet River) in Tolilet on the Nandi Escarpment;
- A new 230m long, 200mm diameter steel gravity raw water main from Kivaywa/Tolilet River IW to a new Treatment Works (TW);
- A new TW of capacity 3,556m³/d near the IW. The works will include:
 - An inlet chamber of dimensions 1.0 x 5.4 x 1.8m deep;
 - 2No. flocculation basins of dimensions 8.85 x 9.0 x 1.0m deep;
 - 2No. sedimentation basins of dimensions 4.0 x 18.6 x 2.9m deep;
 - 3No. filters of dimensions 3.5 x 3.5 x 4.7m deep;
 - A backwash sump of dimensions 8.0 x 11.0 x 3.0m with a submersible pump of capacity 54m³/hr, 6m head, 1kw;
 - A backwash tank of capacity 100m³ with plus St Jude Selile Elevated tank 100m³ pump 100m³/hr, 80m head 24.5kw
 - 2No. sludge drying beds of dimensions 20 x 10m;
- 2No staff houses, laboratory, chemical building, chlorine building and administration building at the TW;
- A 9,520m long, DN200mm steel transmission pipeline from the TW to Malava Town;
- A 1,500m³ ground storage tank at the Treatment Works site
- uPVC gravity distribution pipelines with a total length of 33,533m (DN150=4800m, DN100=4220m DN75=930m, DN50=23,583m)
- 5 No. communal water points (water kiosks) mainly along the transmission pipeline route.

2.2.2. Namagara water supply scheme

The scheme is comprised of the following:

- Intake Works - a concrete weir, inlet chamber and pumping station (pump capacity 83m³/hr, head 137m, power rating 46.1kw) on Kivaywa River at the Namagara -Tande Road crossing;
- A DN 250mm steel raw water pumping main 3,000m long from the IW to a new TW on the outskirts of Namagara market centre;
- A new TW of capacity 2,000m³/d. The works will include:
 - Inlet Works incorporating a stilling well and raw water chemical dosing channel;
 - 2No. flocculation basins of dimensions 8.85 x 9.0 x 1.0m deep;
 - 2No. horizontal flow sedimentation Tanks of dimensions 12.0m x 4.0m x 3.6m deep;
 - 2No. rapid gravity sand filters of dimensions 4.0m x 3.0m;
 - A filter gallery and pipework;
 - A pumping station for backwash pumps;
 - A reinforced concrete treated water tank of capacity 500m³;
 - Administration building, incorporating Operator's Office, Store & Water Testing Laboratory;
 - A chemical storage and mixing building;
 - A backwash sump of dimensions 8.0 x 11.0 x 3.0m with a submersible pump of capacity 54m³/hr, 6m head, 1kw;
 - 2No. sludge drying beds of dimensions 20 x 10m;
 - A 100m³ backwash tank with a pump of 100m³/hr, 15m head and 4.6kw rating;
 - Access road and perimeter fencing;
 - Electro-mechanical Equipment at Treatment Works including Backwash Pumps, Recirculation Pumps, etc.
- New PN10 uPVC distribution lines (DN 200=5,820m, DN150=2,580m);
- 2No. elevated steel tanks of capacity 100m³ each at Tande and Chebwai;

- 3 No. communal water points (water kiosks) mainly along the transmission Pipeline route (at Tande, Butali and Chebwai markets).

2.2.3. Shirugu water supply scheme

The scheme is comprised of the follow

- Intake Works - a concrete weir, inlet chamber and pumping station (with pump capacity of $50\text{m}^3/\text{hr}$, head 115m, power rating 23.2kw) on Nambirima River at the Butali -Shirugu Road crossing;
- A DN200mm steel pumping main 4,416m long from the IW to a new TW at Shirugu Friends Church;
- A new TW of capacity $1,200\text{m}^3/\text{d}$. The works will include:
 - A chemical storage and mixing building;
 - 2No Composite Filtration Units (CFU) each of capacity $600\text{m}^3/\text{d}$;
 - A pumping station for backwash pumps;
 - A 500m^3 reinforced concrete treated water tank;
 - An administration Building, incorporating the operator's office, store and water testing laboratory;
 - A backwash sump of dimensions 8.0 x 11.0 x 3.0m with a submersible pump of $54\text{m}^3/\text{hr}$, 6m head, and 1kw rating;
 - 2No sludge drying beds of dimensions 20 x 10m
 - A backwash tank of capacity 100m^3 with a pump of $100\text{m}^3/\text{hr}$, 15m head and 4.6kw rating;
 - An access road and perimeter fencing;
- New PN10 uPVC distribution lines:
 - Shirugu - Samitsi Line (DN 150=240m, DN100=720m, DN75=1,933m);
 - Shirugu- Burundu Line (DN75=4,291m);
 - Shirugu – Chegulo - Matsakha Line (DN 150=4,260m, DN100=6,197m);
- 2No. elevated steel tanks of capacity 100m^3 each at Chegulo and Matsakha market centres;
- 4 No. communal water points (water kiosks) mainly along the transmission pipeline route (at

Samitsi, Burundu, Chegulo and Matsakha).

1.7. Land Requirements

Project components such as intake works, and treatment works will require the acquisition of land from individuals for development of the facilities. Transmission and distribution pipelines will be laid along existing road reserves such that securing a Right of Way for the transmission and distribution lines will in most cases not require land acquisition.

Table 3: Land Requirements

Number of parcels	Number of PAPs	Land sizes to be acquired (Acres)
North Kabras/Malava/71	1	4.3
North Kabras/Malava/ 396	1	0.8
North Kabras/Malava/ 707	1	2.4
South Kabras/Chemuche/2961	1	0.3
South Kabras/Samitsi/1596	1	0.025
Nandi/Kaptich/67	1	0.245
Nandi/Kaptich/69	1	0.0468
Nandi/Kaptich/ 72	1	0.208
Nandi/Kaptich/73	1	0.7
Nandi/Kaptich/73	1	4.3
Nandi/ Soimining/412	1	0.12
Total	11	13.4448

3.0 BASELINE SOCIO-ECONOMIC CONDITIONS

This chapter gives a summary of the approach that was applied in collecting the socio-economic baseline data of the PAPs and the findings thereof.

Malaria is the most common type of disease in the project area. Other diseases reported include, typhoid and diarrhea. Majority of the respondents get health care services form the health centers while a few others go to the nearest dispensary. Majority, 98 % of the respondents are Christians. Muslims accounted for less than 2 %. Sixty per cent of the respondents earns a monthly income of between KES. 10,000-15,000. Crop farming is the main economic activity in the study area accounting for 69.3 % of the respondents. Livestock farming (1.1%), Business (19.3%), Formal employment 9.1 %

and mixed farming 1.1 %. Majority of the respondents were married. Majority 64.3 % of the respondents were male while 35.7 % were female.

