



Kenya National Highways Authority

Quality Highways, Better Connections

**CONSULTANCY SERVICE FOR REVIEW OF THE FEASIBILITY STUDY,
ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT, RESETTLEMENT
ACTION PLAN AND DETAILED ENGINEERING DESIGN OF MULTINATIONAL
MALINDI – LUNGA LUNGA/TANGA – BAGAMOYO ROAD CORRIDOR
DEVELOPMENT
UPGRADING OF MOMBASA – MTWAPA – KWA KADZENGO-KILIFI
(A7) SECTION**



Draft RAP Report (rev II)
April 2019



Kenya National Highways Authority
Quality Highways, Better Connections

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EXECUTIVE SUMMARY

A. BACKGROUND

The Government of the Republic of Kenya, through its implementing agency, the Kenya National Highways Authority (KeNHA) and support of the African Development Bank (AfDB) is undertaking review of the Mombasa-Mtwapa-Kadzengo-Kilifi (56.1 Km) Section of the A7 Highway which previously underwent Feasibility Study and Detailed Design as part of the Multi-national Lunga Lunga-Mombasa-Malindi (A7) Road Project. Towards this, KeNHA commissioned a consortium led by Uniconsult Engineering Consultants Ltd to undertake the Consultancy Service for Review of the Feasibility Study, Environmental and Social Impact Assessment, Resettlement Action Plan and Detailed Engineering Design of Multinational Malindi – Lunga Lunga/Tanga–Bagamoyo Road Corridor Development with specific focus on the upgrading of Mombasa – Mtwapa – Kwa Kadzengo - Kilifi (A7) Section.

As part of ongoing Feasibility Study for the Project and in keeping with both Kenyan and international requirements for sustainable development the Project was subjected to Africa Development Banks Operational Safeguards which picked displacement from property and livelihoods as a key possibility in the Project. Subsequently, a Resettlement Action Plan (RAP) has been prepared to guide mitigation of displacement impacts.

The Resettlement Action Plan is designed to meet objectives as follows:-

- i) To identify and assess potential environmental and social impacts of the proposed project.
- ii) To identify all potential significant adverse environmental and social impacts of the proposed project.
- iii) To identify and quantify different categories of Project Affected Persons (PAPs) who would require some form of assistance, compensation, rehabilitation or relocation.
- iv) To provide guidelines to stakeholders participating in the mitigation of adverse social impacts of the project including compensation and rehabilitation for affected people.
- v) To verify compliance with the environmental regulations and industry's standards including the AfDB's Operating Strategies.
- vi) To generate baseline data for monitoring and evaluation of how well the mitigation measures will be implemented during the project cycle

This RAP has been prepared consistent with the applicable policy provisions of Kenyan Government and AfDB's Operating Strategies to minimize the land acquisition and displacement, livelihood and associated impacts. Basically, this RAP presents an inventory (register) of people likely to be affected by development of the target bridges, a register of the assets that are likely to be displaced by the project and the proposed compensation package.

The RAP Team

This RAP study was undertaken by a multidisciplinary team bringing together skills as follows:-

- Mr. Michael Wairagu-EIA Lead Expert
- Ms. Monicah Nyang-Sociologist
- Edwin Owino –Statistician/ Field Team Leader
- Margret Kirugo- Assistant Sociologist
- Egal Kombo-Field Technician

Field inventory work was entrusted to six enumerators who were all university students

B. B APPROACH TO THE RAP STUDY

Objectives in the RAP Study

The Study TORs prescribed objectives as follows:-

- To confirm the required ROW and collect the baseline information on the project affected areas;
- To carry out the socio-economic surveys to assess the eligibility for and contents of the compensation under the Resettlement Action Plan (RAP);
- To conduct the replacement cost study to elaborate the just compensation in the RAP;
- To prepare the materials for the public consultation meetings and focus group discussion hosted by KeNHA, and attend the meetings to assist KeNHA and the Survey Team; and
- To prepare the RAP Report.

Scope of the RAP Study

General: The TORs required the Consultant to prepare the Resettlement Action Plan (RAP) in accordance with regulations and guidelines of Kenya and with the AfDB's Operating Strategies as follows.

- The Land Act 2012;
- The Land Registration Act 2012;
- The Environment and Land Court Act 2011;
- The Roads Act of 2007
- AfDB's Operating Strategies for Environmental and Social Considerations 2010.

Collection and Review of Data and Information: The RAP Team was tasked to collect and review the existing data and documents related to land acquisition from various sources including reports of feasibility studies / pre-feasibility studies, information from governmental agencies, literature, universities, research institutions and other organizations concerned, etc. Particularly the Team was required to collect and review the reports or documents concerning land acquisition for projects in Mombasa area.

Surveys: The RAP Survey was to include but not limited to the following scope: -

- Confirmation of the right of way (ROW) and present land use: The Team was to confirm the selected route and required ROW of the Mombasa-Mtwapa-Kadzengo-Kilifi Section of A7 dualling Project.
- Identify involuntary resettlement systems and organizational responsibilities in the Republic of Kenya: The Team was required to identify laws and regulations on land acquisition and involuntary resettlement in the Republic of Kenya (hereinafter referred to as "Kenya") and assess the gaps with AfDB's Operating Strategies. Based on the findings, the Consultant shall propose a project policy to bridge the gaps.
- The Consultant shall also identify the agencies responsible for and related to implementing resettlement activities in Kenya.
- Implement Socio-Economic Surveys including:-

- ✓ Census Survey conducted on PAPs on the project site to confirm the number of persons/families (including land owners, tenants, business owners, employees and illegal settlers) to be compensated and assisted for the restoration of livelihood. The Team shall enumerate the affected families based on the results of the census survey.
- ✓ Assets & Land Survey conducted on properties and interest held by all occupants on the project site which will be physically and economically affected by the project to itemize properties and their quantity. This survey shall be conducted along with the Census Survey.
- ✓ Livelihood and Living Survey shall be conducted on the minimum 20% of total occupants on the project site, and collect base data on the project affected households including their characteristics, livelihoods and living standard, as well as information on vulnerable groups or persons. In the case of resettlement sites are provided, PAPs perceptions toward the relocation/resettlement sites shall also be surveyed.

Preparation of the RAP Report

In line with requirements of the TORs, content of the RAP Report was aligned to OS2 of the AfDB with content for the RAP being agreed with the Bank.

Stakeholder Meetings and Focus Group Discussions

In order to ensure public involvements in the planning process of the resettlement, the RAP Team was required to hold consultative meetings to ensure full public participation.

Additionally, focus group discussions were also held with vulnerable groups or persons, such as women, elders, persons with disability and poor household.

Policy and Legal Framework

The RAP study has been undertaken in accordance with the relevant Kenya legislations that trigger land acquisition, resettlement and compensation including the AfDB policy on involuntary resettlement as follows.

- The Constitution of Kenya
- The Land Act 2012;
- The Land Registration Act 2012;
- National Land Commission Act 2012
- The Environment and Land Court Act 2011;
- The Roads Act of 2007
- AfDB's Operating Strategies for Environmental and Social Considerations 2010.

C. FINDINGS FROM THE RAP STUDY

Potential displacement of assets

Land assets: From inventory of PAPs undertaken (Table ES01), development of the 56.1Km Road Project inclusive of the Second Mtwapa Bridge is likely to affect a total of 378 land parcels accounting for 19 hectares of land. With the exception of the first 4 kilometres of the Project which traverse very high density settlements, the Project traverse is essentially through low density settlements which explains the low number of plots traversed in Kilifi in spite of the County accounting for 76% of the road length.

Table ES01: Distribution of landed PAPs by administrative jurisdiction

County	Road Length (Km)	Total acquisition		
		Parcels	Hectares	Acres
Mombasa	13.5	255	15.2	37.5
Kilifi	42.6	123	3.8	9.4
Totals	56.1	378	19	46.9

Source: This Study

Total structures: The entire road project will displace a total of 388 structures (Table ES023), 359 (92.5%) are single storied and mainly semi-parament. The bulk of displacement is encountered between Km 0+800 to Km 4 + 200 where the project traverses the three informal settlements of VOK, Ziwa La Ngombe and Bombolulu in Mombasa County. The rest of the traverse is through land held by institutions and corporate players such as Bamburi, Shanzu Teachers training College, Shimo la Tewa Prison among others.

Table ES02: Stratification of permanent structures by nature of build

Road section	NS	SS	2S	3S	4S	5S	Totals	Share (%)
Mombasa	274	16	5	0	0	0	295	76.0
Kilifi	85	8	0	0	0	0	93	24.0
Total	359	24	5	0	0	0	388	100

Key: NS-Non-storied, 1-5S-Total Storeys



Source: This Study

A densely settled part of the traverse

Minor assets within properties: A total of 645 assorted assets, majority of which are ancillary to non-affected buildings are likely to be displaced. Among these, temporary and ancillary structures, masonry walls, paved entrances, gates, verandas, toilets are majority.

Potentially displaced population

Total Displacement: Four (4) categories of PAPs can be recognised in the Projects Area of Influence namely;- (i) Property Owners (both titled and non-titled), Business Tenants-BT (loss of livelihoods and means to livelihood); Residential Tenants-RT (means to livelihood-shelter) and employees (means to livelihood). A total of 1531 PAPs falling in the 4 categories are likely to be displaced as enumerated

in Table 3.4 below. Property owners are the single largest category at 40.4% followed by business tenants at 37.4%. Essentially however, tenants (both residential and traders) comprise majority of the PAPs at 51.8% which goes to confirm the strategic role of the A7 road as an economic enabler in the North Coast area.

Table 3ES03: Distribution of PAPs by category

PAP Category	Total tally	Share (%)
Property owners	618	40.4
Residential tenants	221	14.4
Business tenants	572	37.4
Employees	120	7.8
Total	1531	100

Source: This Study

Geographic spread of displacement: Mombasa County accounts for the largest share of PAPs at 76.3% with Kilifi accounting for the reminder 23.7%. As well, the Mombasa section of the traverse recorded the highest share in all PAP categories but commands highest proportion of tenants at over 82%.

Displacement of livelihoods: Project development will displace 572 business tenants and 120 employees accounting for 45.2% of all PAPs while a total of 221 residential tenants and their families are likely to suffer loss of shelter.

Displacement of Common Property Resources: A total of 19 CPRs will be impacted. Of these, religious institutions are leading at over 36.84% followed by GOK Institutions (Police Station, GK Prisons, Law Courts, Shanzu Teachers Training College, Institutions of learning, among others) where main losses will mainly include displacement of perimeter fencing, gates and access roads.

Mosques: Assets belonging to three mosques are likely to be affected. While road expansion will only clip external walls for Masjid Sheikh Zayed, it is likely to affect the main structure for Masjid Sunnah and Masjid Taqwe, with the latter also losing its Madrassa.

Cemeteries: One public cemetery located on LR IMN/I/1410 at Km 1+580 on the RHS and locally identified as Makaburini is potentially affected by road expansion. Within this Cemetery which is property of Mombasa County Government, eight (8) graves located within the Children Section will be displaced in road expansion.

Public Schools: A total of 5 schools, three of which are public are likely to be affected. They stand to lose fences, and sections of their grounds abutting the road project.

Displacement of trees and crops: A total of 7260 assorted trees are likely to be displaced from the reserve of the 56.1-kilometer-long Mombasa-Mtwapa-Kadzengo-Kilifi Road of which, the naturally regenerating/colonising neem tree recorded the highest presence at between 17.4 to 21.4% occurrence.

Socio-economic Profile of potentially displaced population

Sample composition: A total of 480 respondents representing the four (4) PAP categories were and equivalent to 31.4% of the entire PAP population was used in the study. With the exception of employees, the sample represented between 29 to 35% of each PAP category. In line with the observed trend whereby Mombasa accounts for the highest number of PAPs, the sample for socio-economic

survey displayed a similar trend and in general, 75% of respondents were picked from Mombasa County with rest coming from Kilifi County.

Table ES 06: Stratification of sample by PAP Category

PAP Category	Total tally	Share (%)	Sample size	Representation (%)
Property owners	618	40.4	204	33.0
Residential tenants	221	14.4	64	29.0
Business tenants	572	37.4	200	35.0
Employees	120	7.8	12	10.0
Total	1531	100	480	31.4

Source: This study

Age patterns among respondents: All participants in the socio-economic survey were of age 20 years and above and were physically present in the traverse area during the questionnaire survey. The age category of 31 to 40 years emerged dominant (Fig 3.3) followed by the 41 to 50 years category implying that, the bulk of respondents, and by extension residents of the traverse, are aged 30-50 years. 352 (74%) respondents are aged below 50 years and are within productive age group and the project area will be potential labour market during project construction.

Patterns among PAP categories: Age dynamics vary greatly among PAP categories with Residential and Business Tenants form majority of the youthful population of 40years and below. Beyond 30 years age set however, the population of both categories declines sharply and is near absent at age 60years. Beyond this age, both categories have either relocated or become property owners. Population of property owners is quite low within the youthful age categories but rises steadily to peak at age 40 years beyond which, it is both the dominant and actually only category feasible in the traverse area. This is reflective of the Kenyan pattern of economic progression whereby, individuals endeavor to save earnings and acquire property and economic stability with age.

Gender stratification of respondents

The male gender is overall dominant at 58.9% of sample and also leads all categories with the exception of Residential Tenants. The latter is probably in keeping with the Kenyan trend whereby many ladies are housewives who stay behind to mind families while husbands go out to earn the livelihood.

Religion of respondents

Christianity is the dominant religion in the traverse area (Table 3.10) followed by Islam and Hinduism.

Length of residence

General trends: The bulk (87.3%) of respondents and by extension, the local population has lived in the project area for less than 30 years (Table ES07) with 56.2% having less than 10 years of residence. The remaining small minority making 12.7% of the population and mainly comprising of property owners have lived in the project area for periods ranging from 30 to over 80years.

Table ES07: Analysis of length of residence amongst respondent categories

	Length of residence (years)	Tally
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Respondent category	<i>1-10</i>	<i>11-20</i>	<i>21-30</i>	<i>31-40</i>	<i>41-50</i>	<i>51-60</i>	<i>61-70</i>	<i>>70</i>	
Property owners	34	27	40	25	13	6	4	5	154
Residential tenants	84	20	4	4		2			114
Business tenants	143	48	7	2					200
Employees	8	2	1		1				12
Total	269	97	52	31	14	8	4	4	479
<i>Share (%)</i>	<i>56.2</i>	<i>20.3</i>	<i>10.9</i>	<i>6.5</i>	<i>2.9</i>	<i>1.7</i>	<i>0.8</i>	<i>0.8</i>	<i>100.0</i>

Source: This Study

Trends specific to PAP categories: Fig 3.5 presents a graphic analysis of length of residence among PAP categories. Tenant PAPs form the majority in the 1-20 years residence category but drop drastically after 15 years. None of the tenants has lived in the area for more than 25 years. On the contrary, property owners show a low but consistent and prolonged pattern of residence and are the only visible group beyond the 50 years mark which, as observed elsewhere above possibly points to ancestral land ownership. Indeed, the fact that Kilifi county dominates for residence periods in excess of 50 years (see inset) is indicative of ancestral land ownership.

Household characteristics

Head of Household: The question on composition of households attracted only 409 respondents probably implying that some respondents are single and outside of any kind of family set up. This notwithstanding, the male gender dominates among heads of households at 83.4% of total count.

Mean household size: The mean household size across all PAP categories was observed to be 5.9 but ranges from 4.75 to 7.13. Mean which is slightly higher than the national average of 5.9

Household size seems variable for property owners sub categories but is stable and near uniform for tenants and employees.

Education of attainment: Majority (94.7%) of the respondents have been to school as only 5.4% reported having no formal training. As well, 67.3% of respondents have attained secondary school education and above. Generally, secondary school is the most common education level accounting for 40% penetration followed by primary level at 30.5%.

Education achievement across gender: Analysis of respondents' data reveals that the female gender dominates in only one category- that with no formal education while males dominate in all cadres of education. Male Business Tenants lead in most cadres of education followed by male property owners. Female Business Tenants dominate in the primary and secondary cadre but are overtaken by residential counterparts at the Post-Secondary Cadre implying that, female residential tenants have undergone professional/on job training.

Occupation of respondents

Business/Trade is the dominant occupation in the corridor directly accounting for 74.5% of respondents and by extension, the population within traverse. Further, a high prevalence of tenancy trade further goes to confirm the esteemed position of the A7 highway as an economic in the area and disruption of such scenario through road expansion has to be managed to the lowest level possible so

as to maximize on net gains from the road. Observed unemployment is high at 10.4% though slightly lower than the national average of 11.5% computed for year 2018 (<https://www.google.tradingeconomics.com>). Road construction is expected to provide measures to reduce unemployment and avoid anything that compounds unemployment in the area.

Residence and work in the project area

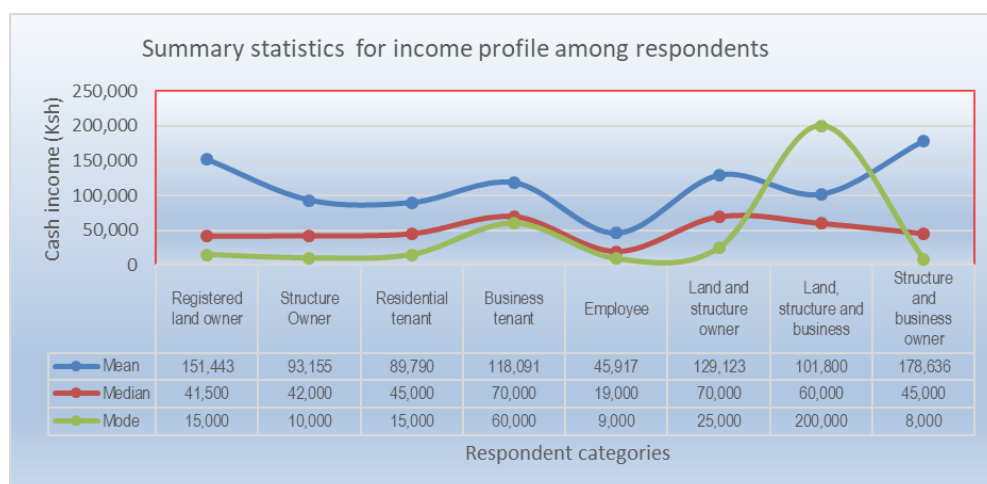
Information on the respondents place of residence and work is crucial in validating claims on socio-economic impacts of the proposed development. With the exception of employees who largely work and live in the same place, all other categories have divergent patterns as follows:-

- While 86.8% of property owners work in the traverse area, proportionately less (63.4%) live in the same area meaning that the reminder 13.4% commute to work daily.
- The same situation is displayed by business tenants whereby 94% work in the project area with only 55.7% being resident implying that 34% commute to work.
- While all residential tenants reside in the area, a significant 83% also work from the same area.
- The employee segment of respondents largely live and work in the area at 83.3 and 90% respectively.

Significantly, over 83% of the local population live and work within the traverse area and are therefore the primary stakeholders to the Road Project.

Income profile

Income levels display high variability: Fig ES01 traces trends in summary statistics for income amongst diverse categories and subcategories of respondents. A high dispersion in the mean, median and modal income especially as displayed by property owners is indicative of very high variability with implication that a single figure is ineffective in describing income levels. Furthermore, mean values for income that are apparently elevated beyond the mode or median are probably skewed upwards by occurrence of a few but exceptionally high entries. All these militate against forcing compressing income data for the traverse into a single average value.



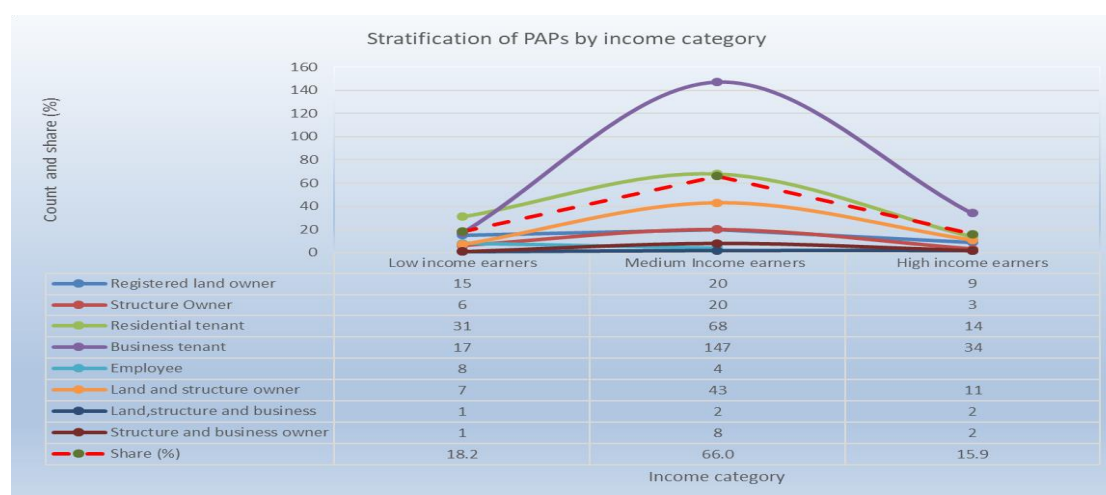
Source: This study

Fig ES01: Analysis of income patterns among respondents

Middle class earners dominate the traverse: For ease of treatment, respondents have been lumped into low, middle- and high-income categories based on the Kenya National Bureau of Statistics categorization the middle class, as anyone spending between KShs 23,670 and KShs 199,999 per month. Assuming everyone spends what they earn the KNBS definition means the middle class Kenyan/Kenyan family is one whose gross monthly salary is between 26,000 and 270,000 per month (approximately).