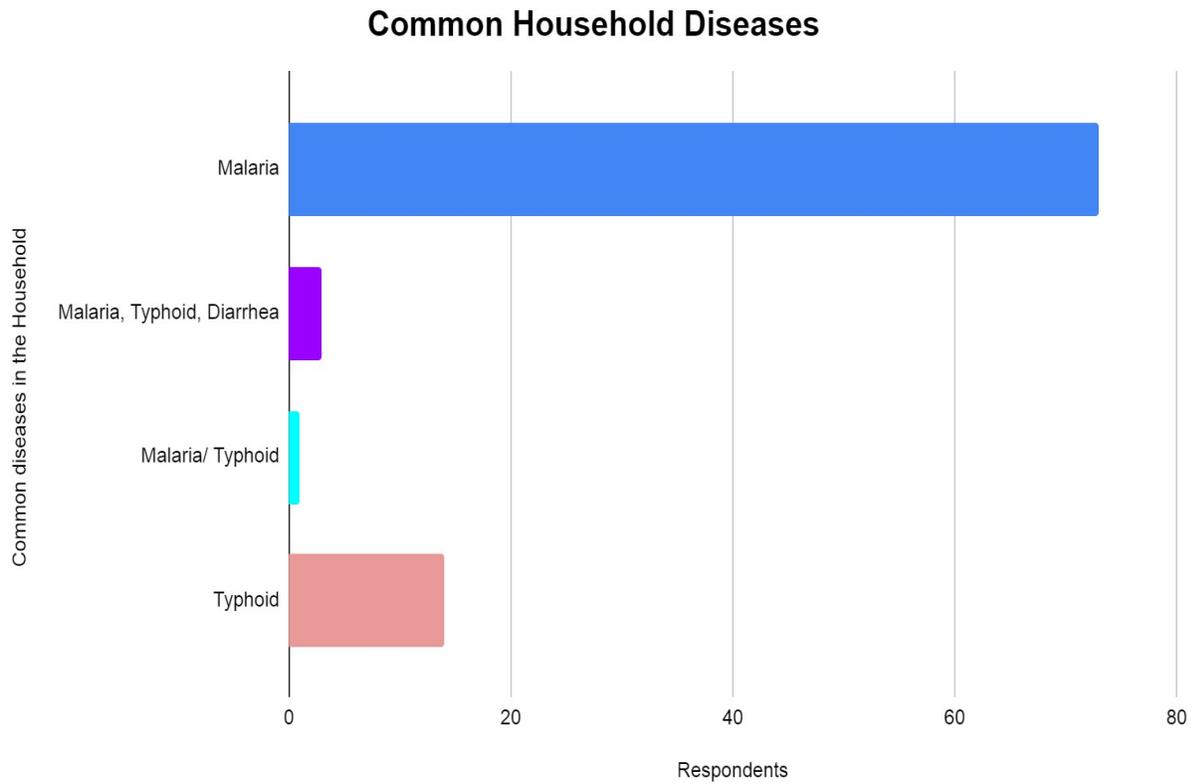


Figure 5: Common diseases

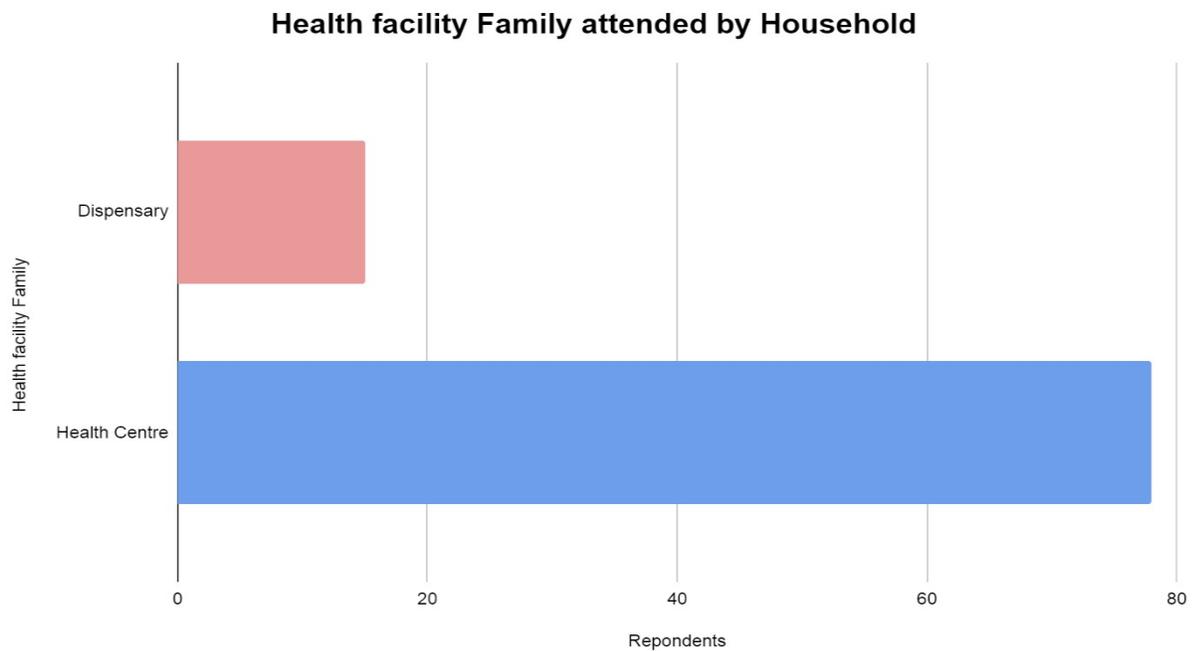


Figure 6: Distribution of health facilities

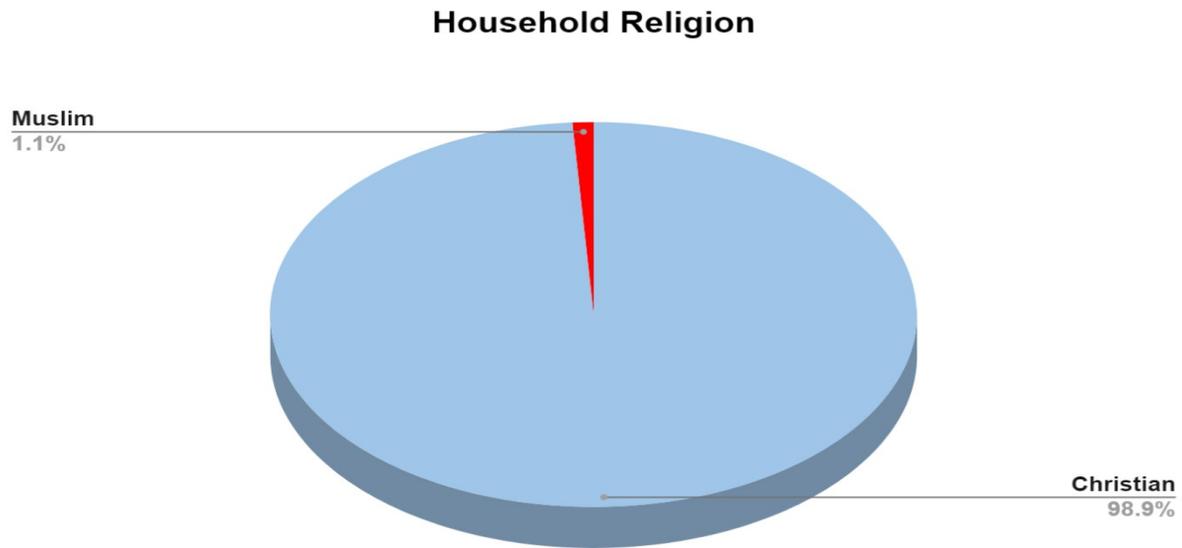


Figure 7: Household religion

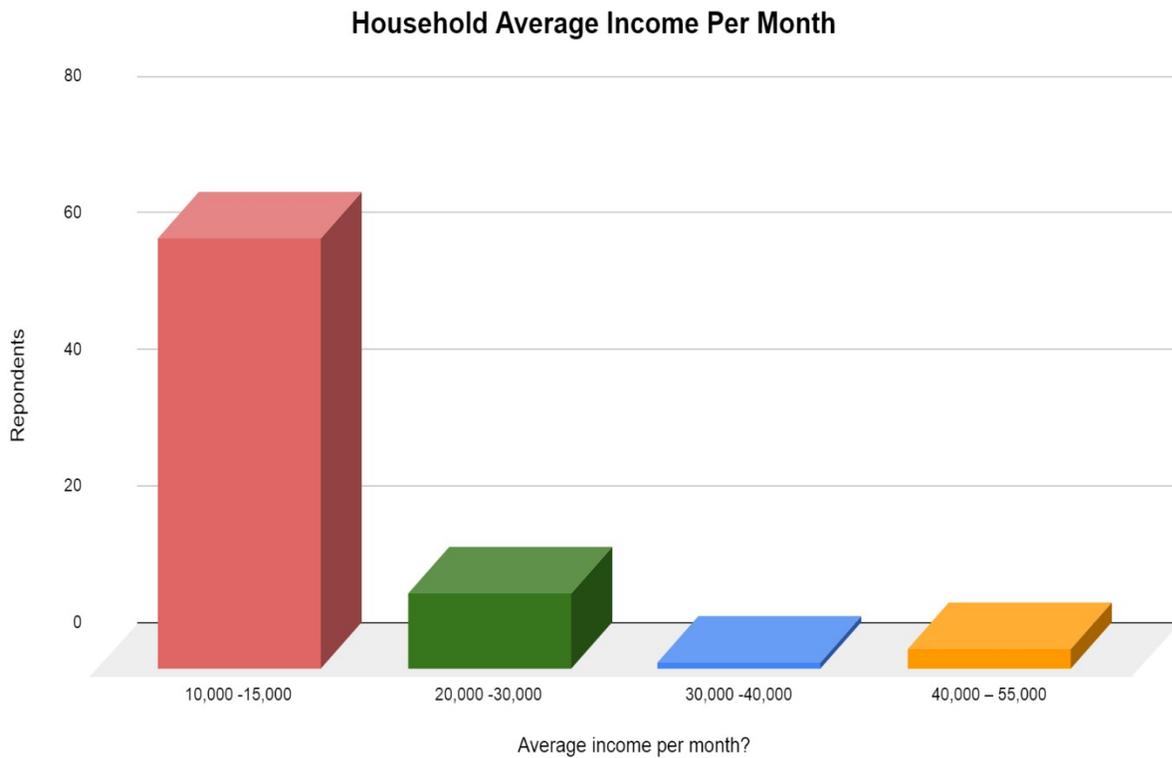


Figure 8: Household monthly income

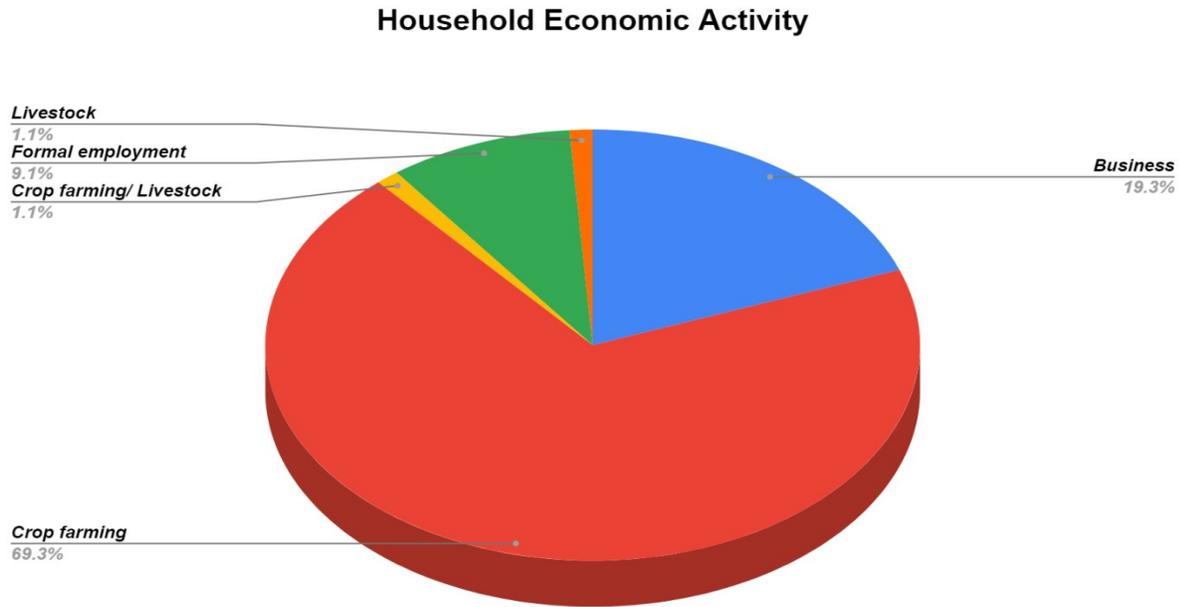


Figure 9: Household economic activities

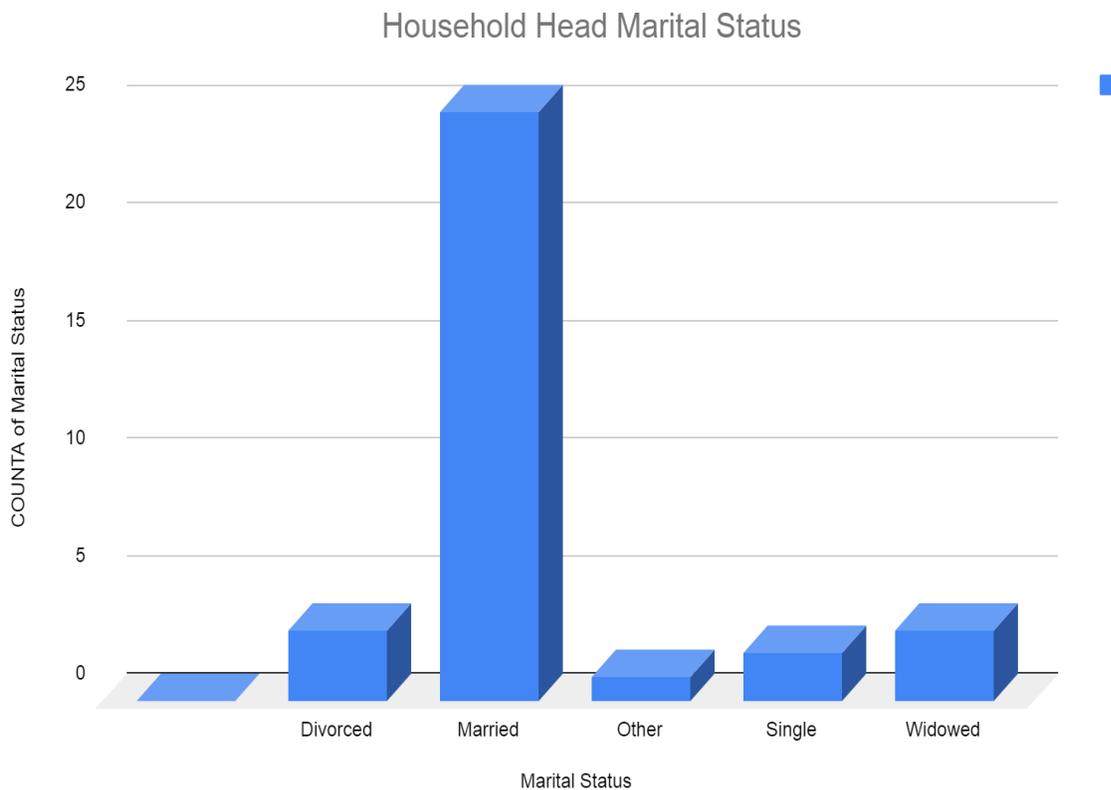


Figure 10: Household head marital status

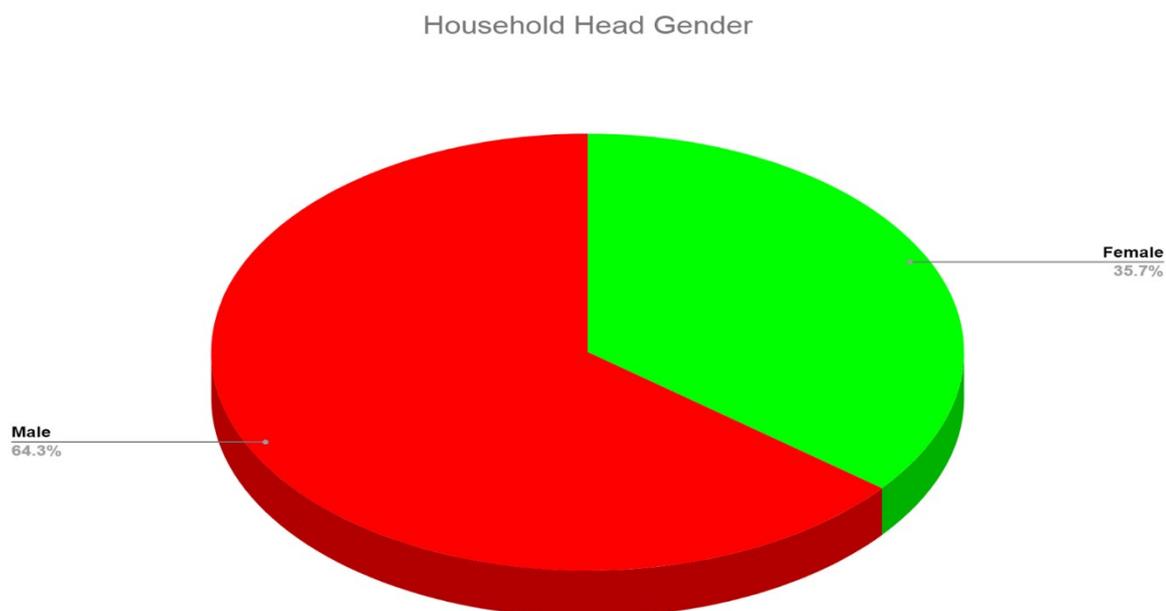


Figure 11: Gender of household head

4.0 POLICY, LEGAL AND ADMINISTRATIVE FRAMEWORK

This section describes the legal operating environment for acquisition of land as anticipated in the implementation of the MALAVA WATER SUPPLY PROJECT. The chapter highlights major issues related to land legislation in Kenya with regards to involuntary resettlement. It provides a brief overview of the Kenya land policy, and the Kenya’s constitutional provisions related to land use, planning, acquisition, management and tenure, and more specifically the legislations related to land expropriation or acquisition, land valuation and land replacement. The chapter also compares the Kenyan legislation with the World Bank provisions on resettlement, highlighting gaps and making recommendations to fill up the identified gaps. The study has been conducted in accordance with all the relevant legislation pertaining to Land Act 2012, Land Registration Act 2012, National Land Commission Act, 2012 as well as the World Bank Environmental and Social standard 5. Land acquisition, restrictions on land use and involuntary resettlement among others, as outlined in Section 5 of this report.

4.1 World Bank ESS relating to Relocation and Resettlement

Relevant World Bank ESS have also been reviewed. The Project has been assessed and considerations made on how the legislations and policies are triggered.

4.2 Environmental and Social Standard 5. Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

The ESS5 Involuntary Resettlement is triggered by the project since the Irrigation tertiaryaries will take up land, affect residential houses, other structures and trees.

Table 4: Summary of relevant resettlement legal statutes applicable

Legal Framework	Functional Relationship to Resettlement