Based on the Kenyan categorization, respondents were lumped into three income sectors of Ksh 0 to 26,000 for low income, Ksh 26, 000 to 200,000 for middle income and above Kas 200, 000 for high income. An analysis of income patterns within categories and subcategories of respondents (Fig 3.10) reveals that the middle-income category dominates the traverse accounting for two thirds (66%) of potentially affected people. Low- and high-income earners account for 18.2 and 15.9% presence respectively.

All respondent categories display a parabolic distribution dominated by a majority middle income category in the middle and high and low incomes on both ends. The Business Tenants category remains dominant accounting for half of both middle income (31.1%) and high income (7.2%) earners respectively again confirming trade to be the main economic driver within the traverse.



Source: This study

Fig ES 02: Stratification of respondents by income classes

Income profile and gender of respondents: Analysis of monthly income level by gender of respondents revealed that, women are low income earners compared to males. The mean monthly income for female is 99,353 Kshs compared to 124,729 Kshs recorded for males. The most common monthly income for female is 30,000 Kshs which is half of male common monthly income.

Status of well being

Status of well-being among respondents was analyzed through comparison of *pa capita* income against the national poverty line pegged at a dollar (Ksh 100) per day equivalent to a monthly household income of Ksh 18,000 for an average sized household. Upon screening, 73 respondents within the low-income bracket were found to fall below this cutoff implying that 15.4% of the population possibly subsists below the poverty line (Table ES08).

Table ES08: Analysis of status of well-being

Respondent category	Low income earners	Medium Income earners	High income earners	Total
Monthly income	5,000-24,000	24,000-200,000	>200,000	
Count per category	86	312	75	473
Share (%) by category	18.2	66.0	15.9	100
Poverty cutoff in Kenya	Monthly income of Ksh 18, 000 equivalent to daily pa capita income of Ksh 100 for a HHS of 6.			
Indicative prevalence of poverty	Count of 73 out of 473 respondents equivalent to 15.4% of all respondents			

Source: This Study

D. RESETTLEMENT MEASURES ELIGIBILITY CRITERIA AND ENTITLEMENT MATRIX AND CUT OFF DATE

Measures to minimize displacement

The overall objective of the AfDB policy on involuntary resettlement is to avoid, or when avoidance is not possible, to minimise and mitigate negative impacts of projects on the environment and affected people.

The following strategies were adopted to reduce on the Project Affected Persons (PAPs) and generally the cost to Resettlement Action Plan (RAP);

- Restricting the Right of Way (ROW) to existing Road Reserve and taking extra width were required to accommodate Construction Width, Services (Water, Electricity, etc), Bus Bays, Footbridges and Grade-separated Intersections.
- Excluding the provision for BRT or Similar modes of Transport because the Transport Studies undertaken in the area had not provided strategic planning with such networks.
- Optimisation of Horizontal alignment in respect of existing road development.
- Kengeleni area adopted Viaduct structure in order to avoid affecting many buildings and Historical monuments.
- Between Km 4.6 and Km 11.2, this is the section along Bamburi Haller Park and Nature Trail: Generally, no service road provided on the Left Hand Side save for the approaches to the Grade-separated Intersections.
- Use of retaining walls to limit extended construction width along Bamburi Haller Park and Nature Trail

- Along Mtwapa Town utilised covered drains beneath the footpaths. Open drains require more space. Also reduced the outer shoulder width from 1.5m to 0.5m.
- Between Kwa Kadzengo and Kilifi section; generally restricted the road improvement to existing Road Reserve. Deviation only occurring at the new Bongolo Bridge and its approaches. Also Single carriageway adopted for the section.

Eligibility Criteria and Entitlement Matrix

This section presents the criteria adopted for upgrading of Mtwapa Kadzengo Kilifi road. The key resettlement impacts include the following:

- Loss of land
- Loss of structures
- Loss of livelihood
- Loss of trees and crops
- Loss of Graves
- Loss of Community proprietary resources
- Historical and archaeological sites
- Assistance to vulnerable groups

In line with the assessment of resettlement impacts during the RAP study, the proposed entitlement matrix is as presented in the table below:

#	Type of Loss	Unit of Entitlement	Entitlements
A. Loss of Agricultural Land			
1	Part of land lost and residual is viable ¹ .	Title holder	100% cash compensation at replacement cost for the portion surrendered. 15% cash top-up in compulsory acquisition
		Tenants	Cash compensation for standing tree crops Advance notice to vacate.
		Informal Settler	In good faith compensation for land as per Article 40(4) of national constitution Cash compensation for standing tree crops Advance Notice to vacate.
2	All land lost or residual land is economically non-viable	(a) Title holder	100% cash compensation at replacement cost for the lost portion. 15% cash top-up in compulsory acquisition.
		(b) Tenants	Cash compensation for standing tree crops Advance notice to vacate
		Informal Settler	In good faith compensation for land as per Article 40(4) of national constitution Cash compensation for standing tree crops Advance Notice to vacate.
B. Loss of Residential/Commercial/Industrial Land			
1	Partial loss of land but residual is viable ²	Title holder	100% Cash compensation for loss at replacement cost. 15% cash top up in compulsory acquisition
		Tenant/Lease holder	Cash compensation for standing tree crops Advance notice to vacate.

1 Non arable land either because of rockiness, slope exceeding 55%, water logging, or cannot afford space adequate for housing and economic utilization.

2 Land can still be exploited economically for residential, commercial or industrial uses as per local zoning class.

#	Type of Loss	Unit of Entitlement	Entitlements
		Informal Settler	Cash compensation for standing tree crops Advance notice to vacate.
2	Entire loss of land or partial loss where residual is not viable	Owners	100% Cash compensation for entire land holding at replacement cost 15% cash top-up in compulsory acquisition Residual land reverts to community
		Tenants/ Lease holders	Replacement cost for standing assets Advance notice to vacate
		Informal Settler	Replacement cost for standing assets, Possibility of land grant where possible ³ Advance notice to vacate
C. Loss of Structures			
1	Partial loss but residual viable	Legal User with valid titles	Cash compensation at replacement cost for affected portion calculated on market value without depreciation; Repair costs for un affected structure equivalent to 25% of the compensation Right to salvage material
		Owner without titles	Cash compensation at replacement cost for affected portion based on market value without depreciation. Repair costs for unaffected structure at 25% Right to salvage material.
		Informal Settler	Cash compensation at replacement cost for affected portion based on market value without factoring depreciation. Repair costs for unaffected structure at 25% of compensation Right to salvage material
2	Fully affected/ part affected and remaining structure is non-viable	Land owner with valid title	Cash compensation at replacement cost of the affected unit based on market value without depreciation plus a house building allowance at 25% of compensation. Right to salvage materials. Advance notice to vacate
		Tenant/ Lease Holder	Cash compensation for remaining lease/ deposits Advance notice to vacate
		Informal user of building	Advance notice to vacate
D. Loss of Standing Tree Crops			
	All Cultivators		Compensation for any non agricultural trees, shrubs/ permanent grass cover based on economic value for tree and vegetation. Cash compensation based on income for entire life-cycle in case of permanent agricultural crops. Cash compensation at gross yield value for temporary crops e.g. cassava
E. Loss of community proprietary resources			
			In kind replacement for affected resources
F. Assistance to vulnerable groups			

³ Some of the encroachers do not know of any land and are too frail to fend for themselves. Unless resettled, displacement would spell doom for them.

#	Type of Loss	Unit of Entitlement	Entitlements
			Socio-department of KENHA to consider other assistance over and above compensation package to cushion them against impact of such disability. To be treated on merit basis.
G: Loss of Livelihood			
	Landlords		3months cash hand-out worth of gross rent
	Businessmen		3 months cash hand-out calculated at gross daily income
	Business		3 months cash hand-out net monthly profit
	Estate Developer		Reimbursement of lost income for entire premises replacement cost rate Right to salvage materials
H. Graves			
	Individual graves		Negotiated re-imbursement for translocation costs including option for physical translocation
	Communal graveyards		Negotiation of available options
I. Historical and archaeological sites			
	Historical areas Archaeological /sacred sites		Assessment by National Museum and Archaeologist Negotiate transfer or realignment

Cut off date

In order to determine the eligibility of the persons entitled to compensation this RAP established different cut off dates as per the table below. Sensitization on the implication on the cut off date was undertaken through consultations from June 2018 to October 2018. Consequently, any claim for compensation by the affected people after the set cut-off date will not be eligible for compensation.

Meeting	Cut off - Date	Target	Attendance
Jambo travellers hotel- Mtwapa	27 th June 2018	Leaders for Kilifi County	92
Baobab Resort- Nyali	28 th June 2018	Leaders in Mombasa County	52
Kongowea Community Hall	28 th June 2018	Public Baraza	233
Mtwapa Community Ground	27 th June 2018	Public Baraza	101
Mtwapa Professional Forum	14 th September 2018	Plenary Session	50
Dissemination meeting	31 st Oct 2018	Leaders from Mombasa and Kilifi	75
Total			603

E. GRIEVANCE REDRESS MECHANISM

The grievance redress mechanism is a tool that enables effective communication among the stakeholders for providing a timely and effective channel to address any complaints from the aggrieved persons. The mechanism provides procedures for resolution of grievances in the spirit of mediation between parties which should comply with the spirit of AfDB and GoK standards.

The grievance redress mechanisms is designed with the objective of solving disputes at the earliest possible time which will be in the interest of all parties concerned and therefore implicitly discourages referring such matters to the Environment and Land Court which would otherwise take a considerably longer time.

F. MEASURES TO MITIGATE DISPLACEMENT IMPACT

This RAP has been prepared in line with the Integrated Safeguards System of the AfDB designed to promote the sustainability of project outcomes by protecting the environment and people from the potentially adverse impacts of projects. The RAP process therefore has aspired to secure aims of the ISS namely:-

- Avoiding adverse impacts of project on the environment and affected people, while maximising potential development benefits to the extent possible;
- Minimising, mitigating, and/ or compensating for adverse impacts on the environment and affected people when avoidance is not possible; and
- Helping the GOK to strengthen local safeguard systems and develop the capacity to manage environmental and social risks.

G. LIVELIHOOD RESTORATION

The prepared RAP aims at restoration of the project affected person's livelihoods and income streams to ensure that the lost livelihoods are restored to pre displacement levels.

This RAP has proposed a transitional support or cash equivalent for owners of buildings whose tenants will move out, covering the would be losses for two to three months after displacement to facilitate restoration of livelihoods and standards of living to pre-displacement levels as the building owners repair the remaining portions of the property or relocate and develop alternative sites elsewhere. The same is provided for business tenants. This aspect is captured for consideration by NLC during the valuation, verification and validation phase as highlighted elsewhere in this report.

The RAP is also proposing partnerships between the project and the counties of Kilifi and Mombasa in ensuring traders are either allocated spaces in the existing markets like Kongowea or new infrastructure is laid out where none exists to ensure trader's livelihoods are improved.

H. ASSET VALUATION & COMPENSATION:

Asset valuation recognized three parameters namely:-land area to be acquired for the RR, structures falling within the RR and trees and crops falling under the RR. Following the collection of the baseline data, market surveys for structures, land and crops, a compensation policy framework was developed setting the framework for valuation. As a principle, valuation in this RAP adopted the Full Replacement Cost Approach Method with the twin goals of restoration and rehabilitation to standards equal to or higher than original.

On compensation, the AfDB involuntary resettlement policy provides for replacement cost valuation for assets methodology. The constitution of Kenya provides for just and prompt compensation. To address this gap, the valuation methodology adopted in this RAP is in line with AfDB requirements of full replacement cost.

I. COSTS AND BUDGET IN THE RAP

Gross Budget

A summary of the Gross RAP Budget is shown in the Table ES04 with a breakdown provided in Table ES 05 below. A Total of Ksh **3,242,915,769.23** will be required in the entire compensation process.

Table ES04: Gross RAP Budget

Cost Item	Allocation (Ksh)
-----------	------------------

Gross displacement	3,059,354,499.28
Operation Costs	30,593,544.99
Contingency	152,967,724.96
Gross RAP Budget	3,242,915,769.23

Source: This Study

Direct Costs

Compensation for displacement: Direct Costs have been computed based on the entitlement as applied to the Assets Register to yield the Costed Assets Register as summarised in Table ES 05. Cost schedules applied in determination of direct costs have been generated through a Replacement Cost Study. A total of Ksh 3,059,354,499.28 has been identified under this vote, of which compensation for land is the largest share accounting for 46% followed by loss of business at 28.3%.

Table ES05: Summary and geographical distribution of components of the Direct Costs

Lot	Structures	Area (m ²)	Wall length (m)	Total for Structures (Ksh)	Total for Wall (Ksh)	Total for 2 mosques (Ksh)	Land acquisition (acres)	Costs to land (Ksh)	15% Top-up of CLA (Ksh)	Loss of bussiness (Ksh)	Costs to trees	Costs to other assets (Ksh)	Gross displacement costs (Ksh)
Lot One	208	23273	18266	1240653630	36532860	52000000	37.5	1125000000	168750000	717654223	9999034	33750000	2604686490
Lot Two	65	7372	1697	993668400	14743636	0	9.4	282000000	42300000	179413556	1932000	5640000	1338352036
Sum	273	30645	19963	401570225	51276496	52000000	47	1407000000	211050000	897067778	11931034	39390000	3059354499
Share(%)				13.1	1.7	2		46.0	6.9	29.3	0.4	1.3	100

Source: This Study

Indirect costs

This RAP has allowed for three categories of indirect costs as namely;-

RAP Implementation Costs/Operation costs: A sum of Ksh 30,593,544.99 equivalent to 1% of Direct Costs has been provisioned to be drawn by KeNHA in implementing the RAP. Expenses envisaged include field costs, capacity building for RAP structures, setting up of a Project Implementation Team, among others. The Exchequer should be approached to provision the funds alongside the Direct Costs Budget.

Contingency Costs: An item of Ksh 152,967,725 equivalent to 5% of the total costs has been allowed to cater for contingencies in costs and unknown impacts.

Assistance to Vulnerable groups:

Additional measures will be pursued as follows;-

- Creating of special programmes:** While ordinary PAPs will undergo training on modalities of coping either the displacement, elderly and sick PAPs will not be available for such. It will thus require the Resettlement Officer to tailor make special programmes to reach out to such people and help them understand and cope with the shock of displacement. If not properly cushioned, such PAPs may find the shock to be too much to handle.
- Monitoring management of proceeds from compensation:** If left alone, some PAPs have no capacity to manage monies accruing from compensation and would end up losing the money without replacing lost assets. The Resettlement Officer will require to network with PAPs to establish modalities of how such PAPs can be assisted to re-place lost assets without being exploited.

c. Project related job opportunities:

Severely affected persons will be prioritized in gaining employment in the works linked to the Project. KENHA will ensure that this is included in the contractors' specifications wherever possible.

d. Assistance through Corporate Social Responsibility (CSR) Programme:

The CSR programme should aim at addressing community felt needs as documented during in the socio-economic survey conducted for this RAP, among which is poverty alleviation. With this in focus, KENHA will explore means of remaining engaged in communities adversely affected by the road upgrading project with possible entry points as follows:-

- Support to local community infrastructure projects.
- Support to local reforestation and conservation groups,

J. INSTITUTIONAL, ADMINISTRATIVE AND MONITORING FRAMEWORK

This RAP will be implemented as part of the Mombasa-Mtwapa-Kadzengo-Kilifi Project which is a project of the Government of the Republic of Kenya with the financial support of the African Development Bank-AfDB. As a project within KeNHA, implementation will be mainstreamed into the administrative and management infrastructure of this Authority with the Head Office assuming the project management role. A GRM has been put in place to resolve all grievances emanating from land acquisition in Project Development.

An M&E Plan for RAP allowing for both Internal and External Monitoring has been put in place as follows:-

Internal for Monitoring: Delivery of outputs outlined in the Entitlement Matrix will be monitored routinely and reported through periodic reports produced by the PMU and backed up by signed consent certificates by PAPs. Indeed, project monitoring for RAP will fit in the overall monitoring plan of the entire project under auspices of the KeNHA. Within the internal monitoring framework, the Resettlement Officer of the PMU will file Status Reports to the Project Coordinator who will review, collaborate and submit to the KeNHA Head office. The latter will review and synthesize monitoring reports to:-

- Provide timely information about all resettlement arising as a result of development of the road upgrading project ;
- Identify any grievances that have not been resolved at local level and require resolution through the involvement of the PMU;
- Document the timely completion of project resettlement obligations for all permanent and temporary losses;
- Evaluate whether all PAPs have been compensated in accordance with the requirements of this RAP and that PAPs have higher living standards in comparison to their living standards before physical or economic displacement.
- Evaluate whether all PAPs have been compensated in accordance with the requirements of this RAP and that PAPs have higher living standards

External Monitoring: External monitoring of the RAP will be undertaken alongside that of other project components. It is expected that KeNHA will mount routine monitoring in response to PMU reports while other agencies will routinely monitor progress including implementation of both social and environmental mitigation. KeNHA in the capacity of Implementing Agency will identify and procure the services of a competent agency to undertake both the Midterm and Post Project Monitoring. Independent external evaluation will preferably be undertaken by an outside research or consulting agency, university department or development NGO. The tasks of the external agency are to:

- Verify results of internal monitoring;
- Assess whether resettlement objectives have been met; specifically, whether
- Livelihoods and living standards have been restored or enhanced;
- Assess resettlement efficiency, effectiveness, impact and sustainability, drawing
- Lessons as a guide to future resettlement policy making and planning; and
- Ascertain whether the resettlement entitlements were appropriate to meeting the objectives, and whether the objectives were suited to PAP conditions.
- Undertake any other assessment relevant to the resettlement process.

K. PROCEDURE FOR RAP IMPLEMENTATION

Implementation Phase activities will entail the following: -

Due process by KeNHA through MOTIHUD

In complying with NLC requirements for Compulsory Land Acquisition in Kenya, KeNHA will take action as follows: -

- i) Section 107(1) of the Land Act 2012 requires the acquiring body to obtain prior approval from their respective Cabinet Secretary before the Commission commences the acquisition process
- ii) Cadastral drawings showing how the infrastructure excises each land parcel, the parcel list table detailing land parcel numbers, total area of land parcels and acreage affected by the infrastructure for each parcel. These drawings shall be submitted to the Commission for scrutiny and records
- iii) Provide a listing for parcel numbers indicating the plot reference number, registered owner and affected acreage column in acres (for easy appreciation by project affected persons). This should be submitted in both soft and hard copy
- iv) Official searches of affected land parcels. The Commission shall assist where necessary.
- v) The Environmental Impact Assessment Report (EIA) and appropriate approvals/certification for the project.
- vi) The Resettlement Action Plan (RAP) report.
- vii) Acknowledgement on availability of funds to allow prompt compensation as provided in the Constitution. The Commission will request the entities to remit compensation money into the Land Compensation Fund (Section 153 of the Land Act 2012) to be administered by the Commission. This is in the purview that in previous acquisitions, the compensation payments were delayed as opposed to the promptness required by the Law

- viii) All applicants will have to take the Land Acquisition and Committee sub-committee members on a site tour for general appreciation of the project in respective locations that will be affected. This will enable informed decision making.
- ix) A final survey for vesting of the acquired land to the National or County Government will have to be done by the acquiring authority. The Commission can assist in this exercise at costs borne by the acquiring body.

Due Process by the NLC

This is the process that will trigger land acquisition for the Road dualling Project. However, to save on time, it is recommended for the Land Acquisition process to start and possibly end long before Construction Stage. Due process will follow as presented below:-

Gazetting of all target parcels: Upon receipt of the application for acquisition from KeNHA, the NLC and KeNHA will arrange field visits to familiarize and confirm the, the final Alignment following which, the Assets register will be cross-checked on the ground to ascertain the final list of PAPs and the status of their assets. The NLC will then issue a Notice of Intention to Acquire and publicize the dates and venues for public inquiries.

Public Inquiries: On appointed dates, the NLC will open public inquiries in which anybody with claims on target properties will present evidence and be cross examined under oath. At the close of the inquiry, the NLC will finalize the List of PAPs and proceed to revalidate the valuation.

Making of awards: Upon revalidation, it is also expected that prior to payment, all those entitled to payment under a PAPs account will have been brought together to agree on monies due to them and on the mode of disbursement. This caution is issued as many households were observed to request that assets be recorded under one brother and this is likely to bring family conflicts once compensation is released. The LPCs will come in handy in fostering consensus among composite PAPs.

Final Award and Signing of Contracts: Upon finalization of the assets register, and revaluation by the NLC, the final compensation sum will be computed and adjusted for inflation and other processes. Based on this sum, offers /contracts will be issued to PAPs who will sign their approval witnessed by their respective chairmen of LPCs and the area chief. Within this contract, each PAP will undertake to remove affected assets within one month of accepting payment. The PAPs will then be required to open bank accounts through which, payments will be made directly to PAPs.

Preparation of PAPs by KeNHA: Kenya is replete with people who squandered entire proceeds from compensation/ terminal benefits or even credit and ended up destitute and miserable. This normally is associated with ignorance and shock reaction to exposure to apparently huge amounts of money instantly. To forestall such incidence in the case of road upgrading project, the PMU will mount counseling sessions for all PAPs to empower them cope with the expected proceeds. Indeed, this RAP recommends that as part of the training, each PAP will be assisted to develop a budget for the expected payment! The reality of how little the anticipated payments are, is likely to cut down on adventures.

Mobilization of LPCs institutions: Once funding has been procured, the RO will move to mobilize the LPCs by ascertaining that there is one for each location Kongowea, Kisauni, Bamburi and Mtwapa, and that they have been appropriately constituted, and are adequate. Following this, the RO will arrange training schedules with a view to focusing activities of the PAPs and such training will cover

aspects such as leadership qualities, roles, responsibilities and limits of the LPC, grievance registration procedures, approach to conflict resolution, need for impartiality, etc. Upon successful training, LPCs will be equipped with standard stationary including grievance registers, foolscaps, filing material etc.

Mobilization of the GRC: The PMU will finalize constitution of the GRC and follow-up approval with the PS. This will be followed by induction meetings during which the GRC will be guided to establish procedures for grievance redress. A secretariat for the GRC will be established within the PMU with the RO as Secretary.

Removal of Economic Assets: From encounters with potential PAPs during entry point discussions and subsequent inventory of individual assets, this RAP can confirm a 100% support to the resettlement process. All households expressed willingness to remove the assets and pave way construction activity in which case no resistance is anticipated. Thus in line with the contract for compensation, each PAP will be expected to shift their assets within one month of receiving payment.

Removal of non-economic Assets: Some assets such as shrines and graves may prove difficult to remove by individuals and where such cases occur, the individuals will be assisted by the contractor upon successful completion of requisite cultural rites.

RAP implementation schedule

Activity	Time												
	2019				2020				2021				2022-24
Year	1	2	3	4	1	2	3	4	1	2	3	4	1
Quarter													
RAP preparation													
Verification of property/asset ownership													
Valuation and issue of awards													
Bank account opening													
Payment of compensation													
Issuance of vacate notice													
PAPs consultation and communication													
Formation and functioning of PAPs committees, CRC and PIU													
Contractor identification													
Removal of all affected structures													
Dispute /grievances resolution;													
Monitoring and evaluation													

L. CONCLUSION AND RECOMMENDATIONS

Overview: This study set out to prepare a legally anchored framework to guide resolution of all displacement impact occasioned by the GOK and AfDB funded project to develop the Mombasa-Mtwapa-Kadzengo Road to dual capacity. Development of the Project was guided by an overriding goal of minimizing displacement impact coupled with formulation of a RAP to resolve any inevitable displacement.

Displacement impact: A major observation of this RAP Report is that by far, the greatest impact of the Project Design Works is the pre-emptive minimization of displacement through selection of an alignment that traverses the least populated areas, position manifested by the fact that, though the 20.8-kilometre long which will traverse and acquire 54.2 hectares of land in a traverse where population densities sometimes exceed 12,000 persons per square kilometre, the total potential displacement was computed at only 3,566 people.

The RAP Team invested a lot of time investigating and documenting all potential PAP categories inclusive of their potentially affected assets and livelihoods to map out the full picture of loss. As an outcome, the documentation revealed that over 86% of all PAPs especially those in Mombasa Mainland South occupy land that is formerly government owned but now in transition. And given that none of the occupiers hold Title Deeds as proof of ownership, they are fearful of possible acquisition without compensation. As such, though an Entitlement Matrix was prepared under auspices of this RAP towards restitution of observed loss categories, compensation for land should target all occupiers irrespective of tenure status.

Most of the PAPs will only suffer partial displacement of land-based assets while the non-affected portions remain viable in which case, a resettlement site was not considered necessary for investigation under the RAP. All such potentially displaced people have been engaged either in person all collectively during public barazas and, except for one family, all are united in support of the Project and are unanimous in favour of cash compensation provided that such payment is just, adequate and prompt to enable them to relocate affected assets and move on with their lives.

Recommendations:

Fair, Just and prompt compensation: This RAP recommends that fair and just compensation be paid promptly for all livelihoods, shelter and assets marked for displacement by the Project. Article 40(4) of the Constitution should be invoked to allow compensation for land and developments to non-title deed holders and squatters who have no access to any other land and shelter.

In all cases, compensation will be paid upfront of site hand-over to contractors in order to allow all aggrieved parties adequate time to amicably resolve disputes. Payments should further be extended to compensate for all project neighbouring assets which, though not directly displaced are likely to be damaged by construction activity. This includes all assets within detours, diversion points and on the edge of construction areas.

The need for PAP revalidation before compensation: PAPs and properties are dynamic and property trading is very vibrant within the traverse area. As such, and to safeguard interests of new purchasers, asset inventory as conducted for this RAP should be revisited at the time of compensation.

Management of the time lag between the RAP process and actual compensation: The RAP Process served to arouse expectation for prospective monetary gains amongst PAPs which are subsequently quite high. It is important that such expectations be toned down through regular release of information especially on project timelines.

More severely, soaring expectation is likely to stimulate property market in the neighbourhood with the consequence of pushing up market prices for land to way above current levels. As such, there is a

possibility that, if compensation is delayed, the Compensation Bill will skyrocket on account of a thriving property market. All efforts should be made to effect payment in the course of 2019 in order to mitigate upward spiralling of the Compensation Bill.

Abbreviations

AfDB	African Development Bank
Asl	Above sea level
BMU	Beach Management Unit
Cap	Chapter of the Laws of Kenya
CBE	Commercial Business Enterprise
CPR	Common Property Resources
CRO	Coast Regional Office of KeNHA
CSR	Corporate Social Responsibility
DCC	Deputy County Commissioner
EMCA	Environment Management and Coordination Act
EM	Entitlement Matrix
ESIA	Environmental and Social Impact Assessment
FY	Financial Year
GoK	Government of Kenya
GPS	Global Positioning System
GRC	Grievance Redress Committee
GRM	Grievance Redress Mechanism
Ha	Hectare
HRB	High-rise building
KeNHA	Kenya National Highways Authority
Ksh	Kenya Shilling
LN	Legal Notice
LEC	Location Elders Committee
LPC	Location PAP Committee
LRB	Low-rise building
m	metre
MCG	Mombasa County Government
MI	Mombasa Island
MOTIHUD	Ministry of Transport, Infrastructure, Housing & Urban Development
M&E	Monitoring & Evaluation
NEMA	National Environment Management Authority
NLC	National Land Commission
O&M	Operation and Maintenance
OS	Operating strategy
PAPs	Project Affected Persons
PIT	Project Implementation Team
PMU	Project Management Unit
RAP	Resettlement Action Plan
RR	Road Reserve
RO	Resettlement Officer
ROW	Right of Way
TORs	Terms of Reference
US\$ /USD	United States of America Dollar

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CHAPTER ONE: INTRODUCTION

1.1: Background

The Government of the Republic of Kenya, through its implementing agency, the Kenya National Highways Authority (KeNHA) and support of the African Development Bank (AfDB) is undertaking review of the Mombasa-Mtwapa-Kadzengo-Kilifi (56.1 km) Section of the A7 Highway which previously underwent Feasibility Study and Detailed Design as part of the Multi-national Lungalunga-Mombasa-Malindi (A7) Road Project. Towards this, KeNHA has commissioned a consortium led by Uniconsult Engineering Consultants Ltd to undertake the Consultancy Service for Review of the Feasibility Study, Environmental and Social Impact Assessment, Resettlement Action Plan and Detailed Engineering Design of Multinational Malindi – Lunga Lunga/Tanga-Bagamoyo Road Corridor Development with specific focus on the upgrading of Mombasa–Mtwapa–Kwa Kadzengo - Kilifi (A7) Section.

As part of the contract, and in line with existing national legislation and international practice, the a Resettlement Action Plan-RAP was prepared to guide resolution of all displacement impacts associated with road expansion and associated features. This Report highlights salient findings from the RAP Process which was managed under contract by Lead Experts from Repcon Associates, an Environmental Firm of Experts duly registered and licensed by NEMA (NEMA Registration No. 0002) and other Government of Kenya (GoK) agencies.

1.2: Project Description

1.2.1: Ownership

Upgrading of the Mombasa-Mtwapa-Kwa Kadzengo-Kilifi section of A7 Highway is a project of the Government of Kenya implemented by the Kenya National Highways Authority (KeNHA) with support of the African Development Bank-AfDB. The Project will be implemented within Mombasa and Kilifi Counties under jurisdiction of respective County Governments.. Other core stakeholders to the project are summarised in Table 1.1. For purposes of this RAP Study, KeNHA in capacity of Executing Agency is the designated Acquiring Agency while the National Land Commission-NLC is the designated National Acquiring Authority.

Table 1.1: Principal stakeholders to the Mombasa-Mtwapa-Kadzengo-Kilifi Road

SN	Stakeholder	Main Stake
1	Republic of Kenya through the Ministry of Transport and Infrastructure Development	Project Owner
2	Kenya National Highway Authority-KeNHA	Executing Agency under direction of the Ministry of Transport and Infrastructure
3	African Development Bank	Project financier
4	National Land Commission	Is the designated National Land Acquiring Authority under the Land Act 2012
5	Mombasa and Kilifi County Governments	Enjoys political, administrative and planning jurisdiction

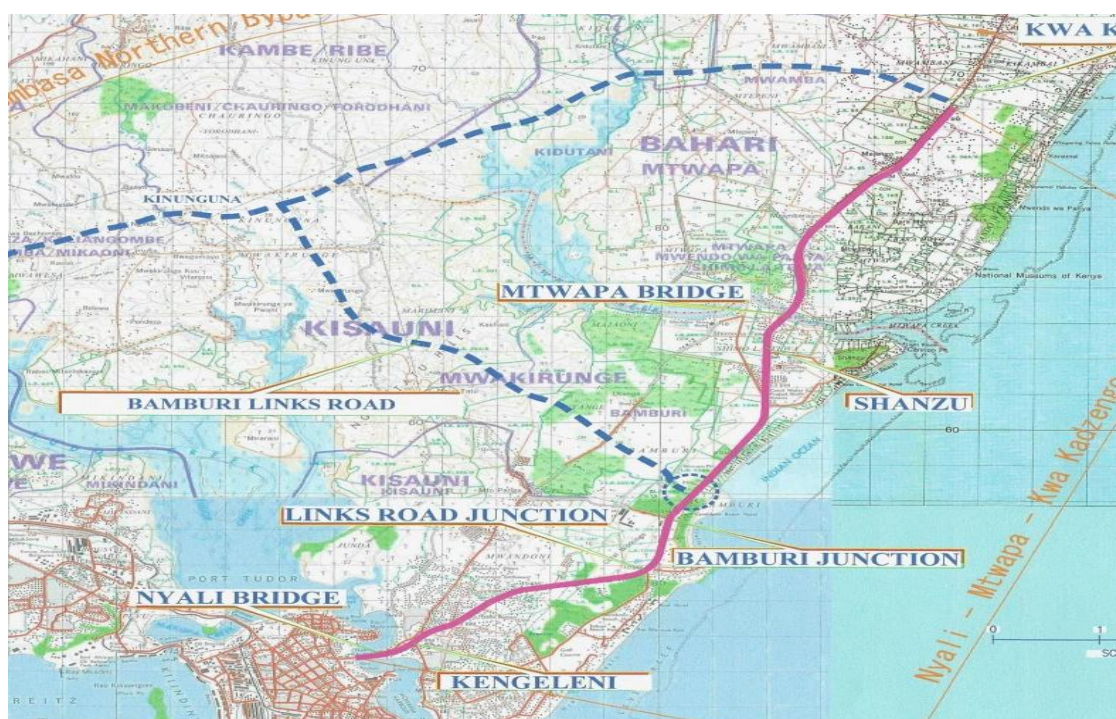
Source: This Study

1.2.2: Project Design Features

Linear Profile: Detailed components of the Project deemed to have displacement impact and which are the subject of the RAP Study are summarized in Table 1.2 below while Figure 1.1 below traces the entire traverse of the Project. The Project is packaged into two lots as follows:-

Project Lot	Linear extension	Length (Km)
One	Nyali Bridge to Mtwapa Bridge	13.5
Two	Mtwapa Bridge to Kadzengo	7.3
	Kadzengo to Kilifi bridge	35.6
Total road length		56.1

The entire Project between Nyali Bridge and Kilifi is 56.1 kilometers long and comprises of a 20.8Km long dual carriage *A-class* highway between Mombasa and Kadzengo inclusive of a new dual carriage bridge for Mtwapa Creek and a 35.6Km long widened single carriage road for the remaining stretch to Kilifi.



Source: This Study

Fig 1.1: Traverse of the Mombasa-Mtwapa-Kadzengo Section of the A7 Highway

Horizontal profile: Design features for Lots One and Two are summarized in Table 1.3 and 1.4 below. Lot one section of the highway will comprise of an 8-lane dual carriage road. The main carriageway will comprise of a 4-lane dual carriage road supplemented by a 2-lane service road on either side.

Table 1.2: Design specifications for Lot One Section of Project

Road Item	Start	End	Length- km	Direction	Comment's
Carriageway	0	13+500	13.5	LHS Northbound - 2 lanes RHS Southbound – 2 lanes	8m wide BRT lane provided between the two carriageways. 3 Lanes each way for Bridges & viaducts
LHS Service Road	0	4+800	4.80	One way Northbound – 2 lanes	Sections next to Haller Park and Bamburi forest trails (kn 4+600 – 10+700) were not provided with service roads on LHS except on the approaches to Junctions
	5+200	6+200	1.00	One way Northbound – 2 lanes	
	6+800	7+700	0.90	One way Northbound – 2 lanes	
	10+800	13+500	2.70	Two way – 2 lanes	
	Total		9.4		
RHS Service Road	0	12+800	12.8	One way Southbound - 2 lanes	RHS service road was terminated at km 12+800 because of dispersed institutional developments further ahead to Mtwapa Bridge
	Total		12.8		

Cross sectional profile: Figure 1.2 presents a typical cross section of the Lot One Highway as revised. A total ROW width of 37metres will be required to accommodate the 8-lane highway while allowing space for passage of utilities-water, power, data, drainage among others.

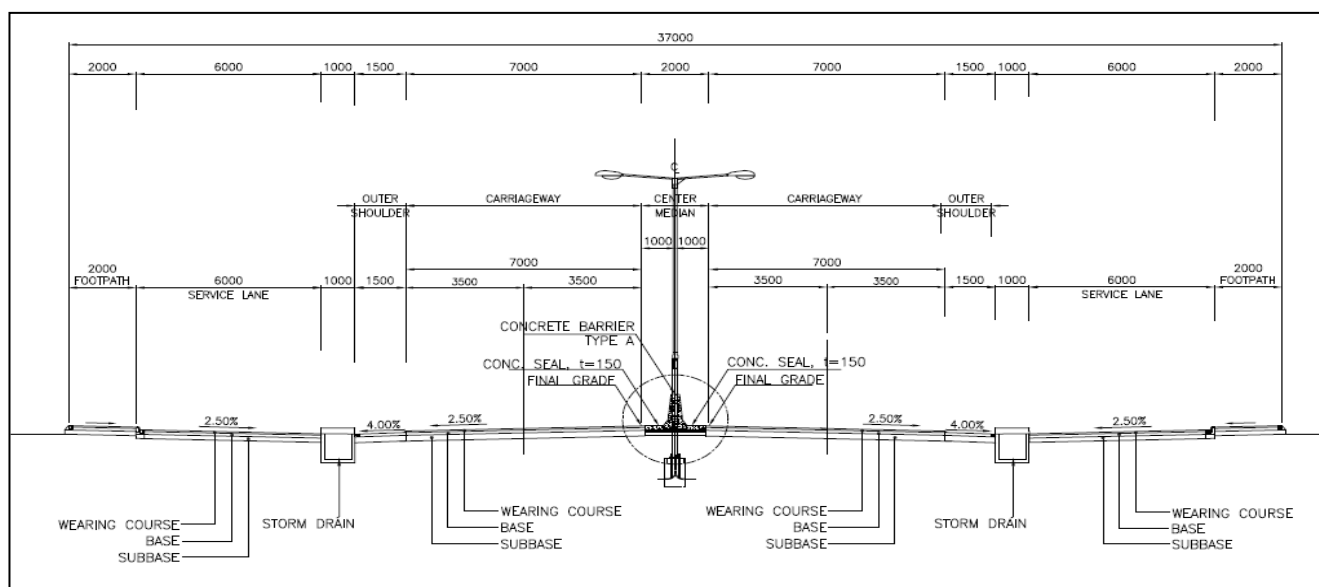


Figure 1.2: Schematic cross section of the Highway as proposed

Source: Design Team

Lot two will comprise two sections.

Section One-Mtwapa bridge to Kadzengo Junction: This section will comprise the proposed 6-lane Mtwapa bridge which will then revert to an 8-lane dual carriage road terminating at Kwa Kadzengo Junction of the proposed Mombasa Northern Bypass.

Table 1.3: Design features for Lot Two

Road Item	Start	End	Length- km	Direction	Comment's
Carriageway	13+500	13+620	0.12	LHS Northbound - 3 lanes RHS Southbound – 3 lanes	Mtwapa Bridge
	13620	20750	7.13	LHS Northbound - 2 lanes RHS Southbound - 2 lanes	8m BRT Lane in the Median
	Total		7.25		
LHS Service Road	13+620	16+300	2.68	One way Northbound – 2 lanes	Service road provided on urbanised section only
	18+200	19+200	1.00	One way Northbound – 2 lanes	Kanamai shopping centre
	Total		3.68		
RHS Service Road	13+620	16+000	2.38	One way Southbound – 2 lanes	Service road provided on urbanised section only
	18+500	19+100	0.60	One way Southbound – 2 lanes	Kanamai shopping centre
	Total		2,980		

Source: This Study

Section Two- Kadzengo Junction to Kilifi Bridge: The 35.6Km long section will entirely comprise a single carriage highway restricted to existing road reserve.

The following strategies were adopted to reduce on the Project Affected Persons (PAPs) and generally the cost to Resettlement Action Plan (RAP);

- 1 Restricting the Right of Way (ROW) to existing Road Reserve and taking extra width were required to accommodate Construction Width, Services (Water, Electricity, etc), Bus Bays, Footbridges and Grade-separated Intersections.
- 2 Excluding the provision for BRT or Similar modes of Transport because the Transport Studies undertaken in the area had not provided strategic planning with such networks.
- 3 Optimization of Horizontal alignment in respect of existing road development.
- 4 Kengeleni area adopted Viaduct structure in order to avoid affecting many buildings and Historical monuments.
- 5 Between Km 4.6 and Km 11.2, this is the section along Bamburi Haller Park and Nature Trail: Generally, no service roads provided on the Left Hand Side save for the approaches to the Grade-separated Intersections.
- 6 Use of retaining walls to limit extended construction width along Bamburi Haller Park and Nature Trail
- 7 Along Mtwapa Town utilised covered drains beneath the footpaths. Open drains require more space. Also reduced the outer shoulder width from 1.5m to 0.5m.
- 8 Between Kwa Kadzengo and Kilifi section; generally restricted the road improvement to existing Road Reserve. Deviation only occurring at the new Bongolo Bridge and its approaches. Also Single carriageway adopted for the section.