Constitution of Kenya 2010	Constitution of Kenya 2010 recognizes individuals' right to acquire and own property provided they are citizens of the country in article 40. However, Article 66 of the same Constitution provides for the State to regulate the manner in which these rights may be curtailed for the benefit of the general public. Article 47 of the Constitution provides for administrative action to override the individual rights but the victim has to be given written reason for the action taken that undermines the right.
Environment and Land Court Act, 2011	Article 162 of the constitution provides for the creation of specialized courts to handle all matters on land and the environment. Such a court will have the status and powers of a High Court in every respect. Article 159 on the principles of judicial authority, indicates that courts will endeavour to encourage application of alternative dispute resolution mechanisms, including traditional ones, so long as they are consistent with the constitution. Section 20, of the Environment and Land Court Act, 2011 empowers the Environment and Land Court, on its own motion, or on application of the parties to a dispute, to direct the application of alternative dispute resolution (ADR), including traditional dispute resolution mechanisms.
Community land Act 2016	This act 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 2012 Laws of Kenya	It is the substantive law governing land in Kenya and provides legal regime over administration of public and private lands. It also provides for the acquisition of land for public benefit. The government has the powers under this Act to acquire land for projects, which are intended to benefit the general public. The projects requiring resettlement are under the provision of this Act.
Land Registration Act, 2012	The law provides for the registration of absolute proprietorship interests over land (exclusive rights) that has been adjudicated or any other leasehold ownership interest on the land. Such land can be acquired by the state under the Land Act 2012 in the project area.
National Land Commission Act 2012	The act establishes the National Land Commission with the purpose of managing public land and carrying out compulsory acquisition of land for specified public purposes.
The Land Adjudication Act Chapter 95 Laws of Kenya	Provides for ascertainment of interests prior to land registrations under the Land Registration Act 2012 through an adjudication committee that works in liaison with adjudication officers.
The Valuers Act 532	The act establishes valuers' registration board, which has the responsibility of regulating the activities and conduct of registered valuers in accordance with the provision of the act.