1.3: Description of the Project area

1.3.1: Administrative jurisdiction

The Project is being implemented within Mombasa and Kilifi Counties of coastal Kenya which are both traversed by the A7 Highway. In terms of administrative jurisdiction, the Project starts in Mombasa County and terminates at the Kilifi bridge in Kilifi Town in the process, traversing three (3) sub-Counties and numerous Administrative Locations (Table 1.4). In terms of County Administration, the road traverses Kongowea, Frere Town, Kadzandani, Maweni Wards in Mombasa County and Mtepeni, Juju, Mnarani and Sokoni Wards in Kilifi County.

Table 1.4: Administrative jurisdiction in the traverse area

County	Sub county	Location	Components
Mombasa	Nyali	Kongowea (RHS)	Dual Carriage, Interchange and Viaduct complex between Kongowea and Old Malindi Road junction.
	Kisauni	Kisauni (LHS)	Dual Carriage and its interchanges with Bamburi Road and Bamburi Link Roads
		Bamburi	
Kilifi	Kilifi South	Mtwapa	New Mtwapa Bridge and dual carriageway to Kwa Kadzengo
		Kanamai, Kijipwa Vipingo/Mikaoni, Kuruwitu, Mkomani /Mkwanjuni Takaungu, Mnarani and Sokoni	Upgraded single carriage highway all the way to Kilifi bridge. A new bridge is proposed for Bongolo River.

Source: This Study

1.3.2: Settlement and land-use patterns

Table 1.5 presents a profile of the land-use and settlement density within the traverse of the Project Road. Essentially, the high settlement density is only encountered within the first four kilometres of the Project but beyond Kilometre 4+200, densities greatly decline on account of change in land use.

Table 1.5: Analysis of land-use and population density along the traverse

Section	Land-use	Settlement density	Remarks
Nyali Bridge to Bombolulu	High density urban settlements comprising semi-permanent Swahili style residential houses giving way to highrise commercial/ residential buildings	Very high population densities in the range of 10,000-20,000 persons per square Kilometer	Displacement impact likely to be high
Bamburi to Shanzu	Middle to high income settlements on the RHS, forest and agricultural use for rest of traverse.	With the exception of Shanzu Market which is a high-density settlement, rest of traverse is largely very low-density settlement with corporate investments	High impact likely at Shanzu, low impact in rest of traverse.
Mtwapa Town to Kijipwa	Mtwapa is high density urban settlements with modern high-rise buildings fronting the road frontage giving way to agricultural/ industrial settlements to the north.	Settlement density is highest at Mtwapa but thins down to the North.	Displacement impact at Mtwapa can be high.

Vipingo to Mnarani	Land-use dominated by commercial agriculture in sisal and daily production.	Very low settlement densities with the exception of the Takaungu area	Very low displacement impact
Mnarani to Kilifi Junction	Urban development on either side	Low settlement density	Low displacement impact

Source: This Study

1.3.3: Condition of the road reserve

The road reserve within the Mombasa-Mtwapa-Kadzengo-Kilifi section of A7 highway is clearly defined and reserved but in varying dimensions. Between Kengeleni and Mtwapa Bridge, width of road reserve is varied with dimensions of 30, 33, 35, 36 metres all being encountered while past Mtwapa, width generally averages 36.5metres.

1.3.4: Economic aspects of the A7 highway in North Coast

The A7 highway in Kenya's North Coast Area is an important transport artery for several reasons:. This road is the main link of North Coast residential settlements of Bamburi, Mtwapa and others to Mombasa which is the regional economic, business and transport hub where sea, road, railway and air transport all originate. As such, this road is used by many commuters going to work in Mombasa and the Port, consumers of goods and services and suppliers of goods to far flung hinterlands in Malindi, Lamu, Tana River and beyond. The road also links north coast based manufacturers and exporters (Bamburi Cement, Gongoni and Mambrui Cement Works, Magarini Sand Harvesters, etc) to both Mombasa Port and consumers on which account, it commands a heavy traffic volume especially during the working hours which, on its peak attracts a huge population of mobile traders cashing in on the traffic. The Mombasa-Mtwapa-Kadzengo-Kilifi road is there a highly strategic economic resource with direct impact on trade, transport, employment while indirectly promoting real estate through attraction of rental and business tenants. The road also connects to Malindi and Lamu which are international tourist destinations, as well as a starting point for the LAPPSET corridor with Berths underway for the Lamu Port. The road also serves as the regional connection to Garsen, and Garissa and a gate way to the northern side of Kenya from Mombasa.

1.4: Justification of a RAP Study for the Project

This RAP has been prepared consistent with the applicable policy provisions of Kenyan Government and AfDB's Operating Strategies to minimize the land acquisition and displacement, livelihood and associated impacts. Basically, this RAP presents an inventory (register) of people likely to be affected by development of the target bridges, a register of the assets that are likely to be displaced by the project and the proposed compensation package. Displacement impact in the project is likely to be occasioned by any component that cannot be accommodated within road reserves as currently designated. Such components include:-

The dual carriage highway including busbays and viaducts: As designed, the pavement and its ROW has a total width of 37.0 metres against an ROW provision of 30-36mtres will require land acquisition in the range of 1 to 6 metres.

Interchanges: Design of Lot One inbuilds numerous interchanges such as Kengeleni, Old Malindi Road, Links Road, Bamburi Junction, MNB junction and others all of which cannot be accommodated

within existing ROW. Acquisition around interchanges is therefore inevitable.

1.5: Approach to the RAP Study

1.5.1: Principles in the RAP Study

Preparation of this Resettlement Action Plan has been guided by core principles stipulated by Operational Safeguard 2 – Involuntary resettlement: land acquisition, population displacement and compensation namely: -

- i) Avoid involuntary resettlement where feasible, or minimise resettlement impacts where involuntary resettlement is deemed unavoidable after all alternative project designs have been explored
- ii) Ensure that displaced people are meaningfully consulted and given opportunities to participate in the planning and implementation of resettlement programmes;
- iii) Ensure that displaced people receive significant resettlement assistance under the project, so that their standards of living, income-earning capacity, production levels and overall means of livelihood are improved beyond pre-project levels;
- iv) Provide explicit guidance to borrowers on the conditions that need to be met regarding involuntary resettlement issues in Bank operations to mitigate the negative impacts of displacement and resettlement, actively facilitate social development and establish a sustainable economy and society; and
- v) Guard against poorly prepared and implemented resettlement plans by setting up a mechanism for monitoring the performance of involuntary resettlement programmes in Bank operations and remedying problems as they arise.

1.5.2: Scope of the RAP Study

A detailed description of the Project is provided in Chapter Two below. The Resettlement Action Plan is designed to meet objectives as follows:-

- i) To identify and assess potential displacement impacts of the proposed project.
- ii) To identify and quantify different categories of Project Affected Persons (PAPs) who would require some form of assistance, compensation, rehabilitation or relocation.
- iii) To provide guidelines to stakeholders participating in the mitigation of adverse social impacts of the project including compensation and rehabilitation for affected people.
- iv) To verify compliance with the environmental regulations and industry's standards including the AfDB's Operating Strategies and Policies.
- v) To generate baseline data for monitoring and evaluation of how well the mitigation measures will be implemented during the project cycle

1.5.3: Familiarization with the Route of Traverse

Field work started with reconnaissance trips to identify and familiarize with the entire alignment. Among other outputs, this activity helped to identify and document features of interest including physical cultural resources.

1.5.4: Stakeholder Consultations

Regulation 7 of Legal Notice 101 of EMCA requires consultation with people likely to be affected by the Project and given that displacement is a social impact, consultations for RAP are partly undertaken

as part of the ESIA process. The aim is to ensure that all stakeholder interests are identified and incorporated in project development, implementation and operation. Of necessity, stakeholder consultations should take place alongside project design and implementation to ensure that the project puts in place measures to cater for stakeholder concerns in all project phases.

(i): Entry point discussions with potentially affected people: Upon commissioning, the RAP Team took time to identify and engage the community likely to be affected. Consultation took the form of Leaders Forums in both Mombasa and Kilifi followed by meetings with grassroots communities namely property owners and traders. During the meeting, the entire scope of the Mombasa-Mtwapa-Kadzengo-Kilifi Road Project was disclosed to such stakeholders who were also accorded an opportunity to raise issues of concern.

(ii) Public sensitization meetings

As an entry point for the RAP process, public meetings were held for purposes of sensitizing potentially affected people on the project. This took the form of meetings arranged with the assistance of Deputy County Commissioners and Chiefs.

(iii) Consultations with Secondary Stakeholders

Under this category, a cross section of stakeholders were met and these included; civil servants, local government officials and the local residents. Consultations took place in respective offices and in the field where possible. Consultations were made either with individual officers or in Focus Group Discussions involving several officers in a group. For this category of stakeholders, a semi-structured questionnaire providing for the Institution, name and designation of officer consulted, issues raised and signed feedback was used to guide the discussions. Discussions started with the consultant team explaining the project to the target officer following which, they were asked to identify their fundamental concerns on the same. After discussion, the officers were requested to fill and sign the form administered by the consultant in a system that was deemed useful and as a strategy to cut down on paperwork while capturing and documenting for future reference-the signed comments of target informants.

1.5.5: Field Inventory of PAPs and assets

This followed specific procedures as follows:-

Questionnaire design and recruitment of enumerators

(i) Design of questionnaires:

For purposes of guiding collation of data on potentially affected persons and their assets, an appropriate questionnaire was designed and adapted for the study at hand. Appendix 4.2 provides a sample of the questionnaire used in the inventory of PAPs.

(ii) Recruitment of enumerators:

In preparation of field work, enumerators were recruited to undertake inventory of people potentially affected by the project. Upon recruitment, enumeration teams were brought together and briefed on the nature of the assignment and their roles in study. They were guided through the questionnaires and then given practical training on the operation of hand-held GPS sets. As part of their training, enumerators participated in reconnaissance surveys to identify the route of traverse during which, questionnaires were also pre-tested.

(iii) Sensitization of affected persons

Given the sensitivity of land matters in Kenya, land inventory was approached with full caution. 4 public barazas were organized to sensitize potentially affected people on the proposed inventory.

Asset Inventory

Inventory of Project Affected People was based on administration of a questionnaire specifically designed for this purpose. The tool was administered on all land owners likely to be affected by the project for purposes of capturing details on their identity and asset ownership so as to assemble an asset register and compute the likely compensation bill.

From the onset of the RAP study, it had been clarified that road expansion will be restricted to 37m and enumeration was always preceded by an on the ground delineation of this reserve along the entire traverse. All enumeration therefore targeted assets and interests either located in the road reserve or opening in to the road reserve and took the form of questionnaires either filled by the respondent or filled after an interview. The questionnaire covered details as follows:-

- Personal details of respondent: this included name, age, relationship to landowner, occupation, parameters of vulnerability (disability, socio-economic status).
- Administrative details including village, location and district;
- Current asset base of respondent family including land ownership and use, total trees owned, number of houses in homestead by size and construction materials (floor, wall and roof types),
- Total length of RR and analysis of assets there-in.
- Any other information including wishes of the respondent family regarding compensation.

The final figure for each was agreed with the land owner following which any questions would be answered. The limit of the land acquisition was then sketched on the map and coordinates taken. Along each section, enumeration teams were supervised by the Lead Expert who also supplemented questionnaire survey with stakeholder consultations to generate socio-economic baseline data.

Data entry and cleaning

Daily returns of questionnaires were always scrutinized for errors in data entry and capture, validity of data generated, etc. following which, the sheets were filed for data entry in the office Nairobi. Once in the office, questionnaire data was entered to create Excel-based data files to create an asset register for all project affected people based on administrative units. A data entry format was adopted as follows:-

Interview No.	District	Location	Village	Name	Status	Age	Total holding [acres]	length of RR [m]	RR (acres)	Per cent of holding	Structures in RR	Total trees

The data was then further screened for consistency and corrected for typological and entry errors before further application in computation work.

Computation of the Assets Register

Following entry and cleaning of all data, an Assets Register based on which, compensation was computed was assembled. Details are provided in Chapter five below.

1.5.6: Procedure in the socio-economic survey

Focus of the Survey

Alongside asset inventory, a socio-economic survey was conducted to generate datum data on potential PAPs. This data has facilitated the socio-economic profiling provided in sections below which forms a useful datum against which, the social welfare of PAPs will be monitored. The evaluation was carried out over a four-week period in September/October 2019.

Core activities within the study frame included:-

Review of project documents and records: The TOR was specific on the documents to be reviewed for the study. Alongside these, the Consultant reviewed all available reports and documents on the Counties of Traverse. A full list of documents reviewed is presented at the bottom of this report.

Design of the Questionnaires: Right from the onset, the Consultant appreciated the need to assemble a credible primary database as a basis for the socio-economic survey and thus opted for a study methodology largely based on field surveys and interviews amongst representative samples within the projects' geographical coverage. Thus, upon review of project documents and attendant briefing, the consultant prepared a draft questionnaire which was reviewed and approved by the client.

1.5.7: Field work in the socio-economic survey

On its part, the field survey entailed diverse activities as follows:-

(i) *Recruitment of enumerators:* Half day training sessions were organized during which, the consultant team interacted with enumerators-who were subsequently trained on application of the questionnaire. Upon training of the enumerators, the study team would then head to the field to visit the nearest sites (KM 00) where each enumerator would administer (pre-test) a questionnaire which was then reviewed by the consultants during an evening session. The purpose was to test both the efficacy of the questionnaire in capturing intended data and to gauge capacity of the enumerator to administer the tool.

(ii) *Questionnaire Surveys:* Upon successful pretesting, each enumerator was issued with 10 serialised questionnaires for administration in respective areas of jurisdiction. Questionnaire administration was further supervised when the study team visited each site along the traverse.

Sample Size: Socio-economic surveys covered all available land owners, Business and Residential Tenants.

(iii) *Data entry and cleaning:* Collected data was entered by three trained data entry operators and a data entry supervisor. In order to ensure quality control, all questionnaires were double entered in excel file and internal consistency checks performed. The keyed in data were then analyzed using the Statistical Package for Social Science (SPSS) software program. A list of all impacted plots and other records was developed to provide an easily retrievable database for further/future reference.

1.5.8: Approach to Asset Valuation

Principles in asset valuation in the RAP Study

As a working principle, compensation for assets in this RAP has been guided by the Replacement Cost Approach (RCA) where restoration of either properties or livelihoods impacted by the project is the main working goal. The working of the RCA as adopted in this RAP is detailed in Appendix 4.3 below. In sections below, we highlight the methodology adopted towards establishing the asset base and worth of each PAP.

Parameters in asset valuation:

Asset valuation recognized three parameters namely:-land area to be acquired for the RR, structures falling within the RR and trees and crops falling under the RR. Following the collection of the baseline data, market surveys for structures, land and crops, a compensation policy framework was developed setting the framework for valuation. As a principle, valuation in this RAP adopted the Replacement Cost Approach Method with the twin goals of restoration and rehabilitation to standards equal to or higher than original.

Valuation Methods Adopted

This RAP adopted diverse valuation methodologies as follows:-

(i) Value of land under RR:

Length of land taken by RR was multiplied by the 37m width to yield area in square meters from which total hectares and acres to be acquired was computed. The latter figure (acres) was multiplied by the market prices for land within the target locality to yield an estimate of total cost of the land to be acquired for Way Leaves. Determination of the land value factored many parameters including the current market prices as obtained from diverse sources land and property agents, local administration, land control boards, property owners, recent research papers and reports, etc). The final compensation value factored in likely escalation in land prices owing to influx of speculators and the purpose was to ensure that, at all times, PAPs can afford to buy land in the same villages. All entitlements also factored in a statutory 15% mark-up required for all compulsory acquisition.

(ii) Valuation of Buildings and other Structures:

Valuation of buildings and other structures used an estimate of the total effort invested in terms of building materials (floor, wall, roof type, finish and labour input) which was valued at market rates without factoring in depreciation. The outcome was used to adjust the value of target property as previously estimated by the owner during questionnaire surveys so as to arrive at objective costing of the total damage due to the target structure.

Implementation of the Replacement Cost to arrive at the total cost implication of replacing assets to be relocated faced challenges in that, on account of extreme poverty, some of the PAPs live in sub-standard dwellings which were considered unfit for human habitation, and which do not merit replacement. As such, other than the replacement cost, this RAP aspired to provide the next best standard of house for affected households. For such PAPs, a flat rate compensation package has been proposed.

(iii) The compensation package:

This was derived from summation of the costs to affected land, buildings, trees and crops to which was added a 15% mark-up to cater for involuntary acquisition in line with Cap 295(repealed) rules.

1.6: The RAP Team

This RAP study was undertaken by a multidisciplinary team bringing together skills as follows:-

- Mr. Michael Wairagu-EIA Lead Expert
- Ms. Monicah Nyang -Sociologist
- Edwin Owino –Statistician/ Field Team Leader
- Margret Kirugo- Assistant Sociologist
- Egal Kombo-Field Technician

Field inventory work was entrusted to six enumerators who were all university students

1.7: Presentation of this RAP Report

This RAP is presented in 10 chapters. A glossary of terms is issued as Annex One to this report.

CHAPTER TWO: THE POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

2.1: Overview of the Policy Framework

The chapter sets out the legal operating environment for acquisition of land as anticipated in the proposed by KeNHA. It is motivated by the realization that, unmitigated involuntary resettlement in development has potential to trigger severe economic, social and environmental risks including:- displaced and dismantled production systems, loss of income sources, weakened community institutions and social networks, dispersed kin groups and diminished or lost cultural identity and traditional authority. The RAP is developed based on the GoK policy and legal provisions as read together with Operational Policies of the African Development Bank.

2.2: An overview of GOK Policy on Access to Land for Public Purpose

GoK Policy on National Development is elaborated in diverse blue-print documents as follows:-

Sessional Paper No. 3 of 2009 on National Land Policy

The National Land Policy was formulated with the aim of securing rights over land and provide for sustainable growth, investment and reduction of poverty in line with Government overall development objectives. The policy will offer a framework of policies and laws designed to ensure the maintenance of a system of land administration and management that will provide:

- All citizens with opportunity to access and beneficially occupy and use land;
- Economically viable, socially equitable and environmentally sustainable allocation and use of land;
- Efficient, effective and economical operation of land markets;
- Efficient and effective utilization of land and land-based resources; and
- Efficient and transparent land dispute resolution mechanisms.

The National Land Policy is relevant to infrastructure development as it provides for compulsory acquisition- the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation, and is provided for in the current Constitution. This power is exercised by the Commissioner of Lands on behalf of the State. The current Constitution also permits a modified form of acquisition in the case of Trust Land which may be activated by the President or local authorities. This is referred to as “setting apart”.

With regard to the coast region domicile of the Road dualling Project, the National Land Policy is relevant as it appreciates the complexity of the land question within the Coast region on account of historical and legal origins which resulted in many members of the indigenous coastal communities being deprived of land. To date, the coast region has the largest single concentration of landless indigenous people living as squatters sometimes on ancestral land owned by absentee landlords. Towards resolution, the NLP has recommended establishment of suitable legal and administrative mechanisms to address historical claims arising from the application of the Land Titles Act (Cap 282) of 1908 through which many were deprived of their ancestral lands.

2.3: Legal Framework in compulsory land acquisition

2.3.1: Legal basis for land ownership in Kenya

(i) Provision of the National Constitution

Section 40 of the National Constitution protects the basic right to land ownership in Kenya as follows:-

- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
 - (a) of any description; and
 - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person—
 - (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

(ii) The Lands Act No. 6 of 2012:

The Land Act was enacted by Parliament to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources, and for connected purposes. The Act applies to all land declared as (a) public land under Article 62 of the Constitution; (b) private land under Article 64 of the Constitution; and (c) community land under Article 63 of the Constitution and any other written law relating to community land.

The Land Act guarantees security of tenure for land under (a) freehold; (b) leasehold; (c) such forms of partial interest as may be defined under the Act and other law, including but not limited to easements; and (d) customary land rights, where consistent with the Constitution and guarantees equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems.

Under the Lands Act 2012, The Wayleaves Act, Cap 292 and The Land Acquisition Act, Cap. 295 have been revoked but Sections 8 and 9 allow for Compulsory Acquisition as an option in acquiring land for public utility.

(iii) The Land Registration Act, No. 3 of 2012:

The Land Registration Act (LRA) 2012 was assented to on 27th April, 2012 and commenced on 2nd May, 2012 with the objective and purpose of revising, consolidating and rationalizing the registration of titles to land to give effect to the principles and objects of devolved government. Sections 18 to 21 of the LRA 2012 deal with establishment and maintenance of boundaries to land. Under section 21(1) is relevant to development of power distribution lines in that, it criminalizes interference with boundaries thus; - Any person who defaces, removes, injures or otherwise impairs a boundary feature or any part of it unless authorized to do so by the Registrar commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand shillings or to both.

Under the LRA 2012, statutes previously related to land property namely;- The Indian Transfer of Property Act 1882, The Government Lands Act, (Cap 280), The Registration of Titles Act, (Cap 281), The Land Titles Act, (Chapter 282) and The Registered Land Act, (Cap. 300) now stand repealed.

(iv) The Environment and Land Court Act No. 19 of 2011:

This law was assented to on 27th August, 2012 and commenced on 30th August, 2012 to give effect to Article 162(2) (b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes. Section 13 (1) of the Act gives the Court original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other written law relating to environment and land. In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes relating to environment and land, including disputes:-

- a) Relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- b) Relating to compulsory acquisition of land;
- c) Relating to land administration and management;
- d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- e) Any other dispute relating to environment and land.

This statute is deemed relevant to all development proposed for implementation in Kenya as it provides for legal recourse for disputes relating to environment and land. This is a law that any developer including the KeNHA should familiarize with.

2.3.2: Statutory mechanism for compulsory land acquisition in Kenya

Land acquisition for public interest is legally allowed for in Kenya as follows:-

(i) The National Land Policy

The National Land Policy recognises the need for compulsory land acquisition where the overriding motivation is the service of public interests. Diverse laws provide for compulsory land acquisition as follows:-

(ii) Provision of the National Constitution

In Kenya, expropriation is provided for in the Constitution under Section 40 whose clauses 3-6 inter alia, state as follows:-

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

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

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

(iii) Provisions of the Land Act of 2012

According to Section 7 of the Lands Act 2012, Title to land may be acquired through— (a) allocation; (b) land adjudication process; (c) compulsory acquisition; (d) prescription; (e) settlement programs; (f) transmissions; (g) transfers; (h) long term leases exceeding twenty one years created out of private land; or any other manner prescribed in an Act of Parliament. Section 9(2) (c) of the Lands Act 2012 also recognises land acquisition as an avenue to conversion of private land to public land.

(iv) Roads Act 2007

The Roads Act 2007 is relevant to management of road reserves. Sections 3(2) (b), 4(2) (b) and 10(2) (b) of this Act places all road reserves under the respective jurisdictions of Road Agencies depending on the category of the road. In essence, any infrastructure service provider intending to utilize a road reserve will require consent of the respective road authority. Further, under Section 27, the respective road authority has power to cause relocation of infrastructure from the road reserve thus:-

(2) Where any infrastructure utility is located within a road reserve, the provider or operator of such infrastructure utility shall, upon written request by the responsible Authority, relocate such infrastructure utility to a location or alignment approved by the Authority at no cost to the Authority.

(3) Where an Authority intends to exercise any power under subsection (2) it shall give reasonable notice of its intention to do so to the person having control of such infrastructure utility, and such person shall cause to be removed such infrastructure utility within sixty days.

(4) Where, under subsection (2) or (3), any person having control of an infrastructure utility fails to remove such infrastructure utility within the time stated in the notice, the concerned Authority may remove such infrastructure utility at the cost of the person who was unable to comply with the notice under subsection (3).

2.3.3: Systematic procedure in compulsory land acquisition

Under the Lands Act of 2012, the NLC has issued guidelines in compulsory land acquisition as follows:-

(i) 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 defense, 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. Infrastructure projects including public highways are explicitly identified as meriting 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.

(ii) Respective Government agency or cabinet must seek approval of 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.

(iii) 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.

(iv) 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.²⁸ 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, georeferenced the land intended for acquisition.

(v) 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.

(vi) 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.

(vii) 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.

2.3.4: Applicable legal procedure in compulsory acquisition of contested properties

Multiple provisions are made in Kenya to allow aggrieved parties to practice their right to due process and right to appeal in case of disputes. Two avenues for grievance redress are provided namely (a) the public inquiry and (b) provision for recourse to courts of law. The 2012 Land Act (section 112) mandates the NLC to hold an inquiry where anyone with interest in the land and who feels aggrieved by the acquisition process can lodge a complaint. The Constitution states that the process of inquiry is to be fair, equitable, transparent and accountable. The public inquiry stage is critical as it provides for an open grievance redress mechanism. The notice of the Inquiry must be advertised in the Gazette 15 days before the date. In addition, the NLC must proactively seek out any persons of interest in the land and hand them this Notice of Inquiry. Any disputes brought forward must be resolved within the period of the Inquiry. Accessibility of these inquiries to the most vulnerable is provided for as the hearings are held on site. In addition, the Constitution of Kenya 2010 provides for aggrieved to file a court case in addition to, or instead of, using the Inquiry set up by the NLC. The Environment and Land Court was established to focus on disputes arising from land or the environment has exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under the Land Act, 2012.

2.3.4: Laws and regulations relating to Acquiring Agencies

Following enactment of the Land laws regime in 2012, diverse laws and regulations have been put in place in attempts to provide clarity. A brief overview is provided:-

(i) **The Land Laws (Amendment) Act, 2016 (No. 28 of 2016)** The Land Laws (Amendment) Act, 2016 received presidential assent on 31st August 2016 and came into force on 21st September 2016. The Act brings about amendments to the Land Act, 2012, Land Registration Act, 2012 and the National Land Commission Act, 2012 and also introduced some fundamental changes to land law and conveyancing in Kenya. Some of the more salient amendments include:-

Clarification of functions of both the Cabinet Secretary for Lands and the National Land Commission-NLC: A clear distinction has now been drawn between the role of the Cabinet Secretary for Lands (falling under the National Government) *vis-à-vis* the National Land Commission. The NLC remains the body responsible for managing public land on behalf of national and county governments including the maintenance of records and data in respect of public land. However, the decision to allocate any part or parcel of public land is to be made by the national or county government (as the case may be). The role of the NLC is only to implement the decision to allocate.

Introduction of a Controlled Land Category: The Act has introduced the new concept of “controlled land” which is land within a zone of 25 kilometres from the inland national boundary of Kenya, within the first and second row beach plots in the Coast Region and any other land that may be declared controlled land by statute. The Act requires that “transactions” in controlled land can only proceed with the prior written approval of the Cabinet Secretary and that in considering an application for approval, the Cabinet Secretary must seek approval of the relevant authorities.

This provision also introduces the concept of “ineligible persons” which basically refers to individuals who are not citizens of Kenya, foreign governments or their agencies or subdivisions and corporate bodies whose shareholders are not Kenyan citizens.

The entire falls within the land designated as controlled for purposes of these regulations implying that consent of then CS for Lands is mandatory in implementation of this RAP.

On Compulsory Acquisition: Compensation for compulsory acquisition is to be made by the NLC only after final survey and determination of the acreage, boundaries, ownership and value of the land. If the Commission takes possession of the land before paying the compensation, interest is payable to the owner from the time of taking possession to actual payment at the base lending rate set by the Central Bank of Kenya.

On Eviction of Unlawful Occupiers: Unlawful occupation of any land, whether public, community or private is prohibited. The Act now provides for elaborate procedures for the giving of notice to unlawful occupiers and the carrying out of evictions upon expiry of such notice. This is highly relevant to the where numerous cases of illegal occupation were registered.

(ii) Land Registration (General) Regulations, 2017 (S.I. No. 278 of 2017).

Following the enactment of the new Land law regime post-2010 of the Land Act, No. 6 of 2012, the Land Registration Act No. 3 of 2012 and the Community Land Act No 27 of 2016, several rules have been published through the Kenya Gazette Vol. CXIX – No. 180 dated 08 December 2017. These are The Community Land Regulations, 2017, The Land Regulations, 2017, The Land (Extension and Renewal of Leases Rules, 2017, The Land (Conversion of Land) Rules, 2017, The Land (Assessment of Just Compensation) Rules, 2017 and The Land (Allocation of Public Land) Regulations, 2017. Some are deemed relevant to land acquisition as proposed for the as follows:-

- **The Land Registration (General) Regulations, 2017** which are to regulate the registration of various instruments relating to land. They include ninety four (94) prescribed forms that range from the form of Power of Attorney, Application for Registration, Application for replacement of lost Title and Application for Official Search etc;
- **The Land Regulations, 2017** which give guidelines and regulate various procedures to transactions in land. Included are forty (40) prescribed forms that range from Application for Consent to transfer, Application for Land Rent Clearance Certificate and Notice of intention to compulsorily acquire etc; and
- **The Land (Extension and Renewal of Leases) Rules, 2017** which are meant to guide officers of the Ministry of Lands and Physical planning, County Governments, the National Land Commission, Lessees, Professionals and any other persons dealing with matters relating to the extension and renewal of Leases and contains various prescribed forms that range from Application of extension of Lease and Application for renewal of lease etc;
- **Land (Assessment of Just Compensation) Rules, 2017 (No. 283 of 2017):** These Rules of the National Land Commission implement provisions of the Land Registration Act 2012 in respect of the amount of compensation to be awarded for land acquired under the Act. It among

other things, sets out factors to be taken into consideration when assessing compensation. Factors to be considered in assessment of compensation shall include:-

- ✓ (a) the market value of the land;
- ✓ (b) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of severing the land from his or her other land;
- ✓ (c) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of the acquisition injuriously affecting his or her other property, whether moveable or immovable, in any other manner or his or her actual earnings;
- ✓ (d) reasonable expenses incidental to the relocation of any of the persons interested or who will be compelled to change residence or place of business as a consequence of the acquisition; and
- ✓ (e) damage genuinely resulting from diminution of the profits of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the Commission takes possession of the land.

2.4: AfDB's Policy on Involuntary Resettlement

AfDB's Policy on Involuntary Resettlement is elaborated in the Bank's Operational safeguard 2 – Involuntary resettlement: land acquisition, population displacement and compensation. For purposes of Clarity, the text of OS2 deemed pivotal to the entitlements arrived at in this RAP is reproduced verbatim in sections below.

Scope of application: This OS applies to all Bank lending operations, both public and private sector, and to project activities funded through other financial instruments managed by the Bank. Its applicability is established during the environmental and social assessment process—specifically, during project screening, when the magnitude, strategy and timing of the resettlement should be determined.

OS2 covers all components of a project, including activities resulting in involuntary resettlement that are directly and significantly related to a Bank-assisted project and necessary to achieve its objectives—whether the resettlement is led by a government, a private sponsor, or both—and carried out or planned to be carried out contemporaneously with the project. It aims to clarify all aspects of impacts related to land acquisition; issues related to physical and economic displacement but not specifically related to land acquisition are dealt with in OS1.

In line with the framework in the involuntary resettlement policy, this OS covers economic, social and cultural impacts associated with Bank-financed projects involving involuntary loss of land, involuntary loss of other assets, or restrictions on land use and on access to local natural resources that result in:

- Relocation or loss of shelter by the people residing in the project area of influence;
- Loss of assets (including loss of structures and assets of cultural, spiritual, and other social importance) or restriction of access to assets, including national parks and protected areas or natural resources; or
- Loss of income sources or means of livelihood as a result of the project, whether or not the people affected are required to move. When a project requires the temporary relocation of people, the resettlement activities should be consistent with this OS, while taking into account the temporary nature of the displacement. The objectives are to minimise disruption to the affected people, avoid irreversible negative impacts, provide satisfactory temporary services and—where appropriate—compensate for transitional hardships.

This OS does not apply to the settlement of refugees and victims of natural disasters, nor to resettlement resulting from voluntary land transactions—that is, market-based land transactions in which the seller

is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures if negotiations fail.

Eligibility and entitlements: In accordance with the involuntary resettlement policy, three groups of displaced people are entitled to compensation or resettlement assistance for loss of land or other assets taken for project purposes:

- Those who have formal legal rights to land or other assets recognised under the laws of the country concerned. This category generally includes people who are physically residing at the project site and those who will be displaced or may lose access or suffer a loss in their livelihood as a result of project activities.
- Those who may not have formal legal rights to land or other assets at the time of the census/evaluation but can prove that they have a claim that would be recognised under the customary laws of the country. This category may include people who may not be physically residing at the project site or persons who may not have any assets or direct sources of livelihood derived from the project site, but who have spiritual and/or ancestral ties with the land and are locally recognised by communities as customary inheritors. Depending on the country's customary land use rights, they may also be considered to have a claim if they are sharecroppers, tenant farmers, and seasonal migrants or nomadic families losing user rights.
- Those who have no recognisable legal right or claim to the land they are occupying in the project area of influence and who do not fall into either of the two categories described above, if they themselves or witnesses can demonstrate that they occupied the project area of influence for at least six months prior to a cut-off date established by the borrower or client and acceptable to the Bank. These groups may be entitled to resettlement assistance other than compensation for land to improve their former living standards (compensation for loss of livelihood activities, common property resources, structures and crops, etc.).

2.5: Gap between AfDB's Operating Strategies and Law in Kenya

As earlier mentioned, Resettlement Policy is not available in Kenya so far. Relevant laws and regulations provide the legal framework for compensation and resettlement in Kenya under the absence of resettlement policies. Table 2.1 presents policy gap analysis between AfDB's Operating Strategies and Kenya's Country System in regard to land acquisition and resettlement, including measures to fulfil the gaps. Though the analysis reveals absence of major gaps, for avoidance of doubt, and for purposes of implementation of this RAP, AfDB's Operating Strategies will prevail in situations. This is because of the Bank's superior provisions especially to non-landed PAPs as compared to the Kenyan legal system.

Table 2.1: Gap analysis between AfDB's Operating Strategies and Law in Kenya

	AfDB's Operating Strategies (2010)	Laws of Kenya	Gap Between AfDB's Operating Strategies and Laws in Kenya	Proposed Gap Filling Measures
1	Involuntary resettlement and loss of means of livelihood are to be avoided when feasible by exploring all viable alternatives.	No specific provisions on preventing involuntary resettlement and loss of means of livelihood.	There is no provisions in this regard, while the AfDB's Operating Strategies require to avoid/minimize resettlement/loss of livelihood	The project shall explore various alternatives and select the most viable option where involuntary resettlement is minimized, while optimizing the alignment of the bridge.
2	When population displacement is unavoidable, effective measures to minimize impact and to compensate for losses should be taken.	The Land Act Section 111. (1) Requires just and full compensation to be paid promptly to the land owner for compulsorily land acquisition for public	There is no specific provision for compensation for "effective measures", while AfDB's Operating Strategies	The RAP has been prepared to provide for:- (i) evaluation of the impacts of the project to the PAPs, and (ii) formulation of the entitlement and the compensation for the losses incurred in terms of

	AfDB's Operating Strategies (2010)	Laws of Kenya	Gap Between AfDB's Operating Strategies and Laws in Kenya	Proposed Gap Filling Measures
		purpose.	acknowledges all affected persons whether legally residing or not, are eligible for compensation.	land, structures, improvements and crops and trees.
3	People who must be resettled involuntarily and people whose means of livelihood will be hindered or lost must be sufficiently compensated and supported, so that they can improve or at least restore their standard of living, income opportunities and production levels to pre-project levels.	The Land Act Section 134. (1) The Land Commission shall implement settlement programmes to provide access to land for shelter and livelihood, on behalf of the national and county governments.	There is no provision for maintaining living standard of affected people at the same or above pre-project levels in Kenyan Laws, while AfDB's Operating Strategies require that no one is worse off as a result of resettlement and would maintain their living level at least at original levels	Livelihood restoration is not clearly set out in Kenyan laws; the RAP will cover "improve or at least restore their standard of living, income opportunities, and production level to pre-project levels".
4	Compensation must be based on the full replacement cost as much as possible.	The Land Act Section 113. (2), an award shall be based on (i) the size of the land; (ii) the value (opinion of the Commission); (iii) the amount of the compensation payable.	The related provisions regarding replacement cost is not clear in Kenyan Laws, while AfDB's Operating Strategies require that the replacement cost plus tax and remittance charge shall be included in compensation.	The Project Policy on compensation is based on the full replacement cost for land, structures and other improvements in line with AfDB's guidelines. The Survey Team will carry out Replacement Cost Survey (RCS) to figure out the full replacement cost.'
5	Compensation and other kinds of assistance must be provided prior to displacement	The Land Act, National Land Policy specifies the quick compensation; however, its timing to disburse is not clear.	Compensation and other assistance are made regardless of whether it is before or after construction, while AfDB's Operating Strategies requires paying compensation prior to relocation.	The resettlement plan addresses all these issues and spells out a mechanism for all the compensation to be paid prior to possession of the acquired land and prior to displacement.
6	For projects that entail large-scale involuntary resettlement, resettlement action plans must be prepared and made available to the public.	There is no legal basis on the preparation of resettlement plan; however the schedule of EMCA, 1999, identifies projects to be subjected to EIAs including large-scale involuntary resettlement.	There is no gap in principle. Both EIA and RAP are disclosed to the public prior to grant of EIA License.	Preparation of the RAP is indispensable for EIA clearance.
7	In preparing a resettlement action plan, consultations must be held with the affected people and their communities based on sufficient information made available to them in	There is no specific law on preparing a resettlement plan.	There is no provision in the law for consulting the stakeholders or communities.	Kenyan Land Law stipulates contents of meeting with PAPs. Based on the AfDB's Guidelines, the RAP Team Survey Team organized at least three round of public consultation: (i) introduction of the project and announcing cut-

	AfDB's Operating Strategies (2010)	Laws of Kenya	Gap Between AfDB's Operating Strategies and Laws in Kenya	Proposed Gap Filling Measures
	advance.			
8	When consultations are held, explanations must be given in a form, manner, and language that are understandable to the affected people.			off date, (ii) sharing the findings from RPA related survey and draft of RAP, and (iii) presentation of RAP, with the affected people in their communities by preparing materials written and spoken in a local language used by the PAPs.
9	Appropriate participation of affected people must be promoted in planning, implementation, and monitoring of resettlement action plans.	There is no provision for the monitoring related activities with the participation of affected people	There is no provisions in Kenyan Laws, while AfDB's Operating Strategies recommend participation of affected people in planning, implementation and monitoring of the RAP	The RAP has been prepared by following a consultation process with all stakeholders. The consultation will be a continuous process at all stages of the project development, such as project formulation, feasibility study, design, implementation, and post-implementation, including the monitoring phase.
10	Appropriate and accessible grievance mechanisms must be established for the affected people and their communities.	The Land Act provides a mechanism for dealing with grievances including the mandatory holding of inquiries by the NLC, lodging complaints to the Environment and Land Court (Section 150), among others.	There is no definite gap.	A suitable GRM process inbuilding on both Kenyan and AfDB provisions has been assembled for this RAP.
11	Affected people are to be identified and recorded as early as possible in order to establish their eligibility through an initial baseline survey (including population census that serves as an eligibility cut-off date, asset inventory, and socioeconomic survey).	Based on the Land Act section 134 (1), resettlement program is required, but no description of census and cut-off-date.	There is neither census nor cut-off date requirement in Kenyan Laws.	The Survey Team will announce the cut-off date complying with the AfDB Guidelines. Population census and asset inventory, and the socio-economic survey will be undertaken as processes to compile an RAP.
12	Eligibility of benefits includes, the PAPs who have formal legal rights to land (including customary and traditional land rights recognized under law), the PAPs who don't have formal legal rights to land at the time of census but have a claim to such land or assets and the PAPs who have no recognizable legal right to the land they are occupying.	Constitution Article 40 (4) states compensation to be paid to occupants who may not hold title to the land in good faith. On the other hand, the Land Amendment Act of 2016 seems to contradict this provision by allowing for eviction of illegal occupants to land.	Although the statements under the same article conflict, it could be interpreted as eligibility of squatters who do not have legal rights is recognized.	Based on the AfDB's Guidelines, appropriate entitlements are discussed in the RAP. In principle, both formal and informal settlers are eligible for compensation and other conditions.
13	Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based.	No specific provisions in the Kenyan Law.	Preference to the land-based resettlement strategies is not confirmed in Kenyan laws.	Land-based resettlement policy should be reselected to RAP considering the socioeconomic status and needs of the PAPs.
14	Provide support for the transition period (between	No specific provisions on The Land Act.	The Kenyan law does not mention the	During the process of RAP discussion, compensation for

	AfDB's Operating Strategies (2010)	Laws of Kenya	Gap Between AfDB's Operating Strategies and Laws in Kenya	Proposed Gap Filling Measures
	displacement and livelihood restoration).		provision of support during the transition.	temporary business disturbance, income restoration in an early stage, or any other allowance are considered.
15	Particular attention must be paid to the needs of the vulnerable groups among those displaced, especially those below the poverty line, landless, elderly, women, and children, ethnic minorities, etc.	According to Land Act Section 134. (4), women, youth, and the vulnerable people are a member of committee of beneficiary's identification.	The Kenyan Land Act provides particular attention to women, youth, and the vulnerable people. However, the scope of the vulnerable people is not defined.	Based on the needs assessment through the stakeholder meetings, socio-economic survey, focus group discussion, etc., special considerations for vulnerable groups will be discussed and taken into RAP.
16	For a project that entails land acquisition or involuntary resettlement of more than 200 people, a resettlement action plan is to be prepared	There is no provision	As shown in the left.	The RAP has been prepared since the displaced people are estimated to be more than 200.