<p>The Environment Management and Coordination Act, 1999(Amended 2015)</p>	<p>The Environment Management and Coordination Act (EMCA), 1999 provides for the establishment of an umbrella legal and institutional framework under which the environment in general is to be managed. EMCA is implemented by the guiding principle that every person has a right to a clean and healthy environment and can seek redress through the High court if this right has been, is likely to be or is being contravened.</p>
<p>Environmental Impact Assessment and Audit Regulations 2003</p>	<p>The Environmental Impact Assessment and Audit Regulations state in Regulation 3 “the Regulations should apply to all policies, plans, programmes, projects and activities specified in Part IV, Part V, and the Second Schedule of the Act. Part III of the Regulations indicates the procedures to be taken during preparation, submission and approval of the study report (This report).</p>
<p>The Environmental Management and Co-ordination Act (Water Quality) Regulations, 2006)</p>	<p>These Regulations were published in the Kenya Gazette Supplement No. 68, Legislative Supplement No. 36, and Legal Notice No. 120 of 29 September 2006. The Regulations provide for sustainable management of water resources including prevention of water pollution and protection of water sources (lakes, rivers, streams, springs, wells, and other water sources). It is an offence under Regulation No. 4 (2), for any person to throw or cause to flow into or near a water resource any liquid, solid, or gaseous substance or deposit any such substance in or near it, as to cause pollution.</p>
<p>Occupational Safety and Health Act, 2007</p>	<p>Occupational Safety and Health Act (OSHA) is an Act of Parliament that provides for the safety, health and welfare of all workers and all persons lawfully present at workplaces, to provide for the establishment of the National Council for Occupational Safety and Health and for connected purposes. It applies to all workplaces where any person is at work, whether temporarily or permanently. The purpose of this Act is to:</p> <p>Secure the safety, health and welfare of persons at work; and protect persons other than persons at work against safety and health arising out of, or in connection with the activities of persons at work.</p>
<p>Work Injury Benefits Act (WIBA), 2007</p>	<p>It is an act of Parliament (No. 13 of 2007) to provide for compensation to workers for injuries suffered in the course of their employment.</p> <p>It outlines the following:</p> <p>Employer’s liability for compensation for death or incapacity resulting from accident; Compensation in fatal cases; Compensation in case of permanent partial incapacity; Compensation in case of temporary incapacity; Persons entitled to compensation and methods of calculating the earnings; No compensation shall be payable under this Act in respect of any incapacity or death resulting from a deliberate self-injury; and Notice of an accident,</p>

	causing injury to a workman, of such a nature as would entitle him for compensation shall be given in the prescribed form to the director.
The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012	This Act of Parliament puts into effect the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, and the United Nations Guiding Principles on Internal Displacement. The Act requires that displacement and relocation be carried out only if justified by compelling and overriding public interests, and in accordance with the conditions and procedures of Article 5 of the Protocol, Principles 7-9 of the Guiding Principles, and Sections 21-22 of this Act.
The Matrimonial Property Act 2013	This Act of Parliament outlines the law and procedures for the creation and division of a marital estate, as well as how and by whom matrimonial property should be managed and divided at the end of a marriage. Section 3(2) of the Act asserts that the parties of marriage have equal rights and obligations at the time of marriage and its dissolution. Matrimonial property is vested in the spouses in equal share, regardless of the contribution of either spouse towards its acquisition. Similarly, no estate or interest in the matrimonial property may be alienated without the prior consent of both spouses.

4.3 Land Tenure System in Kenya

Land tenure in Kenya is classified as public, community or private. Public land consists of government forests (other than those “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines”), government game reserves, water catchment areas, national parks, government animal sanctuaries and specially protected areas. The National Land Commission will manage public land. Community land includes land that is “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines,” and “ancestral lands and lands traditionally occupied by hunter-gatherer communities.” Rights are also held through traditional African systems, and rights that derive from the English system introduced and maintained through laws enacted by colonial and then the national parliament. The former is loosely known as customary tenure bound through traditional rules (customary law). The latter body of law is referred to as statutory tenure, secured and expressed through national law, in various Act of parliament e.g. Land Act 2012, Land Registration Act, 2012, Trust Land Act (cap 288) of the Laws of Kenya).

4.3.1 Customary Land Tenure

This refers to unwritten land ownership practices by certain communities under customary law. Kenya being a diverse country in terms of its ethnic composition has multiple customary tenure systems, which vary mainly due to different agricultural practices, climatic conditions and cultural practices. However most customary tenure systems exhibit several similar characteristics as follows: First, individuals or groups by virtue of their membership in some social unit of production or political community have guaranteed rights of access to land and other natural resources. Individuals or families thus claim property rights by virtue of their affiliation to the group.

4.3.2 Freehold Tenure

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. The Land Registration Act, 2012, governs freehold land. The Act provides that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights, privileges relating thereto. A freehold title generally has no restriction as to the use and occupation but in practice there are conditional freeholds, which restrict the use for say agricultural or ranching purposes only. Land individualization was demanded by the colonial settlers who required legal guarantee for the private ownership of land without which they were reluctant to invest.

4.3.3 Leasehold Tenure

Leasehold is an interest in land for a definite term of years and may be granted by a freeholder usually subject to the payment of a fee or rent and is subject also to certain conditions which must be observed e.g. relating to developments and usage. Leases are also granted by the government for government land, the local authorities for trust land and by individuals or organizations owning freehold land. The maximum term of government leases granted in Kenya is 99 years for agricultural land and urban plots. There are few cases of 33 years leases granted by government in respect of urban trust lands. The local authorities have granted leases for 50 and 30 years as appropriate.

4.3.4 Public Tenure

This is where land owned by the Government for her own purpose and which includes unutilized or un-alienated government land reserved for future use by the Government itself or may be available to the general public for various uses. The land is administered under the Land Act 2012 (LA). These lands were vested in the president and who has, normally exercised this power through the Commissioner of Lands, to allocate or make grants of any estates, interests or rights in or over un-alienated government land.

4.4 Land Acquisition Process

4.4.1 Proof that Compulsory Possession is for Public Good

It is very explicit in the Land Act, 2012, Section 107, that whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110 of Land Act 2012, the possession of the land must be necessary for public purpose or public interest, such as, in the interests of public defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit. Irrigation and drainage are explicitly identified as qualifying for land acquisition as public utility and the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having right over the property, and so certifies in writing, possession of such land may be taken.

4.4.2 Respective Government agency or cabinet must seek approval of National Land Commission (NLC)

The respective Cabinet Secretary or Government agency or the County Executive Committee Member must submit a request for acquisition of private land to the NLC to acquire the land on its behalf. The Commission will prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land. It is important to note that if the NLC is constituted prior to conclusion of land acquisition, it could prescribe criteria and guidelines necessitating variations or revisions to the current

RAP. Similar, the Commission has powers to reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed.

4.4.3 Inspection of Land to be acquired

NLC may physically ascertain or satisfy itself whether the intended land is suitable for the public purpose, which the applying authority intends to use as specified. If it certifies that indeed the land is required for public purpose, it shall express the satisfaction in writing and serve necessary notices to land owners and or approve the request made by acquiring authority intending to acquire land.

4.4.4 Publication of Notice of Intention to Acquire

Upon approval, NLC shall publish a notice of intention to acquire the land in the *Kenya Gazette and County Gazette*. It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar

The courts have strictly interpreted this provision, requiring that the notice include the description of the land, indicate the public purpose for which the land is being acquired and state the name of the acquiring public body. NLC shall ensure that the provisions are included in her notice.

The Land Registrar shall then make entry in the master register on the intention to acquire as the office responsible for survey, at both national and county level, geo-references the land intended for acquisition.

4.4.5 Serve the notice of inquiry

Thirty days after the publication of the Notice of Intention to Acquire, NLC will schedule a hearing for public inquiry. NLC must publish notice of this meeting in the *Kenya Gazette and County gazette 15 days before the inquiry meeting* and serve the notice on every person interested in the land to be acquired. Such notice must instruct owner of land to deliver to the NLC, no later than the date of the inquiry, a written claim for compensation.

4.4.6 Holding of a public hearing

NLC then convenes a public hearing not earlier than 30 days after publication of the Notice of Intention to Acquire. On the date of the hearing, NLC must conduct a full inquiry to determine the number of individuals who have legitimate claims on the land, the land value and the amount of compensation payable to each legitimate claimant. Besides, at the hearing, the Commission shall—make full inquiry into and determine who are the persons interested in the land; and receive written claims of compensation from those interested in the land. 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 (NLC) of documents of title to the land.

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. It will also provide opportunity to land owners to hear the justification of the public authority in laying claims to acquire the land.

4.4.7 Valuation of the land

Part III of the Land Act 2012, section 113 (2a) states that “the Commission shall determine the value of land with conclusive evidence of (i) the size of land to be acquired; (ii) the value, in the opinion of the Commission, of the land; (iii) the amount of compensation payable, whether the owners of land

have or have not appeared at the inquiry.” This can be interpreted that NLC must determine the value of the land accordingly and pay appropriate just compensation in accordance with the principles and formulae that it will develop. Nonetheless, just compensation could also be interpreted as market rate. The final award on the value of the land shall be determined by NLC and shall not be invalidated by reason of discrepancy, which may be found to exist in the area.

4.4.8 Matters to be Considered in Determining Compensation

The market value of the property, which is determined at the date of the publication of the acquisition notice, must be considered. Determination of the value has to take into consideration the conditions of the title and the regulations that classify the land use e.g. agricultural, residential, commercial or industrial.

Increased market value is disregarded when:

- It is accrued by improvements made within two years before the date of the publication of the acquisition notice, unless it is proved that such improvement was made in good faith and not in contemplation of the proceedings for compulsory acquisition.
- It is accrued by land use contrary to the law or detrimental to the health of the occupiers of the premises or public health.
- Any damages sustained or likely to be sustained by reason of severing such land from other land owned by the claimant.
- Any damage sustained or likely to be sustained if the acquisition of the land had negative effects on other property owned by the claimant.
- Reasonable expenses, if as a consequence of the acquisition, the claimant was compelled to change his residence or place of business (i.e., compensation for disruption to the claimant’s life).
- Any damage from loss of profits over the land occurring between the date of the publication of the acquisition notice and the date the NLC takes possession of the land.