Source: This Study

2.6: The need or otherwise for additional legal regimes

Going by analysis presented in Table 2.1 above, it is apparent that the Kenyan legal regime has adequate provision to support management of displacement as anticipated from upgrading of the Mombasa-Mtwapa-Kadzengo-Kilifi section of the A7 highway. As is usually the case however, payment of compensation to persons with no legal support for claimed land may face hurdles given the apparent contradiction of Constitutional provisions (Article 40 (4)) by the Land Amendment Act of 2016 in the definition of eligibility. The same Act however provides better clarity on the basis and criteria for compensating for loss of livelihood in displacement.

CHAPTER THREE: SCOPE OF RESETTLEMENT IMPACT

This chapter unveils the outcome of the socio-economic survey and the impact survey (inventory of likely damage) all of which form the foundation on which the compensation package has been crafted. As observed elsewhere above, though the A& highway has an existing reserve, the current ROW does not provide for the 60m width required in the expansion. Consequently therefore, there will be need to acquire additional land which will displace people from properties, shelter and livelihoods. That is the core motivation for this RAP Study.

3.1: Potential displacement of assets

3.1.1: Land assets

Outcome of the Census Survey/ inventory of potential PAPs is summarized in Table 3.1. From inventory of PAPs undertaken, development of the 56.1Km Road Project inclusive of a the Second Mtwapa Bridge is likely to affect a total of 378 land parcels accounting for 19.1 hectares of land. Bulk of land is under largescale operators in both the public sector namely NITA, KRA, Mombasa School for Physically challenged, State Department of Water, Shanzu TTC, Shimo la Tewa Primary School, Shimo la Tewa Prisons and Shanzu Law Courts and the private sector such as Bamburi, Vipingo and Kilifi Plantations. With the exception of the first 4 kilometres of the Project which traverse very high density settlements, the Project traverse is essentially through low density settlements which explain the low number of plots traversed in Kilifi in spite of the County accounting for 76% of the road length.

Table 3.1: Distribution of landed PAPs by administrative jurisdiction

County	Road Length (Km)	Total acquisition		
		Parcels	Hectares	Acres
Mombasa	13.5	255	15.2	37.5
Kilifi	42.6	123	3.8	9.4
Totals	56.1	378	19	46.9

Source: This Study

3.1.2: Total structures

The entire road project will displace a total of 388 structures shared at a ratio of almost 70:30 between Mombasa and Kilifi (Table 3.2). 359 structures equivalent to 92.5% of total tally are single storied and mainly semi-paramant. The Mombasa Section (Lot One) of the Project traverses some heavy population density settlements on which account, displacement is likely to be high. The bulk of displacement is encountered between Km 0+800 to Km 4 + 200 where the project traverses the three informal settlements of VOK, Ziwa La Ngombe and Bombolulu in Mombasa County. The rest of the traverse is through land commanded by institutions and corporate players such as Bamburi, Shanzu Teachers training College, Shimo la Tewa Prison among others.

Table 3.2: Stratification of permanent structures by nature of build

Road section	NS	SS	2S	3S	4S	5S	Totals	Share (%)
Mombasa	274	16	5	0	0	0	295	76.0
Kilifi	85	8	0	0	0	0	93	24.0
Total	359	24	5	0	0	0	388	100

Key: NS-Non-storied, 1-5S-Total Storeys



Source: This Study

Plate 3.1: A densely settled part of the traverse

3.1.3: Other assorted privately-owned assets:

Minor assets within properties: A total of 645 assorted assets, majority of which are ancillary to non-affected buildings are likely to be displaced (Table 3.3). Among these, temporary and ancillary structures, masonry walls, paved entrances, gates, verandas, toilets are majority.

Table 3.3: Tally of minor structures

Road section	Temporary str.	Minor structures	Gate	Pedestal & Ramp	Park& Ent	Canopy	Water Reservoir	Fuel tanks	BHs	Well	GI&CL Fence	Masonry Wall	Electric fence	Pavement & Landscape	Septic Pit	Billboard
Mombasa Right	48	80	46	16	37	0	7	1	5	1	6	44	6	7	5	1
Mombasa Left	6	21	13	2	9	2	2	1	0	2	4	16	3	3	0	1
Kilifi Right	6	27	24	3	8	1	4	0	3	0	2	21	0	5	1	2
Kilifi Left	48	34	19	2	8	3	1	0	1	1	5	13	0	7	0	1
Total	108	162	102	23	62	6	14	2	9	4	17	94	9	22	6	5

Source: This Study

3.1.4: Potentially displaced population

Total Displacement: Computation of the potentially displaced population has been informed by provisions of OS2 of the AfDB which covers:- economic, social and cultural impacts associated with Bank-financed projects involving involuntary loss of land, involuntary loss of other assets, or restrictions on land use and on access to local natural resources that result including:-

- Relocation or loss of shelter by the people residing in the project area of influence;
- Loss of assets (including loss of structures and assets of cultural, spiritual, and other social importance) or restriction of access to assets, including national parks and protected areas or natural resources; or
- Loss of income sources or means of livelihood as a result of the project, whether or not the people affected are required to move.

Going by provision of OS2 of AfDB which is considered more comprehensive than Kenyan legal framework for compensation in compulsory acquisition, 4 categories of PAPs can be recognised in the Projects Area of Influence namely:- (i) Property Owners (both titled and non-titled), Business Tenants-BT (loss of livelihoods and means to livelihood); Residential Tenants-RT (means to

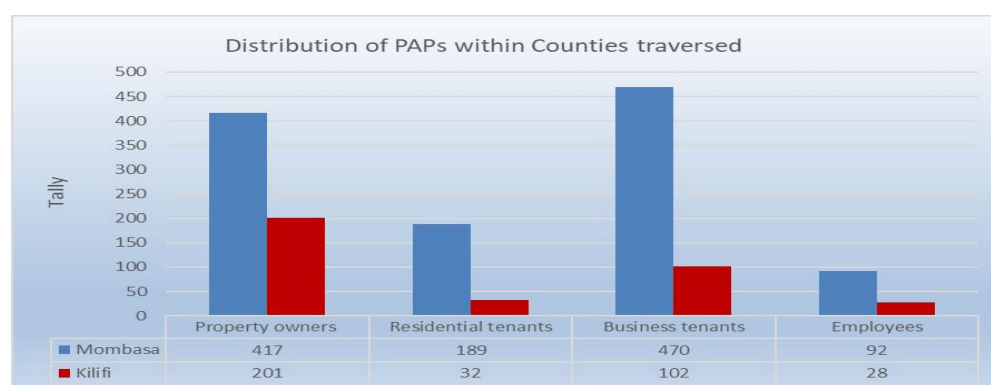
livelihood-shelter) and employees (means to livelihood). A total of 1531 PAPs falling in the 4 categories are likely to be displaced as enumerated in Table 3.4 below. Property owners are the single largest category at 40.4% followed by business tenants at 37.4%. Essentially however, tenants (both residential and traders) comprise majority of the PAPs at 51.8% which goes to confirm the strategic role of the A7 road as an economic enabler in the North Coast area.

Table 3.4: Distribution of PAPs by category and geographic spread

Category of respondents	Mombasa	Share (%)	Kilifi	Share (%)	Totals	Share (%)
Property owners	618	67.5	201	32.5	618	40.4
Residential tenants	221	85.5	32	14.5	221	14.4
Business tenants	572	82.2	102	17.8	572	37.4
Employees	120	76.7	28	23.3	120	7.8
Totals	1531	76.3	363	23.7	1531	100

Source: This Study

Geographic spread of displacement: Mombasa County accounts for the largest share of PAPs at 76.3% with Kilifi accounting for the remainder 23.7% (Table 3.4 and Fig 3.1). As well, the Mombasa section of the traverse recorded the highest share in all PAP categories but commands highest proportion of tenants at over 82%.



Source: This Study

Fig 3.1: Geographic spread of PAPs

3.1.5: Displacement of livelihoods

Project development will displace 572 business tenants and 120 employees accounting for 45.2% of all PAPs while a total of 221 residential tenants and their families are likely to suffer loss of shelter.

3.2: Displacement of Common Property Resources-CPRs

3.2.1: Common Property Resources

A total of 19 CPRs will be impacted. Of these, religious institutions are leading at over 36.84% followed by GOK Institutions (Police Station, GK Prisons, Law Courts, Shanzu Teachers Training College, Institutions of learning, among others) where main losses will mainly include displacement of perimeter fencing, gates and access roads.

Table 3.6: Inventory of Common Property Resources

Name of Institution	Core business	Comment
Africa Inland Church Kongowea	Church	Business structure and perimeter wall
Kisauni Academy	School	Only the wall is affected
Masjid Taqwe	Mosque	Both mosque and its madrassa
Masjid Sunnah	Mosque	Prayer house
East Africa Pentecostal Church - EAPC	Church	Church is affected
Masjid Sheikh Zayed	Mosque	Only wall is affected
Sheikh Zayed Primary and secondary School	School	wall and entrance are affected
National Industrial Training Authority	Technical Training	wall and entrance are affected
Kenya School of Revenue Administration	Revenue Administration	wall and entrance are affected
Mombasa Secondary for Physically Handicapped	School	wall and entrance are affected
Shanzu Teachers College	Teachers Training	wall and entrance are affected
Shimo La Tewa Primary School	School	Ablution block and wall are affected
Shimo Latewa Prison ECDE Center	ECDE Center	Fence and toilet
Khadija Primary School	School	wall and entrance are affected
Bamburi Police Station	Police Station	wall and entrance are affected
Shimo Latewa Max. Prison	Prison	wall and entrance are affected
Shanzu Law Court	Law Court	wall and entrance are affected
EAPC Mzambaraoni Church	Church	Varandar of church is affected
PCEA Mtwapa Church	Church	

Mosques: Assets belonging to three mosques are likely to be affected. While road expansion will only clip external walls for Masjid Sheikh Zayed, it is likely to affect the main structure for Masjid Sunnah and Masjid Taqwe, with the latter also losing its Madrassa.

Cemeteries: One public cemetery located on LR IMN/I/1410 at Km 1+580 on the RHS and locally identified as Makaburini is potentially affected by road expansion. Within this Cemetery which is property of Mombasa County Government, eight (8) graves located within the Children Section will be displaced in road expansion.

Self-help group projects: These number 3 and comprise structures that groups use to further common interests such as sports, table banking among others.

Public Schools: A total of 5 schools, three of which are public are likely to be affected.

3.3.4: Displacement of Trees and crops

Trees: A total of 2260 assorted trees are likely to be displaced from the reserve of the 56.1 kilometer-long Mombasa-Mtwapa-Kadzengo-Kilifi Road (Table 3.7) of which, the naturally regenerating/colonising neem tree recorded the highest presence at between 17.4 to 21.4% occurrence.

Crops: In keeping with the nature of coastal agriculture which largely favours tree crops, coconut, mango, citrus, pawpaw, guava, cow pea etc were encountered in the target reserve.

Table 3.7: Tally of road reserve trees

Affected Trees species in Road Reserve (Mombasa Kadzengo)					Affected trees in Road Reserve (Kadzengo Kilifi)				
Sr.	Botanical name	Occurrence	Count	Share (%)	SN	Species	Common Name	Total	Share (%)
1	Acacia Spp.	4	4	0.3	1	Azadirachta indica	Mkilifi	207	21.4
2	Adansonia digitata	3	8	0.6	2	Senna siamea	Casia	46	4.8
3	Agave sisalana	2	5	0.4	3	Delonix regia	Flamboyant	30	3.1
4	Albizia lebeck	3	7	0.5	4	Leucaena	Lucina	3	0.3
5	Annona squamosa	1	1	0.1	5	Gmelina arborea	Mshilingi	38	3.9
6	Azadirachta indica	13	225	17.4	6	Ficus sycomorus	Mkuyu	21	2.2
7	Bamboo	3	32	2.5	7	Carica papaya	Pawpaw	35	3.6
8	Bischofia javanica	2	2	0.2	8	Ziziphus mauritiana	Mkunazi	13	1.3
9	Bombax ceiba	1	1	0.1	9	Musa acuminata	Bananas	67	6.9
10	Cactus Spp	1	7	0.5	10	Mangifera indica	Mango	34	3.5
11	Cajanus cajan	1	5	0.4	11	Eucalyptus sp.	Eucalyptus	57	5.9
12	Carica papaya	6	54	4.2	12	Moringa oleifera	Moringa	28	2.9
13	Casuarina equisetifolia	4	40	3.1	13	Cocos nucifera	Coconut	67	6.9
14	Citrus Tree	2	4	0.3	14	Madagascar thorn		63	6.5
15	Cocos nucifera	4	34	2.6	15	Palm sp.		12	1.2
16	Croton megalocarpus	1	1	0.1	16	Citrus sp.	Lemon	3	0.3
17	Delonix regia	10	139	10.7	17	Saraca asoca	India Ashock	59	6.1
18	Ensete ventricosum	1	14	1.1	18	Terminalia mantaly	Umbrella Tree	2	0.2
19	Ficus sycomorus	4	13	1.0	19	Casuarina	Casuarina	65	6.7
20	Flacourtia indica	6	43	3.3	20	Adansonia digitata	Baobab Tree	21	2.2
21	Gmelina arborea	5	9	0.7	21	Acacia sp	Acacia	5	0.5
22	Leucaena leucocephala	6	48	3.7	22	Albizia sp.	Albizia	2	0.2
23	Makhamia lutea	1	4	0.3	23	Thevetia peruviana	Chamama	20	2.1
24	Mangifera indica	7	37	2.9	24	Milicia excelsa	Mvule	3	0.3
25	Manihot esculenta	1	1	0.1	25	Anacardium	Mkorosho	34	3.5
26	Moringa oleifera	4	35	2.7	26	Kegelia africanus	Sausage tree	3	0.3
27	Musa acuminata	2	54	4.2	27	Hyphaene compressa	Mkoma	10	1
28	Nerium oleander	1	2	0.2	28	Acrocarpus sp	Indian ash	4	0.4
29	Palm Spp.	9	90	7.0	29	Tamarindus indica	Mkwaju	1	0.1
30	Phoenix dactylifera	2	13	1.0	30	Psidium guajava	Mpera	1	0.1
31	Psidium guajava	2	4	0.3	31	Unknown species		12	1.2
32	Raphia farinifera	2	18	1.4		Total		966	100
33	Rhizophora spp.	1	20	1.5					
34	Saccharum officinarum	1	20	1.5		Total tally: 2260			
35	Saraca asoca	9	190	14.7					
36	Senna siamea	7	18	1.4					
37	Spathodea campanulata	4	12	0.9					
38	Terminalia catappa	7	26	2.0					
39	Terminalia mantaly	5	18	1.4					
40	Thevetia peruviana	2	2	0.2					
41	Washingtonia filifera	1	7	0.5					
42	Ziziphus mauritiana	6	27	2.1					
	Total	157	1294	100					

Source: This Study

3.4: Process and findings in the Socio-economic Survey

3.4.1: Sample size in the socio-economic survey

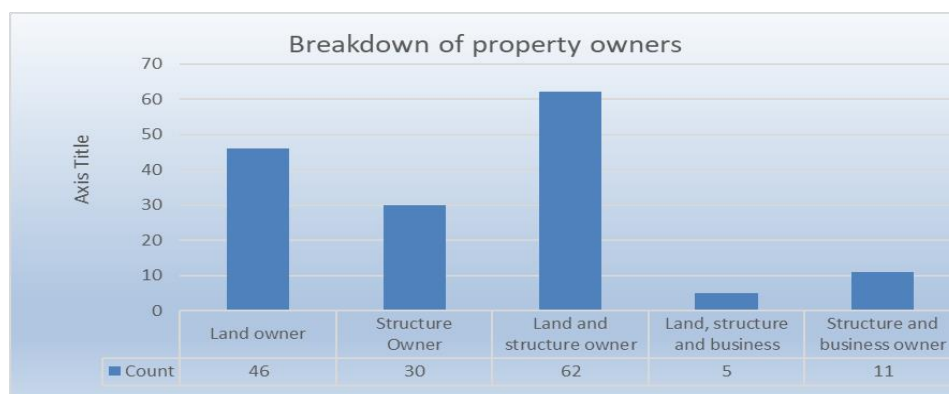
Sample composition: A total of 480 respondents representing the four (4) PAP categories were reached as documented in Table 3.8 below. With the exception of employees, the sample represented between 29 to 35% of each PAP category.

Table 3.8: Stratification of sample by PAP Category

PAP Category	Total tally	Share (%)	Sample size	Representation (%)
Property owners	618	40.4	204	33.0
Residential tenants	221	14.4	64	29.0
Business tenants	572	37.4	200	35.0
Employees	120	7.8	12	10.0
Total	1531	100	480	31.4

Source: This study

Breakdown of property owners: For ease of treatment, all property owners have been lumped together in this study. However, in reality, each category has diverse subgroupings. We provide a breakdown of the Property Owner Category which has impact on certain dimensions especially on status of income and well-being. The 204 property owners sampled represent 5 sub-categories (Fig 3.1) comprising land owners, structure owners, land and structure owners, land/structure and business owners and structure and business owners. Respondents who combine ownership of structures and the land on which they stand are the majority at 62 followed by those owning only land at 46. As will later, this structure has great impact on status of well-being.

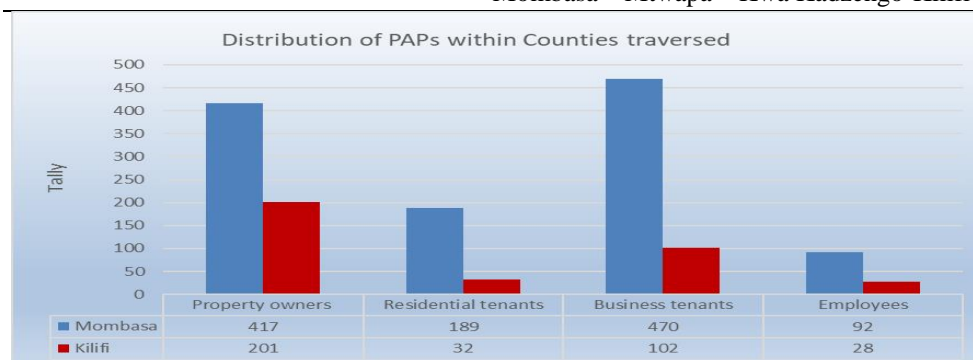


Source: This study

Fig 3.1: Breakdown of property owners

3.4.2: Geographic spread

In line with the prior observed trend whereby Mombasa accounts for the highest number of PAPs, the sample for socio-economic survey displayed a similar trend. While actual composition varied with PAP categories, in general, 75% of respondents were picked from Mombasa County with rest coming from Kilifi County.

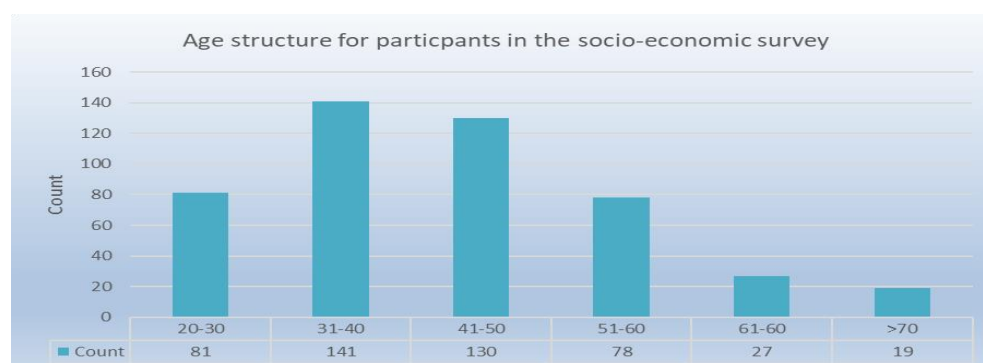


Source: This Study

Fig 3.2: Geographic spread of respondents in the socio-economic survey

3.4.3: Age patterns among respondents

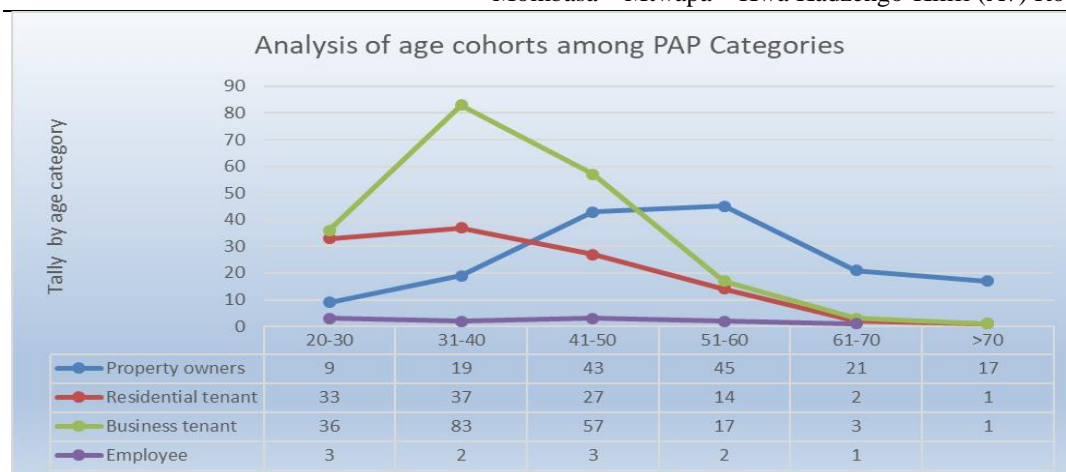
General pattern: All participants in the socio-economic survey were of 20 years and above and were physically present in the traverse area during the questionnaire survey. For ease of analysis, respondents have been lumped into 6 age sets ranging from 20 to over 70 years. The age category of 31 to 40 years emerged dominant (Fig 3.3) followed by the 41 to 50 years category implying that, the bulk of respondents, and by extension residents of the traverse, are aged 30-50 years. 352 (74%) respondents are aged below 50 years and are within productive age group and the project area will be potential labour market during project construction.