4.4.9 Matters not to be Considered in Determining Compensation:

- The degree of urgency, which has led to the acquisition.
- Any disinclination of the person’s interest to part with the land.
- Damages sustained by the claimant, which will not represent a good cause of action.
- Damages, which are likely to be caused to the land after the publication of the acquisition notice or as a consequence of the future, land use.
- Increased land value accrued by its future use.
- Any development at the time of acquisition notice, unless these improvements were necessary for maintaining the land.

4.4.10 Award of Compensation

The Land Act does not stipulate that compensation must be in the form of money only. Under the Land Act 2012 section 117, the State can award a grant of land in lieu of money compensation (“land for land”), provided the value of the land awarded does not exceed the value of the money compensation that would have been allowable. The law could be interpreted that any dispossessed person shall be awarded the market value of the land. The new law is silent on relocation support or disturbance allowance support.

Upon the conclusion of the inquiry, and once the NLC has determined the amount of compensation, NLC will prepare and serve a written award of compensation to each legitimate claimant. NLC will publish these awards, which will be considered “final and conclusive evidence” of the area of the land to be acquired, the value of the land and the amount payable as compensation. Land Act, Section 115

further stipulates that an award shall not be invalidated by reason only of a discrepancy between the area specified in the award and the actual area of the land. Compensation cannot include attorney's fees, costs of obtaining advice, and costs incurred in preparing and submitting written claims.

4.4.11 Payment of Compensation

A notice of award and offer of compensation shall be served to each person by the Commission. Section 120 provides that "first offer compensation shall be paid promptly" to all persons interested in land. Section 119 provides a different condition and states that the NLC "as soon as practicable" will pay such compensation. Where such amount is not paid on or before the taking of the land, the NLC must pay interest on the awarded amount at the market rate yearly, calculated from the date the State takes possession until the date of the payment.

In cases of dispute, the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying owner of land accordingly. 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 rate prevailing bank rates from the time of taking possession until the time of payment.

4.4.12 Transfer of Possession and Ownership to the State

Once first offer payment has been awarded, the NLC will serve notice to landowners in the property indicating the date the Government will take possession. Upon taking possession of land, the commission shall ensure payment of just compensation in full. When this has been done, NLC removes the ownership of private land from the register of private ownership and the land is vested in the national or county Government as public land free from any encumbrances.

On the other side also, the Commission has also the power to obtain temporary occupation of land. However, the commission shall as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.

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 this Act, the Commission may take possession of uncultivated or pasture or arable land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire.

On the expiration of that time NLC shall, notwithstanding that no award has been made, take possession of that land. 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.

On receipt of the documents of title, the Registrar shall— cancel the title documents if the whole of the land comprised in the documents has been acquired; 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. 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 this Act.

4.4.13 Opportunity for Appeal

The Kenya Constitution establishes Environment and Land Court. Article 162 of the constitution provides for the creation of specialized courts to handle all matters on land and the environment. Such a court will have the status and powers of a High Court in every respect. Article 159 on the principles of judicial authority, indicates that courts will endeavour to encourage application of alternative dispute resolution mechanisms, including traditional ones, so long as they are consistent with the constitution. Section 20, of the Environment and Land Court Act, 2011 empowers the Environment and Land Court, on its own motion, or on application of the parties to a dispute, to direct the application of Alternative Dispute Resolution (ADR), including traditional dispute resolution mechanisms. Any person whose land has been compulsorily acquired may petition the Environment and Land Court for redress with respect to:

- *The determination of such person's right over the land;*
- *The amount offered in compensation; and*
- *The amount offered in compensation for damages for temporary dispossession in the case of the Government's withdrawal of its acquisition of the land.*

4.5 World Bank Environmental and Social Standards

Environmental and Social Standard 1. Assessment and Management of Environmental and Social Risks and Impacts

ESS1 sets out the Borrower's responsibilities for assessing, managing and monitoring environmental and social risks and impacts associated with each stage of a project supported by the Bank through Investment Project Financing, in order to achieve environmental and social outcomes consistent with the Environmental and Social Standards (ESSs).

The ESSs are designed to help Borrowers to manage the risks and impacts of a project, and improve their environmental and social performance, through a risk and outcomes based approach. The desired outcomes for the project are described in the objectives of each ESS, followed by specific requirements to help Borrowers achieve these objectives through means that are appropriate to the nature and scale of the project and proportionate to the level of environmental and social risks and impacts.

Environmental and Social Standard 2. Labor and Working Conditions

ESS2 recognizes the importance of employment creation and income generation in the pursuit of poverty reduction and inclusive economic growth. Borrowers can promote sound worker-management relationships and enhance the development benefits of a project by treating workers in the project fairly and providing safe and healthy working conditions.

Objectives

- i. To promote safety and health at work.
- ii. To promote the fair treatment, nondiscrimination and equal opportunity of project workers.
- iii. To protect project workers, including vulnerable workers such as women, persons with disabilities,
- iv. children (of working age, in accordance with this ESS) and migrant workers, contracted workers, community workers and primary supply workers, as appropriate.
- v. To prevent the use of all forms of forced labor and child labor.¹
- vi. To support the principles of freedom of association and collective bargaining of project workers in a manner consistent with national law.

- vii. To provide project workers with accessible means to raise workplace concerns.

Environmental and Social Standard 3. Resource Efficiency and Pollution Prevention and Management

ESS3 recognizes that economic activity and urbanization often generate pollution to air, water, and land, and consume finite resources that may threaten people, ecosystem services and the environment at the local, regional, and global levels. The current and projected atmospheric concentration of greenhouse gases (GHG) threatens the welfare of current and future generations. At the same time, more efficient and effective resource use, pollution prevention and GHG emission avoidance, and mitigation technologies and practices have become more accessible and achievable. This ESS sets out the requirements to address resource efficiency and pollution¹ prevention and management² throughout the project life cycle consistent with GIIP.

Objectives

- i. To promote the sustainable use of resources, including energy, water and raw materials.
- ii. To avoid or minimize adverse impacts on human health and the environment by avoiding or minimizing
- iii. pollution from project activities.
- iv. To avoid or minimize project-related emissions of short and long-lived climate pollutants.³
- v. To avoid or minimize generation of hazardous and non-hazardous waste.
- vi. To minimize and manage the risks and impacts associated with pesticide use.

Environmental and Social Standard 4. Community Health and Safety

ESS4 recognizes that project activities, equipment, and infrastructure can increase community exposure to risks and impacts. In addition, communities that are already subjected to impacts from climate change may also experience an acceleration or intensification of impacts due to project activities. ESS4 addresses the health, safety, and security risks and impacts on project-affected communities and the corresponding responsibility of Borrowers to avoid or minimize such risks and impacts, with particular attention to people who, because of their particular circumstances, may be vulnerable.

Objectives

- i. To anticipate and avoid adverse impacts on the health and safety of project-affected communities
- ii. during the project life cycle from both routine and non-routine circumstances.
- iii. To promote quality and safety, and considerations relating to climate change, in the design and construction of infrastructure, including dams.
- iv. To avoid or minimize community exposure to project-related traffic and road safety risks, diseases and hazardous materials.
- v. To have in place effective measures to address emergency events.
- vi. To ensure that the safeguarding of personnel and property is carried out in a manner that avoids or minimizes risks to the project-affected communities.

Environmental and Social Standard 5. Land Acquisition, Restrictions on Land Use and Involuntary Resettlement.

ESS5 recognizes that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons. Project-related land acquisition or restrictions on land use may cause physical displacement (relocation, loss of residential land or loss of shelter), economic displacement (loss of land, assets or access to assets, leading to loss of income sources or other means of livelihood), or both. The term “involuntary resettlement” refers to these impacts. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in displacement.

Experience and research indicate that physical and economic displacement, if unmitigated, may give rise to severe economic, social and environmental risks: production systems may be dismantled; people face impoverishment if their productive resources or other income sources are lost; people may be relocated to environments where their productive skills are less applicable and the competition for resources greater; community institutions and social networks may be weakened; kin groups may be dispersed; and cultural identity, traditional authority, and the potential for mutual help may be diminished or lost. For these reasons, involuntary resettlement should be avoided. Where involuntary resettlement is unavoidable, it will be minimized and appropriate measures to mitigate adverse impacts on displaced persons (and on host communities receiving displaced persons) will be carefully planned and implemented.

Objectives

- i. To avoid involuntary resettlement or, when unavoidable, minimize involuntary resettlement by exploring project design alternatives.
- ii. To avoid forced eviction.
- iii. To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by: (a) providing timely compensation for loss of assets at replacement cost⁶ and (b) assisting displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation whichever is higher.
- iv. To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities, and security of tenure.
- v. To conceive and execute resettlement activities as sustainable development programs, providing sufficient investment resources to enable displaced persons to benefit directly from the project, as the nature of the project may warrant.
- vi. To ensure that resettlement activities are planned and implemented with appropriate disclosure of information, meaningful consultation, and the informed participation of those affected.

Environmental and Social Standard 6. Biodiversity Conservation and Sustainable Management of Living Natural Resources

ESS6 recognizes that protecting and conserving biodiversity and sustainably managing living natural resources are fundamental to sustainable development. Biodiversity is defined as the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species, and of ecosystems. Biodiversity often underpins ecosystem services valued by humans. Impacts on biodiversity can therefore often adversely affect the delivery of ecosystem services.

ESS6 recognizes the importance of maintaining core ecological functions of habitats, including forests, and the biodiversity they support. Habitat is defined as a terrestrial, freshwater, or marine geographical unit or airway that supports assemblages of living organisms and their interactions with the nonliving

environment. All habitats support complexities of living organisms and vary in terms of species diversity, abundance and importance. This ESS also addresses sustainable management of primary production and harvesting of living natural resources. ESS6 recognizes the need to consider the livelihood of project-affected parties, including Indigenous Peoples, whose access to, or use of, biodiversity or living natural resources may be affected by a project. The potential, positive role of project affected parties, including Indigenous Peoples, in biodiversity conservation and sustainable management of living natural resources is also considered.