Source: This study

Fig 3.3: Age structure for participants in the socio-economic survey

Patterns among PAP categories: Age dynamics vary greatly among PAP categories (Fig 3.4). Residential and Business Tenants form majority of the youthful population of 40years and below. Beyond 30 years age set however, the population of both categories declines sharply and is near absent at age 60years. Beyond this age, both categories have either relocated or become property owners. Population of property owners is quite low within the youthful age categories but rises steadily to peak at age 40 years beyond which, it is both the dominant and actually only category feasible in the traverse area. This is reflective of the Kenyan pattern of economic progression whereby, individuals endeavor to save earnings and acquire property and economic stability with age.



Source: This study

Fig 3.4: Age structure among PAP Categories

3.4.4: Gender stratification of respondents

Table 3.9 below shows gender composition in PAP Categories. The male gender is overall dominant at 58.9% of sample and also leads all categories with the exception of Residential Tenants. The latter is probably in keeping with the Kenyan trend whereby many ladies are housewives who stay behind to mind families while husbands go out to earn the livelihood.

Table 3.9: Gender stratification among PAP categories

Respondent category	Male	Share (%)	Female	Share (%)	Total
Property owners	84	60	56	40	140
Residential Tenants	49	49.5	50	50.5	99
Business Tenants	106	61.3	67	38.7	173
Employees	10	90.9	1	9.1	11
Total	249	58.9	174	41.1	423

Source: This Study

3.4.5: Religion of respondents

Christianity is the dominant religion in the traverse area (Table 3.10) followed by Islam and Hinduism.

Table 3.10: Patterns in religious practice

Broad Category of respondents	Christian	Muslim	Hindu	Total
Property owners	105	47	1	153
Residential tenant	98	16	0	114
Business tenant	179	19	1	199
Employee	10	2	0	12
Total	392	84	2	478

Source: This Study

3.4.6: Analysis of length of residence

Respondents were lumped together into 9 residency categories depending on how long one had lived in the area. Length of residence ranged from 1 to over 80 years. Length of residence in this study is very important given that it takes time to build and access supportive social ties which are important determinants of social

Mombasa – Mtwapa – Kwa Kadzengo-Kilifi (A7) Road - Draft RAP Report
integration. To assess level of impact on length of residence, the study compared respondents' length of residence across all categories of respondents, age and gender with observations as follows:-

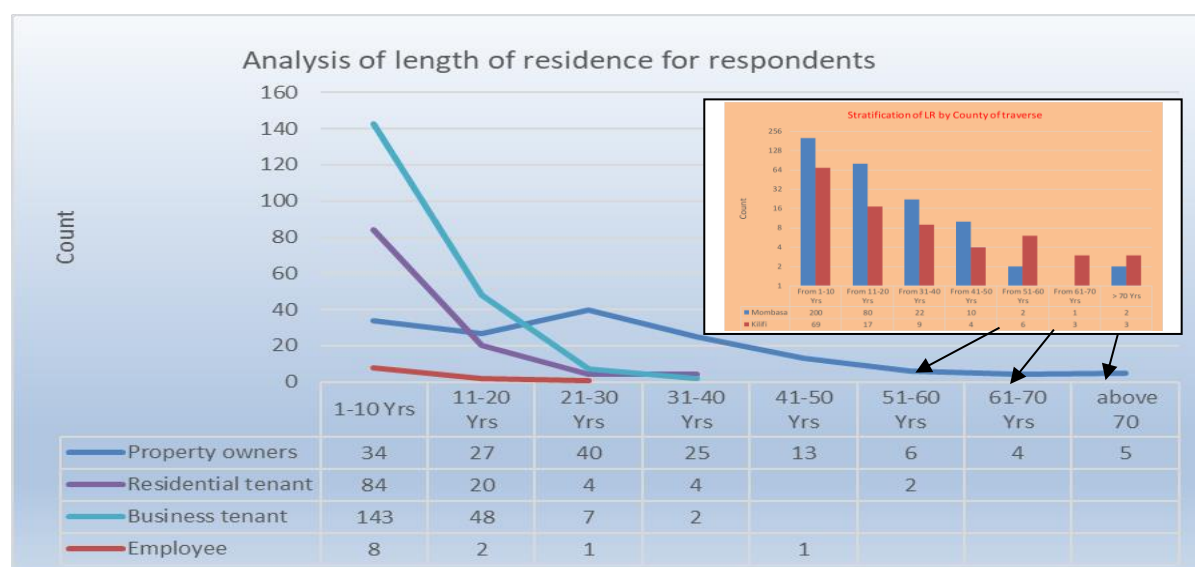
General trends: The bulk (87.3%) of respondents and by extension, the local population have lived in the project area for less than 30 years (Table 3.11 and Fig 3.5) with 56.2% having less than 10 years of residence. The remaining small minority making 12.7% of the population and mainly comprising of property owners have lived in the project area for periods ranging from 30 to over 80years.

Table 3.11: Analysis of length of residence amongst respondent categories

Respondent category	Length of residence (years)								Tally
	1-10	11-20	21-30	31-40	41-50	51-60	61-70	>70	
Property owners	34	27	40	25	13	6	4	5	154
Residential tenants	84	20	4	4		2			114
Business tenants	143	48	7	2					200
Employees	8	2	1		1				12
Total	269	97	52	31	14	8	4	4	479
<i>Share (%)</i>	<i>56.2</i>	<i>20.3</i>	<i>10.9</i>	<i>6.5</i>	<i>2.9</i>	<i>1.7</i>	<i>0.8</i>	<i>0.8</i>	<i>100.0</i>

Source: This Study

Trends specific to PAP categories: Fig 3.5 presents a graphic analysis of length of residence among PAP categories. Tenant PAPs form the majority in the 1-20 years residence category but drop drastically after 15 years. None of the tenants has lived in the area for more than 25 years. On the contrary, property owners show a low but consistent and prolonged pattern of residence and are the only visible group beyond the 50 years mark which, as observed elsewhere above possibly points to ancestral land ownership. Indeed, the fact that Kilifi county dominates for residence periods in excess of 50 years (see inset) is indicative of ancestral land ownership.



Source: This Study

Fig 3.5: Analysis of length of residence amongst respondent categories

3.4.7: Household characteristics

Head of Household: The question on composition of households attracted only 409 respondents probably implying that some respondents are single and outside of any kind of family set up. This notwithstanding, the male gender dominates among heads of households at 83.4% (Table 3.12) of total count.

Table 3.12: Composition of Heads of Households

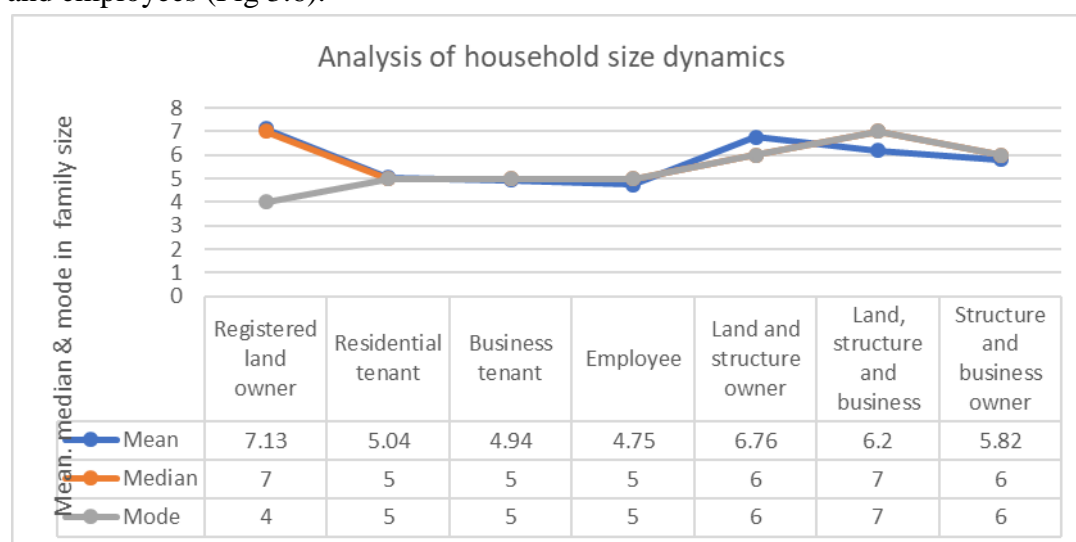
Respondent Category	MHH	FHH	Total
Property owners	108	19	127
Residential Tenants	82	17	99
Business Tenants	139	32	171
Employees	12	0	12
Totals	341	68	409
<i>Share (%)</i>	<i>83.4</i>	<i>16.6</i>	<i>100</i>

Source: This Study

Key: MHH-Male Headed Households; FHH-Female Headed Households

Mean household size: The mean household size across all PAP categories was observed to be 5.9 but ranges from 4.75 to 7.13. Mean high is slightly higher than the national average of 5.9

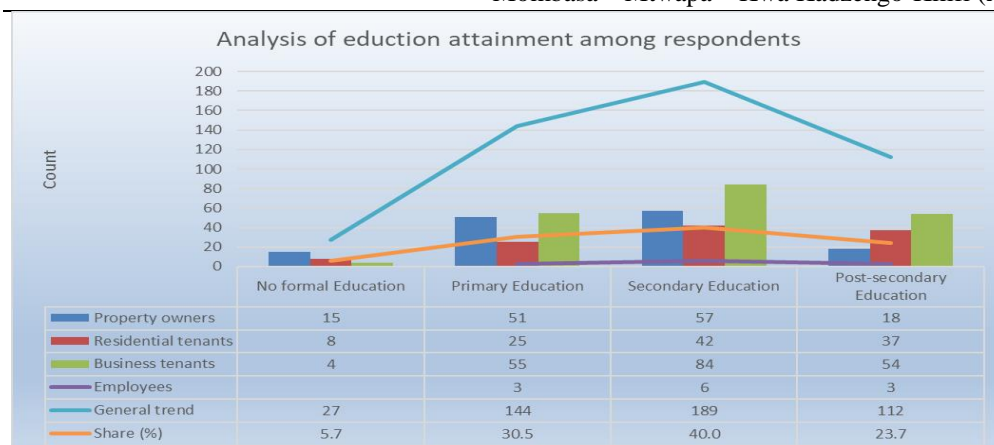
Household size seems variable for property own sub categories but is stable and near uniform for tenants and employees (Fig 3.6).



Source: This study

Fig 3.6: Analysis of household dynamics for respondent groups

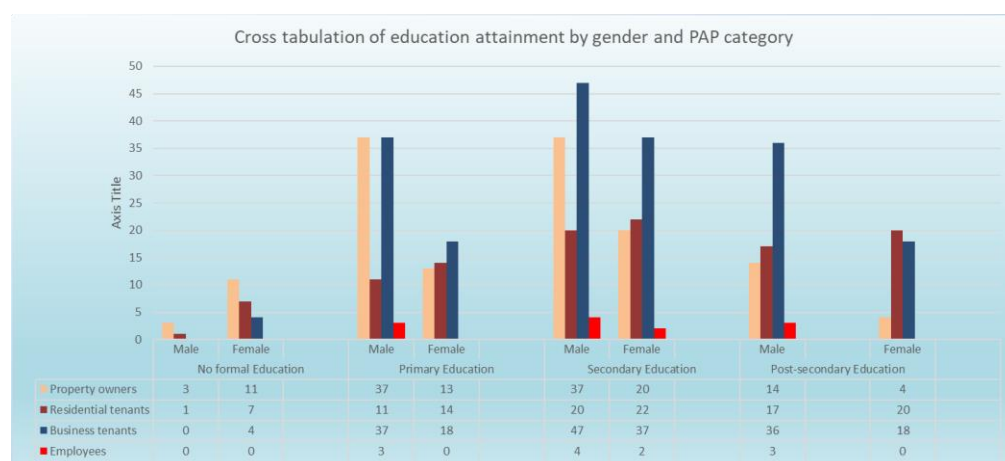
Education of attainment: Majority (94.7%) of the respondents have been to school (Fig 3.7) as only 5.4% reported having no formal training. As well, 67.3% of respondents are of secondary school education and above. Generally, secondary school is the most common education level accounting for 40% penetration followed by primary level at 30.5%.



Source: This Study

Fig 3.7: Education attainment amongst respondents

Education achievement across gender: Analysis of respondents' data (Fig 3.8) reveals that the female gender dominates in only one category- that with no formal education while males dominate in all cadres of education. Male Business Tenants lead in most cadres of education followed by male property owners. Female Business Tenants dominate in the primary and secondary cadre but are overtaken by residential counterparts at the Post-Secondary Cadre implying that, sadly female residential tenants have undergone professional/job training.



Source: This Study

Fig 3.8: Gender dimensions in education attainment

3.4.8: Occupation of respondents

Business/Trade is the dominant occupation in the corridor directly accounting for 74.5% of respondents and by extension, the population within traverse. Further, a high prevalence of tenancy trade further goes to confirm the esteemed position of the A7 highway as an economic in the area and disruption of such scenario through road expansion has to be managed to the lowest level possible so as to maximize on net gains from the road. Observed unemployment is high at 10.4% though slightly lower than the national average of 11.5% computed for year 2018 (<https://www.google.tradingeconomics.com>). Road construction must avoid anything that compounds unemployment in the area.

Table 3.13: Dominant means to livelihood among respondents

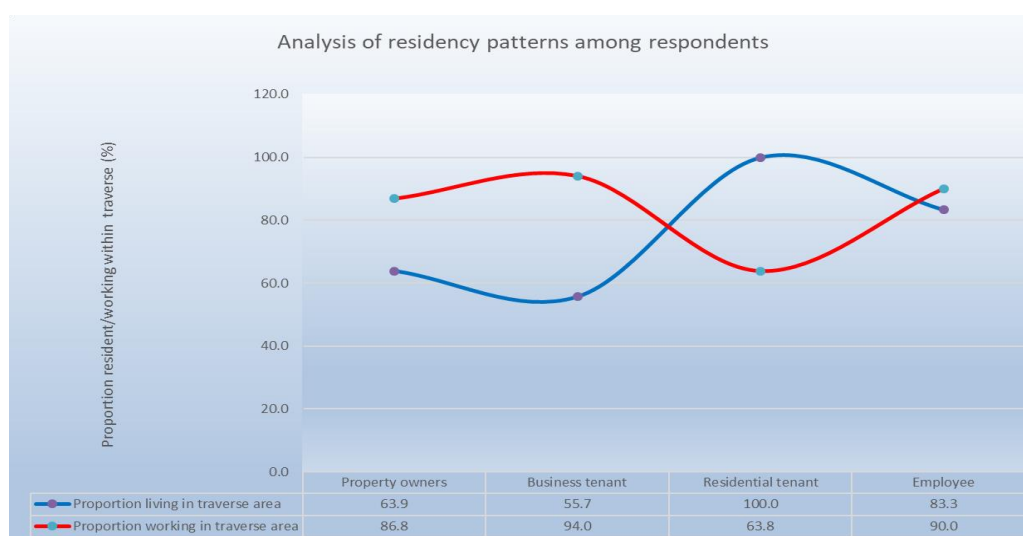
Respondent category	Trade	Employed	Unemployed	Sum
Property owners	92	15	37	144
Residential tenants	71	31	12	114
Business tenants	187	13	0	200
Employees	0	12	0	12
Total	350	71	49	470
<i>Share (%)</i>	<i>74.5</i>	<i>15.1</i>	<i>10.4</i>	<i>100</i>

3.4.9: Residence and work in the project area

Information on the respondents place of residence and work is crucial in validating claims on socio-economic impacts of the proposed development. Towards this, respondent categories were polled on where they live and practice their work with results are summarized in Fig 3.9 below. With the exception of employees who largely work and live in the same place, all other categories have divergent patterns as follows:-

- While 86.8% of property owners work in the traverse area, proportionately less (63.4%) live in the same area meaning that the reminder 13.4% commute to work daily.
- The same situation is displayed by business tenants whereby 94% work in the project area with only 55.7% being resident implying that 34% commute to work.
- While all residential tenants reside in the area, a significant 83% also work from the same area.
- The employee segment of respondents largely live and work in the area at 83.3 and 90% respectively.

Significantly, over 83% of the local population live and work within the traverse area and are therefore the primary stakeholders to the Road Project.

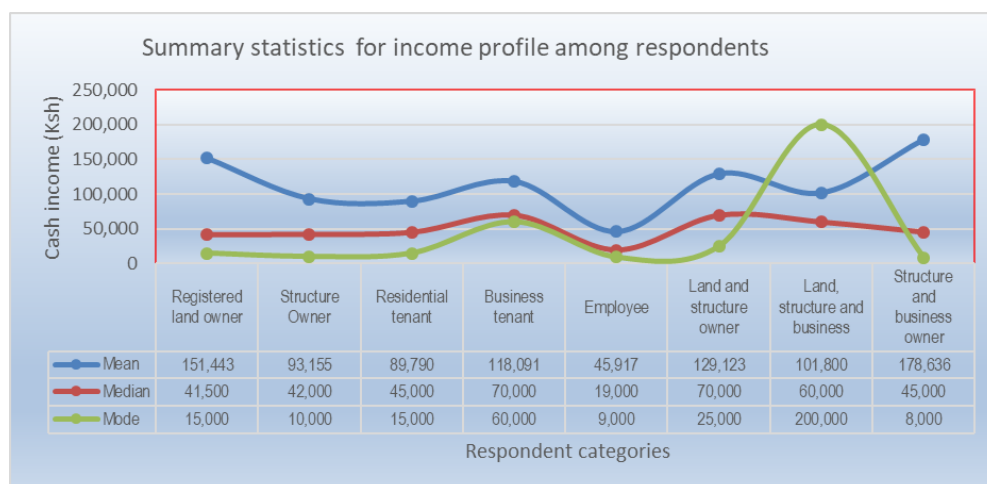


Source: This Study

Fig 3.9: Analysis of residence patterns amongst respondents

3.4.10: Income profile

Income levels display high variability: Fig 3.9 traces trends in summary statistics for income amongst diverse categories and subcategories of respondents. A high dispersion in the mean, median and modal income especially as displayed by property owners is indicative of very high variability with implication that a single figure is ineffective in describing income levels. Furthermore, mean values for income that are apparently elevated beyond the mode or median are probably skewed upwards by occurrence of a few but exceptionally high entries. All these militate against forcing compressing income data for the traverse into a single average value.