Objectives

- i. To protect and conserve biodiversity and habitats.
- ii. To apply the mitigation hierarchy⁴ and the precautionary approach in the design and implementation of projects that could have an impact on biodiversity.
- iii. To promote the sustainable management of living natural resources.
- iv. To support livelihoods of local communities, including Indigenous Peoples, and inclusive economic development, through the adoption of practices that integrate conservation needs and development priorities.

Environmental and Social Standard 7. Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.

This ESS applies to a distinct social and cultural group identified in accordance with paragraphs 8 and 9 of this ESS. The terminology used for such groups varies from country to country, and often reflects national considerations. ESS7 uses the term “*Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities*,”¹ recognizing that groups identified under paragraphs 8 and 9 may be referred to in different countries by different terms. Such terms include “Sub-Saharan African historically underserved traditional local communities,” “indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “vulnerable and marginalized groups,” “minority nationalities,” “scheduled tribes,” “first nations” or “tribal groups.” ESS7 applies to all such groups, providing they meet the criteria set out in paragraphs 8 and 9. For the purposes of this ESS, the term “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities” includes all such alternative terminology.

Environmental and Social Standard 8. Cultural Heritage

ESS8 recognizes that cultural heritage provides continuity in tangible and intangible forms between the past, present and future. People identify with cultural heritage as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. Cultural heritage, in its many manifestations, is important as a source of valuable scientific and historical information, as an economic and social asset for development, and as an integral part of people’s cultural identity and practice. ESS8 sets out measures designed to protect cultural heritage throughout the project life cycle. This ESS sets out general provisions on risks and impacts to cultural heritage from project activities. ESS7 sets out additional requirements for cultural heritage in the context of Indigenous Peoples. ESS6 recognizes the social and cultural values of biodiversity. Provisions on Stakeholder Engagement and Information Disclosure are set out in ESS10.

Objectives

- i. To protect cultural heritage from the adverse impacts of project activities and support its preservation.
- ii. To address cultural heritage as an integral aspect of sustainable development.
- iii. To promote meaningful consultation with stakeholders regarding cultural heritage.

- iv. To promote the equitable sharing of benefits from the use of cultural heritage.

Environmental and Social Standard 10. Stakeholder Engagement and Information Disclosure.

This ESS recognizes the importance of open and transparent engagement between the Borrower and project stakeholders as an essential element of good international practice. Effective stakeholder engagement can improve the environmental and social sustainability of projects, enhance project acceptance, and make a significant contribution to successful project design and implementation.

Stakeholder engagement is an inclusive process conducted throughout the project life cycle. Where properly designed and implemented, it supports the development of strong, constructive and responsive relationships that are important for successful management of a project’s environmental and social risks. Stakeholder engagement is most effective when initiated at an early stage of the project development process, and is an integral part of early project decisions and the assessment, management and monitoring of the project’s environmental and social risks and impacts. This ESS must be read in conjunction with ESS1. Requirements regarding engagement with workers are found in ESS2. Special provisions on emergency preparedness and response are covered in ESS2 and ESS4. In the case of projects involving involuntary resettlement, Indigenous Peoples or cultural heritage, the Borrower will also apply the special disclosure and consultation requirements set out in ESS5, ESS7 and ESS8.

Objectives

- To establish a systematic approach to stakeholder engagement that will help Borrowers
 - i. Identify stakeholders and build and maintain a constructive relationship with them, in particular project-affected parties.
 - ii. To assess the level of stakeholder interest and support for the project and to enable stakeholders’ views to be taken into account in project design and environmental and social performance.
 - iii. To promote and provide means for effective and inclusive engagement with project-affected parties throughout the project life cycle on issues that could potentially affect them.
 - iv. To ensure that appropriate project information on environmental and social risks and impacts is disclosed to stakeholders in a timely, understandable, accessible and appropriate manner and format.

Table 5: Comparative Analysis of World Bank ESS and Government

ESS	Kenyan Legislation	Comparison	Agreed approach to cover gap
General Requirements			
World Bank ESS has overall policy objectives, requiring that: 1. Involuntary resettlement should be avoided wherever possible, or minimized, exploring all alternatives.	1. According to Kenyan Legislation, involuntary resettlement may occur as a result of projects implemented in public interest. 2. The Land Act, 2012 Act outlines	1. The Land Act does not stipulate that resettlement should be avoided wherever possible; on the contrary, as long as a project is for public interest, involuntary resettlement is	1. RAP, ensure that resettlement issues are considered at the design stage of the project in order to avoid/ minimize resettlement. 2. Implement World Bank ESS standards - displaced should be

<p>2. Resettlement programs should be sustainable, include meaningful consultation with affected parties, and provide benefits to the affected parties.</p>	<p>procedures for sensitizing the affected population to the project and for consultation on implications and grievance procedures.</p>	<p>considered to be inevitable.</p>	<p>assisted in improving their livelihood to pre-project status.</p>
<p>3. Displaced persons should be assisted in improving livelihoods etc., or at least restoring them to previous levels.</p>	<p>3. The Land Act 2012 guarantees the right to fair and just compensation in case of relocation.</p>	<p>2. Same as the World Bank 3. Just and fair compensation as outlined in the Land Act 2012 is not clear and can only be determined by NLC, which can be subjective. It does not talk about improving livelihood or restoring them to pre-project status.</p>	

ESS	Kenyan Legislation	Comparison	Agreed approach to cover gap
Process Requirements			
<p>Consultation: 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>Grievance: 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 ESS requirements.</p>	<p>No action required</p>
<p>Eligibility Criteria <i>Defined as:</i> (a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);</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</p>	<p>Kenya's Land Law defines eligibility as both formal (legal) and informal (customary) owners of expropriated land. However, it does not specifically recognize all users of</p>	<p>Ensure ALL users (including illegal squatters, labourers, rights of access) of affected lands are included in the census survey or are paid</p>

ESS	Kenyan Legislation	Comparison	Agreed approach to cover gap
<p>(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—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan (see Annex 10 A, Para. 7(f)); and¹⁹</p> <p>(c) those who have no recognizable legal right or claim to the land they are occupying</p> <p><i>To determine eligibility:</i> Carry out resettlement census. Cut-off date for eligibility is the day when the census begins.</p>	<p>those holding land tenure rights</p> <p>Land Act also recognizes those who have interest or some claim in the land such as pastoralist or who use the land for their 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 land to be compensated.</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>Measures: Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land-based.</p> <p>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 viable; (b) active markets for lost assets exist and there is sufficient supply of land and housing; or (c) livelihoods are not</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.</p> <p>Land Act 2012 appears to prefer mode of compensation by the Government to the affected population.</p> <p>Land Act talks of prompt, just compensation before the acquisition of land. However,</p>	<p>Land for Land provided for in the Land Act based on agreement by the PAP.</p> <p>Cash based compensation seems to be the preferred mode of awarding compensation to the affected population by Government of Kenya</p> <p>‘Just compensation’ as stipulated in the Land Act not yet specifically defined.</p>	<p>Ensure that all alternative options are considered before providing cash compensation</p> <p>Use World Bank ESS procedures in determining form of compensation</p> <p>Implement prompt and effective compensation at full replacement cost for the losses of the assets.</p> <p>Implement World Bank</p>

ESS	Kenyan Legislation	Comparison	Agreed approach to cover gap
<p>land-based. World Bank ESS Article 6(a) 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 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>interpretation of just compensation is yet to be clearly outlined through a specific schedule defining just compensation has 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>ESS provides related land transaction fees. Land Act not clear on this.</p> <p>ESS 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>policy.</p> <p>Ensure that ALL resettlement options are agreed on with PAPs and put in place BEFORE displacement of affected persons.</p>
<p>Valuation: With regard to land and structures, “replacement cost” is</p>	<p>Valuation is covered by the Land Act 2012 and stipulates, as</p>	<p>Though one could argue that there is some form of</p>	<p>Apply the World Bank ESS valuation measures, as outlined in Section 6,</p>

ESS	Kenyan Legislation	Comparison	Agreed approach to cover gap
<p>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 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 labour and contractors' fees, plus the cost of any registration and transfer taxes.</p>	<p>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.</p> <p>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>The Land Act 2012 stipulates just compensation.</p>	<p>consistency between the Kenyan Law and World Bank ESS, interpretation of 'just compensation' has not been defined.</p> <p>Interpretation of just compensation not clear</p> <p>Interpretation of just compensation not clear.</p>	<p>in order to fully value all affected assets in a consistent manner.</p> <p>Apply World Bank ESS on valuation and compensation measures.</p> <p>Apply World Bank ESS on valuation and compensation procedures.</p>
<p>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 ESS and Kenyan Law.</p>

Table 6: Comparative Analysis of World Bank ESS and Kenya’s requirements Relevant to the Process

Category of PAPs and Type of Lost Assets	Kenyan Law	World Bank ESS
Land Owners	Fair and just compensation which could be in form of cash compensation or Land for Land	Recommends land-for-land compensation. Other compensation is at replacement cost. If livelihoods are land-based, then livelihood restoration is also needed.
Land Tenants	Constitution says that ‘occupants of land’ entitled to some level of pay in good faith. Land Act stipulates that they are entitled to some compensation based on the amount of rights they hold upon land under relevant laws. However, those who acquired land illegally not entitled to any.	PAPs are entitled to some form of compensation whatever the legal/illegal recognition of their occupancy.
Land Users	Land Act not clear on Land Users although in some cases they can receive some form of compensation depending on the determination by NLC	Entitled to compensation for crops and investments made on the land; livelihood must be restored to at least pre-project levels.
Owners of Temporary Buildings	The constitution of Kenyan respects the right to private property and in case of compulsory acquisition, just compensation must be granted to the owner for the loss temporary buildings.	Entitled to in-kind compensation or cash compensation at full replacement cost including labour and relocation expenses, prior to displacement.
Owners of Permanent buildings	The constitution of Kenyan respects the right to private property and in case of compulsory acquisition, just compensation must be granted to the owner for the permanent building	Entitled to in-kind compensation or cash compensation at full replacement cost including labour and relocation expenses, prior to displacement.
Perennial Crops	Compensation for the loss of crops as per the rates approved by the Ministry of Agriculture	As per specifications of this project’s RPF, once approved by the Bank and disclosed at the Bank info shop,

5.0 ELIGIBILITY AND VALUATION

Malava water supply project will lead to displacement (economic and physical) 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 Resettlement Policy Framework (RPF) and Financial Agreement between Government of Kenya (GoK) and World Bank, the Project has developed detailed entitlement matrices for the project. This chapter outlines the general principles and processes the Project will follow with respect to entitlement for each category of PAP.

5.1 Eligibility

There are four variables to consider regarding Eligibility:

- i. Who is eligible – this is established through the definition of PAP and their relationship to the project-affected-area determined through the census?
- ii. How are they deemed eligible - this is established in the eligibility criteria?
- iii. When are they eligible - this is defined by the Cut-off Date?
- iv. 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 may be 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.

Table 7: Eligibility Framework

Description	Who	How	When
Physically displaced PAP:	Individuals, households or groups who will lose their place of residence due to Land Acquisition required for the Project Area.	Determined by the Cadastral and Asset Survey.	At the time of signing the cut-off date form during the rolling Cut-off date.
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.		
Physically and Economically displaced PAP:	Individuals, households or groups who fit into both categories above.		

5.1.1 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 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.

5.1.2 Cut-Off Date

Persons who encroach on the area after the cut-off date are not entitled to compensation or any other form of resettlement assistance. Improvements made to homes or additional structures added by existing residents after the cut-off date are also not eligible for compensation and resettlement assistance. According to ESS, Cut-off date is the date the census begins. 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.

5.1.3 Category of PAH

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

PAH Categorization

- i. Land Owners
- ii. Land and Crop/Tree Owners
- iii. Land and Structure Owners
- iv. Land, Crop/Tree and Structure Owners
- v. Crop Owners

5.1.4 Entitlement Matrix

The Entitlement Framework establishes the specific rights and entitlements to replacement assets or 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 framework established the specific rights per the type of loss, as well as differentiating the potential compensation entitlement granted to physically and/or economically displaced PAPs.

Table 8: Entitlement matrix

#	Type of Loss/Impact	Entitled person	Description of Entitlements
1.	Structures	Rightful owners of the affected structures	<p>Cash compensation for all structures at full 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 within the notice period given to vacate as defined by the project schedule and prior to demolition.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p>
2.	Land for Primary Residential land(relocation)	Registered owner or claimants of customary held land on which complete immovable housing structure is established for primary residence.	<p>Self-managed relocation (Cash compensation)</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p>
3.	Loss of agricultural farming land	Registered owners or claimants of customary held lands	<p>Cash compensation</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p>
4.	Crops	Owners of crops on farm land	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:

#	Type of Loss/Impact	Entitled person	Description of Entitlements
			<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> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p>
	Trees	Owners of trees	All trees shall be compensated at the recommended rates by KFS. And considering the prevailing market rates and the time required to have similar trees grow to maturity.
5.	Vulnerable Support Program (Tailored)	There are 208 vulnerable PAPs who shall receive support. This category refers to PAPs with other forms of vulnerabilities which may require special consideration. Vulnerable individuals e.g. the elderly (over 70 years old), physically challenged, those suffering from chronic illness; widows and children who are under 18 years	Assistance in the compensation payment procedure
6.	Graves	Family members	Cash compensation at a rate 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.

6.0 PUBLIC CONSULTATION AND DISCLOSURE

6.1 Introduction

Effective resettlement action planning requires regular and thorough consultation with a wide range of project stakeholders drawn from the affected area. This wide consultation is intended to include individuals and groups who will be positively or adversely affected by the project. The stakeholders' consultations are extremely important for successful implementation of the RAP.

Stakeholder and PAP consultation meetings were held within the Project area from 25th August 2021 to 3rd September 2021. The stakeholder and PAP Consultation meetings included the following:

- i) Courtesy calls and introductory meetings at the County Commissioner
- ii) Consultation meetings with affected PAPs

Courtesy to Deputy County Commissioner, Malava

The Consultant paid a courtesy call to Deputy County Commissioner, Malava and held a consultative meeting to brief Commissioner on the assignment and the activities to be undertaken.

The meeting took place on 25th August 2021.

6.2 Community Introductory meetings with PAPs

Community Sensitization meeting were held in each of the Location affected by the project. During the introductory meetings, the RAP Consultant team was introduced by the host chiefs after which the Consultant gave a brief background of the Project and informed the participants that Batch Associates had been contracted by LVNWWDA to update the RAP for the tertiaries in Malava water supply project.

The Consultant outlined the activities that were to be undertaken during the field work as follows:

- (i) Determination and acquisition of the pipeline wayleave and intakes works and storage tanks
- (ii) Survey and marking of the infrastructure;
- (iii) Identification of Persons Affected by the project through census and Socioeconomic baseline survey of PAPs;
- (iv) Valuation of affected assets;
- (v) PAPs sensitization meetings;

The Consultant underscored the need for the community to co-operate with the Consultants' Team, locally recruited enumerators and village elders during the data collection. In addition, the community was informed about the RAP coverage.

Table 9: Schedule of community Introductory and Sensitization Meeting in locations

Date	Location
1/9/2021	Samitsi
2/9/2021	Namagara
31/8/2021	Burundu
30/8/2021	Chegulo
27/8/2021	Chebwai
26/8/2021	Butali
26/8/2021	Tolilet
25/8/2021	Malava constituency CDF hall

6.3 PAPs Concerns

The project affected person (PAPs) were concerned that the project infrastructure is going to disturb the social relations and interactions. The project activities are going to impact, to some extent, communication and movement among the PAPs. There may be limited movement within communities and between communities and access to some social and public facilities. However, to mitigate these impacts, the project design has included footpaths, bridges and steps to ensure easy access between affected neighbourhoods and communities as well as continuous access to water for affected households and livestock. The best way to avoid accidents and improve safety of the locals is through public awareness and capacity building of the community members and safety measures. The focus should be on children. The detailed summary of PAPs' concerns and responses are provided in below:

Table 10: Ssummary of PAPs'

Issue Raised	Response
What is the width of the pipeline?	5m
As construction starts locals youths and the area residents should be considered	70% of the unskilled labor force will be sourced from the project area as a requirement
Will be people whose lands are along the road be affected and will be compensation?	Existing road demarcations will be used-no plans for acquisition unless changes occur then those affected will be liable for compensation
Road reserve demarcations should be clearly stated and marked.	Prior to construction surveys will undertake the survey and mark the road reserve
What happens to the scenic tree to be destroyed along the road?	Compensation planting of tree will be undertaken along the road or at designated place by the County Government This will be done before construction works start
What would be done to ensure there would be no noise and air pollution from machines to be used by contractor? Concerned of the destruction of water and sewerage infrastructure installations along the road.	NEMA License issued to the contractor considers issues of noise and air pollution All stakeholders whose installations are within the road reserve work in close collaboration with LVNWWDA
How will compensation be done to affected lands without title deeds	-Anybody impacted by the project will qualify for fair and just compensation however the public should also strive to have legal ownership documents for their lands to avoid future tussles should they qualify for any compensation.
Hopeful that the water project will be finally constructed after many years of promises What are the correct road	-The government has already allocated funds in the budget and the construction of the project is assured after finalization of the project design and bid documents
Can people go on with developments outside the demarcated points?	Construction will be undertaken within the road reserve if need be then there will be acquisition with compensation
Adequate notice of vacation should be given to encroachers to avoid destruction of property	The public have been made aware of the project and should therefore start willingly evacuate the road reserve other than waiting for forceful demolitions
Local sourcing of construction materials should be considered to boost the local economy	The concerns will be reported to LVNWWDA
Applauded the organizers for involving the local administration who are key public mobilizers	The selected community committee should work with the contractor to ensure local youths are considered for employment Public participation is key and therefore the forum was very important in informing the public of the proposed project and

	collect their views and concerns
The project should consider incorporating solar power alongside hydropower for pumping water to cut the operation costs	The Concerns will be incorporated in the design
Securing the intake at Tolilet	The project should consider putting up houses for security personnel to be deployed by the government
Will people pay for water	The water service companies under the county government will install meters and people will pay according to consumption levels
Who will manage the project	LVNWWDA will manager key installations while the county government will manage distribution pipes.

7.0 GRIEVANCE REDRESS MECHANISM

7.1 Introduction

7.1.1 Grievance Redress mechanisms

Grievance redress forms a critical part of any resettlement and/or compensation program. In this project, grievance management will be handled by a Project Grievance Redress Committee (PGRC) which will include representatives of the PAPs, Lake Victoria North Water Services Board, and the local administration.

This RAP provides for a formalized grievance redress mechanism to help reduce any complaints and grievances from the PAP's and to enhance the acceptance of the proposed compensation program through people participation and support.

In the event that disputes are un-resolvable via the committee, PAPs will seek resolution from the National Land Tribunal, the high court or any other relevant courts in Kenya with jurisdiction on the same.

7.1.2 Grievance tiers

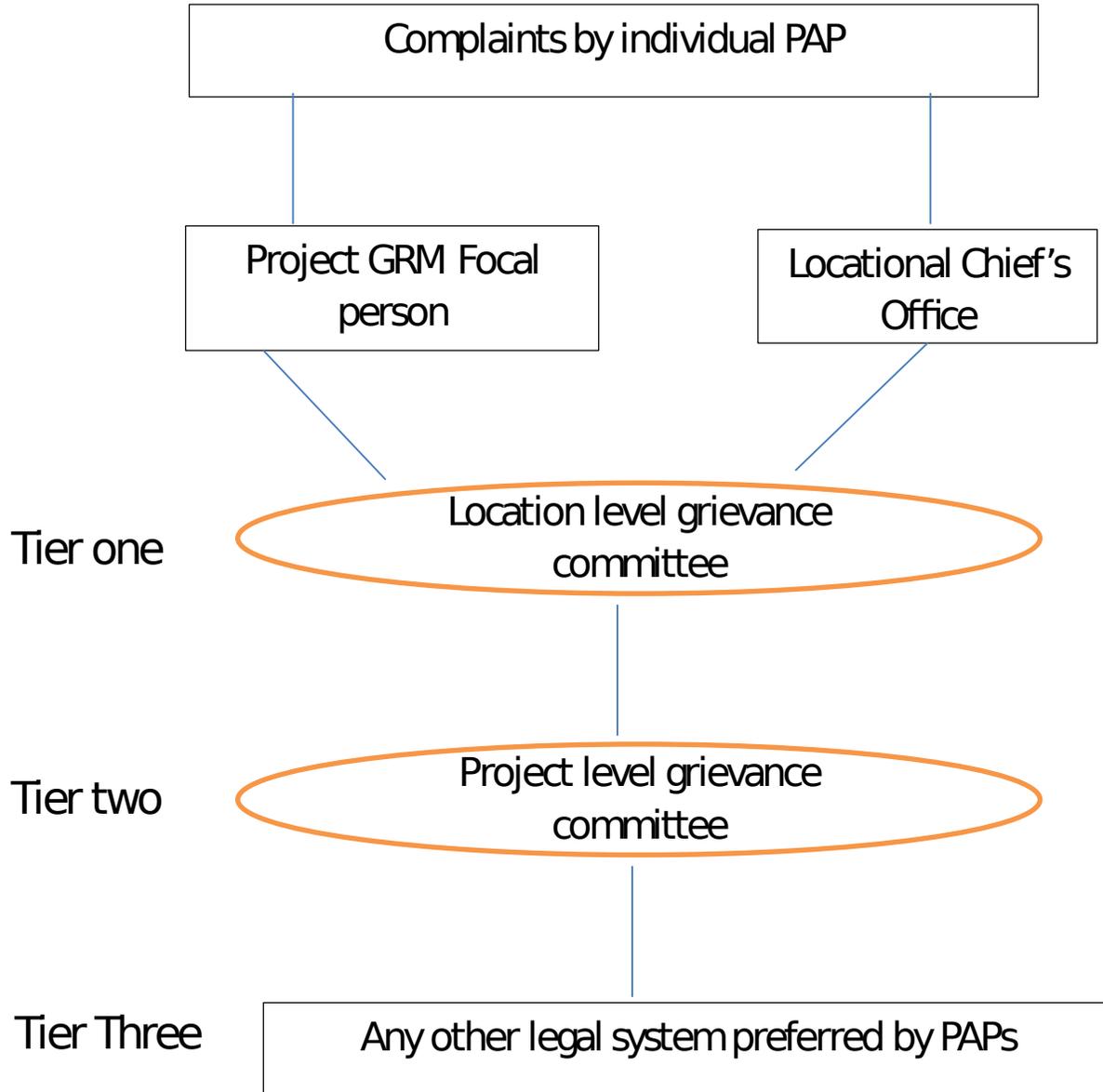


Figure 12: Grievance tiers

8.0 Institutional Framework for RAP Implementation

The implementation of the RAP requires collaboration from all the stakeholders. This would require a properly constituted structure for the administration of the same. The proposed project involves land acquisition, resettlement and compensation of project affected people for the loss of their land, structures, and trees/crops. The RAP will be implemented by LVNNWDA in consultation with the County Government of Nandi and Kakamega. The Ministry of Interior and Coordination of National Government shall also support the RAP implementation.

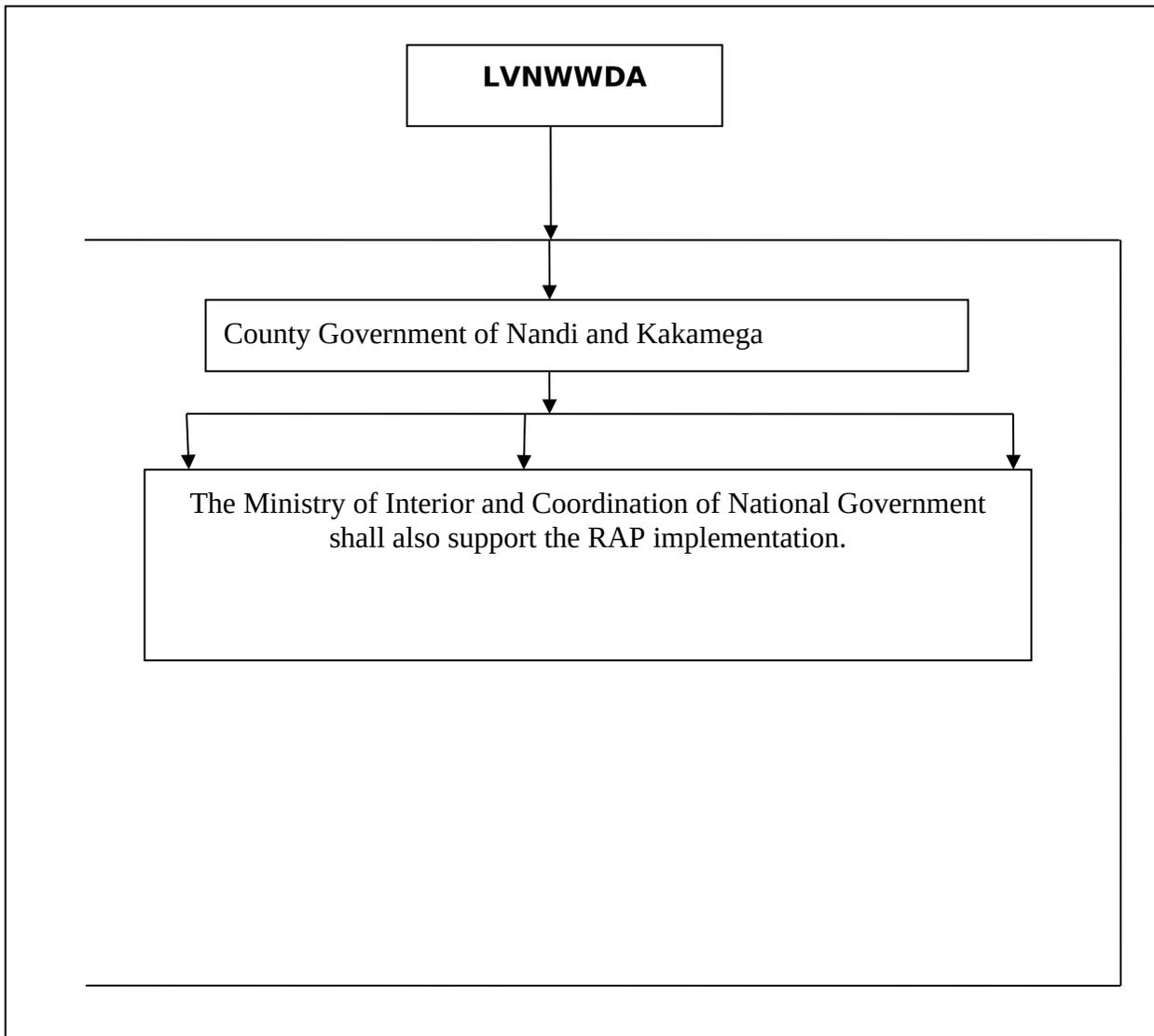


Figure 13: Institutional Framework for RAP Implementation

9.0 RAP Implementation Schedule

The RAP implementation period and timelines will at least be 1 years particularly the livelihood restoration programs which will last beyond the project construction phase.

10.0 Monitoring and Evaluation

Internal monitoring

Monitoring will be carried out on a continuous basis by the LVNNWDA who will collect and record the information of resettlement activities.

11.0 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. Hard copies will be made available at LVNWWDA offices

12.0 RAP budget

The total budget for resettlement compensation is Kshs. 16,138,675 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 LVNWWDA.

Table 11: RAP budget

Items	Cost
Compensation	14,138,675
Grievance redress	1,000,000
Public meetings	1,000,000
Succession and Conveyancing	1,000,000
Total	17,138,675

REFERENCES

1. Environmental Impact Assessment of the Proposed Malava, Namagara and Shirugu Water Supply Project.
2. GoK. (2015). Environmental Management and Coordination Act (EMCA), 2015. Nairobi:
3. GoK. (2009). Sessional Paper No. 3 of 2009 on National Land Policy.
4. GoK. (2010). The Constitution of Kenya, 2010.
5. Kenya Vision 2030. Government of the Republic of Kenya, 2007.
6. Land Act No. 6 of 2012.
7. National Water Policy - Sessional Paper No. 1

ANNEXES

- Annexes i: Public Consultation meetings attendance lists
- Annexes ii: Land Acquisition Maps
- Annexes iii: Valuation Report
- Annex iv: Minutes of meetings
- Annex v: Photos of public meetings