Source: This study

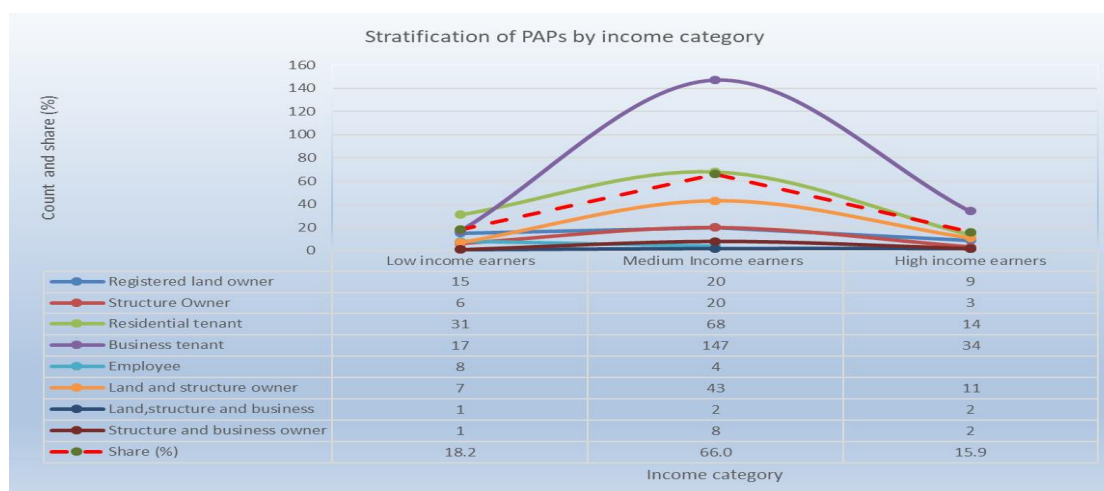
Fig 3.9: Analysis of income patterns among respondents

Middle class earners dominate the traverse: For ease of treatment, respondents have been lumped into low, middle- and high-income categories based on the cutoffs applied by diverse authorities. The World Bank puts the middle-class individual's or household's daily income at between \$10 and \$50 (Sh1,031 and Sh5,158) per person per day which works out to an average income of Sh27,000 to Sh140,000 a month. The African Development Bank (AfDB) defines middle class as anyone who spends between \$2 and \$20 a day (Sh200 and Sh2,000). The Kenya National Bureau of Statistics has adopted a different definition of the middle class, as anyone spending between KShs 23,670 and KShs 199,999 per month. Assuming everyone spends what they earn the KNBS definition means the middle class Kenyan/Kenyan family is one whose gross monthly salary is between 26,000 and 270,000 per month (approximately).

Based on the Kenyan categorization, respondents were lumped into three income sectors of Ksh 0 to 26,000 for low income, Ksh 26, 000 to 200,000 for middle income and above Kas 200, 000 for high income. An analysis of income patterns within categories and subcategories of respondents (Fig 3.10) reveals that the middle-income category dominates the traverse accounting for two thirds (66%) of potentially affected people. Low- and high-income earners account for 18.2 and 15.9% presence respectively.

All respondent categories display a parabolic distribution dominated by a majority middle income category in the middle and high and low incomes on both ends. The Business Tenants category remains

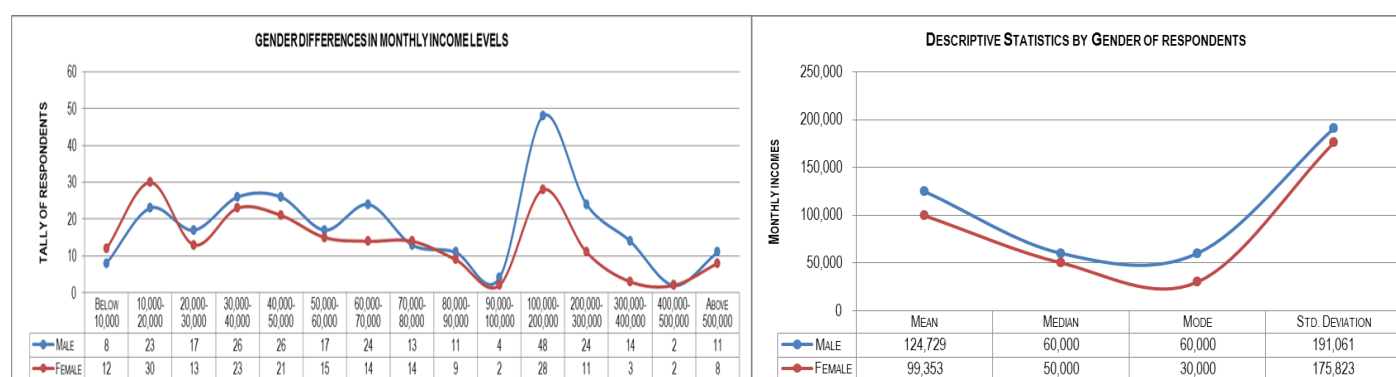
dominant accounting for half of both middle income (31.1%) and high income (7.2%) earners respectively again confirming trade to be the main economic driver within the traverse.



Source: This study

Fig 3.10: Stratification of respondents by income classes

Income profile and gender of respondents: Analysis of monthly income level by gender of respondents revealed that, women are low income earners compared to males. The mean monthly income for female is 99,353 Kshs compared to 124,729 Kshs recorded for males. The most common monthly income for female is 30,000 Kshs which is half of male common monthly income. It is worth noting that income levels are not evenly distributed amongst the female respondents just as it is for male respondents; with majority of female having monthly income ranging from 10,000 to 20,000 Kshs followed by those having incomes of 100,000 to 200,000 Kshs. This anomaly has pulled away the mean monthly income to very high values. Fig 3.11 below provides detailed observations for income levels in the project area.



Source: This Study

Fig 3.11 Stratification of income by gender of respondents

3.4.11: Status of well being

Status of well-being among respondents was analyzed through comparison of *pa capita* income against the national poverty line pegged at a dollar (Ksh 100) per day equivalent to a monthly household income of Ksh 18,000 for an average sized household. Upon screening, 73 respondents within the low-income bracket were found to fall below this cutoff implying that 15.4% of the population possibly subsists below the poverty line (Table 3.14).

Table 3.1.4: Analysis of status of well-being

Respondent category	Low income earners	Medium Income earners	High income earners	Total
Monthly income	5,000-24,000	24,000-200,000	>200,000	
Count per category	86	312	75	473
Share (%) by category	18.2	66.0	15.9	100
Poverty cutoff in Kenya	Monthly income of Ksh 18, 000 equivalent to daily pa capita income of Ksh 100 for a HHS of 6.			
Indicative prevalence of poverty	Count of 73 out of 473 respondents equivalent to 15.4% of all respondents			

Source: This Study

CHAPTER FOUR: RESETTLEMENT MEASURES AND ENTITLEMENT MATRIX

4.1: Eligibility

This chapter sets out eligibility criteria, which are necessary to determine who will be eligible for resettlement and benefits, and to discourage inflow of ineligible people.

4.1.1: Criteria for Eligibility

AfDB's Operating Strategies for Environmental and Social considerations requires that Involuntary Resettlement and loss of means of livelihood to be avoided when feasible by exploring all viable alternatives. When, after such an examination, avoidance is proved unfeasible, effective measures to minimize impact and to compensate for losses must be agreed upon with the people who will be affected. AfDB further requires that people who must be resettled involuntarily and people whose means of livelihood will be hindered or lost be sufficiently compensated and supported by project proponents etc. in a timely manner. Prior compensation, at full replacement cost, must be provided as much as possible.

Thus, for purposes of the RAP for Mombasa-Mtwapa-Kadzengo-Kilifi Road Upgrading Project, AfDB's Operating Strategies clearly identify involuntary displacement and loss of means to livelihood to be the core criteria in determining eligibility for compensation. Subsequent to this view, as a policy, this RAP will make provision to compensate all aspects of involuntary displacement. Some of the priority displacement impacts to be compensated include:-

Table 4.1: Categories of displacement recognised by this RAP

Displacement from:-	Categories	Proposed restitution
Land	Commercial, residential, agricultural, recreational, communal land irrespective of tenure	In cash compensation for personal and communal loss
	All shelter categories, owned, rented, institutional, communal etc.	In cash compensation
Livelihood	All legal livelihood categories including trade, employment, fishing, manufacturing, service provision	In cash compensation to assist rehabilitation, opportunities for employment and business in road construction etc.
Essential services	Schools, Medicare, water supply, household energy, etc.	Rehabilitation for any damage
Institutions and FBOs	All institutions;- academic and social, churches, mosques, shrines	Negotiated settlement
Recreational facilities	Playgrounds, halls,	Provision of alternative facilities
Social networks	Self-help groups, investment group, merry go round, table-banking, welfare groups, funeral groups etc.	Minimisation of displacement
Access to neighbourhood	Barrier effect of linear projects cutting through settlements	Design intervention to minimize barrier effect
All above for vulnerable groups	People considered vulnerable on account of minority and advanced age, poor health, disability, etc. suffer more severe impacts	Tailor made assistance depending on specific cases.

Source: This Study

4.1.2: The Cut-off Date

Sensitization meetings: The Cut-off Date for eligibility for compensation for displacement impacts was proclaimed on respective days when sensitization meetings were held as summarised in Table 4.2 below. Persons who encroach on the area after the cut-off date are not entitled to compensation or any other form of resettlement assistance. During all meetings, PAPs were encouraged to be vigilant and watch out for speculators intent either to infiltrate the area or cheat locals out of land through cheap buyouts. The same message was amplified by the local leadership

Table 4.2: Details of meetings called to proclaim Cut off dates

Meeting	Date	Target	Attendance
Jambo travellers hotel- Mtwapa	27 th June 2018	Leaders for Kilifi County	92
Baobab Resort- Nyali	28 th June 2018	Leaders in Mombasa County	52
Kongowea Community Hall	28 th June 2018	Public Baraza	233
Mtwapa Community Ground	27 th June 2018	Public Baraza	101
Mtwapa Professional Forum	14 th September 2018	Plenary Session	50
Dissemination meeting	31 st Oct 2018	Leaders from Mombasa and Kilifi	75
Total			603

Source: This Study

4.2: Restoration of livelihoods

4.2.1: Dominant livelihoods within the traverse

Dominant livelihoods encountered within the traverse are summarised in Table 4.3 based on administrative jurisdiction.

Table 4.3: Measures in income restoration

Sub County	Location	Main livelihood systems	Proposed restoration
Nyali and Kisauni	Kongowea and Kisauni	Commercial:- Real Estate, Trading, Services, Manufacturing	Compensation for loss of property and business including relocation costs
		Employment	Cash compensation for lost opportunities as per the guidance by NIC for those with usufruct rights
		Self-employment in small scale trade	Cash compensation for loss of premises and business
Kilifi South	Mtwapa	As above	As above

Source: This Study

Livelihood restoration

The Socio Economic survey included categorization of the human activities along the road corridors and all the economic features that are to be displaced by the proposed road works. These elements would be the major areas of impacts considered for any compensation or restoration by the project. This RAP has proposed a transitional support or cash equivalent for owners of buildings whose tenants will move out, covering the would be losses for two to three months after displacement to facilitate restoration of livelihoods and standards of living to pre-displacement levels as the building owners repair the remaining portions of the property or relocate and develop alternative sites elsewhere. The

same is provided for business tenants. This aspect is captured for consideration by NLC during the valuation, verification and validation phase as highlighted elsewhere in this report.

The RAP is also proposing partnerships between the project and the counties of Kilifi and Mombasa in ensuring traders are either allocated spaces in the existing markets like Kongowea or new infrastructure is laid out where none exists to ensure traders livelihoods are improved.

4.3: The Entitlement Matrix

An entitlement matrix detailing out (i) eligibility and (ii), entitlement in compensation is provided in Table 4.4 below.

Table 4.4: The Entitlement Matrix

#	Type of Loss	Unit of Entitlement	Entitlements
A. Loss of Agricultural Land			
1	Part of land lost and residual is viable ⁴ .	Title holder	100% cash compensation at replacement cost for the portion surrendered. 15% cash top-up in compulsory acquisition
		Tenants	Cash compensation for standing tree crops Advance notice to vacate.
		Informal Settler	In good faith compensation for land as per Article 40(4) of national constitution Cash compensation for standing tree crops Advance Notice to vacate.
2	All land lost or residual land is economically non-viable	(a) Title holder	100% cash compensation at replacement cost for the lost portion. 15% cash top-up in compulsory acquisition.
		(b) Tenants	Cash compensation for standing tree crops Advance notice to vacate
		Informal Settler	In good faith compensation for land as per Article 40(4) of national constitution Cash compensation for standing tree crops Advance Notice to vacate.
B. Loss of Residential/Commercial/Industrial Land			
1	Partial loss of land but residual is viable ⁵	Title holder	100% Cash compensation for loss at replacement cost. 15% cash top up in compulsory acquisition
		Tenant/Lease holder	Cash compensation for standing tree crops Advance notice to vacate.
		Informal Settler	Cash compensation for standing tree crops Advance notice to vacate.
2	Entire loss of land or partial loss where residual is not viable	Owners	100% Cash compensation for entire land holding at replacement cost 15% cash top-up in compulsory acquisition Residual land reverts to community
		Tenants/ Lease holders	Replacement cost for standing assets Advance notice to vacate
		Informal Settler	Replacement cost for standing assets, Possibility of land grant where possible ⁶ Advance notice to vacate
C. Loss of Structures			
1	Partial loss but residual viable	Legal User with valid titles	Cash compensation at replacement cost for affected portion calculated on market value without depreciation; Repair costs for un affected structure equivalent to 25% of the compensation Right to salvage material
		Owner without titles	Cash compensation at replacement cost for affected portion based on market value without depreciation. Repair costs for unaffected structure at 25% Right to salvage material.

4 Non arable land either because of rockiness, slope exceeding 55%, water logging, or cannot afford space adequate for housing and economic utilization.

5 Land can still be exploited economically for residential, commercial or industrial uses as per local zoning class.

6 Some of the encroachers do not know of any land and are too frail to fend for themselves. Unless resettled, displacement would spell doom for them.

#	Type of Loss	Unit of Entitlement	Entitlements
		Informal Settler	Cash compensation at replacement cost for affected portion based on market value without factoring depreciation. Repair costs for unaffected structure at 25% of compensation Right to salvage material
2	Fully affected/ part affected and remaining structure is non- viable	Land owner with valid title	Cash compensation at replacement cost of the affected unit based on market value without depreciation plus a house building allowance at 25% of compensation. Right to salvage materials. Advance notice to vacate
		Tenant/ Lease Holder	Cash compensation for remaining lease/ deposits Advance notice to vacate
		Informal user of building	Advance notice to vacate
D. Loss of Standing Tree Crops			
	All Cultivators		Compensation for any non agricultural trees, shrubs/ permanent grass cover based on economic value for tree and vegetation. Cash compensation based on income for entire life- cycle in case of permanent agricultural crops. Cash compensation at gross yield value for temporary crops e.g. cassava
E. Loss of community proprietary resources			
			In kind replacement for affected resources
F. Assistance to vulnerable groups			
			Socio-department of KENHA to consider other assistance over and above compensation package to cushion them against impact of such disability. To be treated on merit basis.
G: Loss of Livelihood			
	Landlords		3months cash hand-out worth of gross rent
	Businessmen		3 months cash hand-out calculated at gross daily income
	Business		3 months cash hand-out net monthly profit
	Estate Developer		Reimbursement of lost income for entire premises replacement cost rate Right to salvage materials
H. Graves			
	Individual graves		Negotiated re-imbursement for translocation costs including option for physical translocation
	Communal graveyards		Negotiation of available options
I. Historical and archaeological sites			
	Historical areas Archaeological /sacred sites		Assessment by National Museum and Archaeologist Negotiate transfer or realignment

Source: This Study

4.4: Site Selection, site preparation and Relocation

This RAP Report has made no provision for selection and preparation for relocation sites. This is because, though some PAPs will lose 100% of their residential and commercial plots, none expressed the wish for land to land compensation. All are in favour of cash compensation provided that adequate compensation is paid promptly and before site handover to contractors. They were explained that this is also the AfDB Policy.

CHAPTER FIVE: GRIEVANCE REDRESS MECHANISM

5.1: Overview

Regardless of its scale, involuntary resettlement inevitably gives rise to grievances among the affected population over issues ranging from rates of compensation and eligibility criteria to the location of resettlement sites and the quality of services at those sites. Timely redress of such grievances is vital to the satisfactory implementation of resettlement and to completion of the project on schedule.

Grievance procedures may be invoked at any time, depending on the complaint and no person or community from whom land or other productive assets are to be taken will be required to surrender those assets until any complaints he/she has about the method or value of the assets or proposed measures are satisfactorily resolved. In order to deal with the grievance that may rise during the implementation, this RAP has identified procedures to allow affected people to lodge a complaint or a claim (including claims that derive from customary law and usage) without cost and with the assurance of a timely and satisfactory resolution of that complaint or claim in which case, dialogue is a vital element. The grievance redress mechanisms is designed with the objective of solving disputes at the earliest possible time which will be in the interest of all parties concerned and therefore implicitly discourages referring such matters to the Environment and Land Court which would otherwise take a considerably longer time. The grievance procedure will be simple, administered as far as possible at the local levels to facilitate access, flexible and open to various proofs.

For purposes of the Project, a two-phase GRM has been put in place as follows:-

- Pre-compensation GRM
- Compensation Stage

Procedures put in place at every stage are highlighted in section 5.2 below.

5.2: The GRM

5.2.1: Pre- compensation GRM

The pre-compensation process entailing development and managing the RAP process up to preparing of the final list of PAPs by the NLC has inbuilt mechanisms for grievance redress as follows:-

(i) Grievance management at the Asset Inventory Stage (current stage)

The RAP Process always started with entry point meetings called to explain the Project to communities within the traverse and explain that land acquisition would be inevitable. The community were allowed time to discuss and internalize the proposed project following which, they were asked to make their stand on whether they support the project or not. Upon achieving consensus on support for the Project the need to declare a cutoff date to forestall influx of speculators was discussed and declared. Villagers were then asked to set up a date when the RAP Team would pass through the traverse conducting inventory of assets, and during which time all asset owners were expected to be present and identify their assets. Further, the villagers were asked to appoint two respected villager elders knowledgeable in property matters and who would mobilize non-resident PAPs to appear for their asset inventory. By following such a transparent process, the Asset Inventory process served to forestall and reduce many would be grievances.

Any grievances noted during asset inventory were referred to the Local Elders who were able to solve majority of these thus allowing the inventory to proceed unhampered.

(ii) Grievance management through public inquiries to be conducted by the NLC:

Upon receipt of the RAP Report from KeNHA, the NLC will gazette all land targeted for acquisition and then conduct public inquiries as to who the owners of the properties area. By advertising the Public Inquiries in the local press and holding the public hearings in a court like fashion, the NLC accords all stakeholders to land who may have missed out at the Asset Inventory Stage to come out and stake their claims thereby minimizing future grievance at the compensation stage.

5.2.2: Organs in the Compensation Stage-GRM

This RAP recognizes three organs of the Compensation Stage GRM process as follows:-

(i) The Location PAPs Committees (LPCs)

Implementation of the RAP will be tied up to the national administrative setup starting from the Village, through sub-location, location, and Division and Sub-County level whereby PAPs will be organized at Location Level. PAPs in each of the five administrative locations traversed by the and access roads will be mobilized to elect their own PAP Committee to draw membership as follows:-

- A representative of affected persons in each village of traverse (max three),
- A representative of fishermen if there is a BMU in the respective location,
- A representative of Kaya Elders where shrines fall within the traverse
- Chairmen of any community projects affected

The Committee will appoint their own officials whose names will be submitted to the Local Chief vide minutes signed by all members. This committee will henceforth provide linkage between the PAPS and the PMU/GRC on all aspects of resettlement. This is the committee that will also play a role in resolving basic conflicts between members. A total of 4 LPCs will be formed to represent all the five administrative locations traversed as follows:-

Table 5.1: Distribution of PAP Committees

County	Sub County	Location	Name of PAP Committees
Mombasa	Nyali	Kongowea	Kongowea LPC
	Kiauni	Kisauni	Kisauni LPC
		Bamburi	Bamburi LPC
Kikifi	Kilifi South	Mtwapa	Mtwapa LPC

(ii) Location Elders Committees-LECs

Inventory of Assets undertaken for this RAP came across many silent land disputes relating to inheritance, boundaries, etc. which is likely to intensify once the compensation process gets underway. As such, the Location Elders Forums which already exist within the traverse area will require be re-mobilizing and energizing to resolve all non-RAP land disputes whose escalation has potential to delay or derail project implementation. The LECs will also spearhead compensation for communally owned assets such as water projects, communal graveyards, etc.

(iii) Grievance Redress Committee-GRC

The GRC will comprise of 3 personalities who are not direct stakeholders to the resettlement process and this should include the Deputy County Commissioner serving in the area, a respected Spiritual Leader, and former Chairman of the County Council and one who is well versed with land matters in the area. The Resettlement Officer of the Project Management Unit (PMU) will provide secretariat services and serve as the Secretary to the GRC. The GRC will meet for 3 consecutive days every month on a pre-fixed schedule and will deliver their decisions within a month from the registration of the case. In the event of the grievance not being resolved by the GRC, the aggrieved party is free to seek legal redress.

5.2.3: Operationalization of the GRM at Compensation Stage

Fig. 5.1 is a schematic presentation of the overall grievance procures recommended in implementing the RAP. Grievance redress is anticipated at 5 levels namely:-

- PAP to PAP Counseling:
- Location Elders Council
- Location PAP Committee
- Grievance Redress Council
- Environment and Land Court

Expectations for each level are highlighted in sections below.

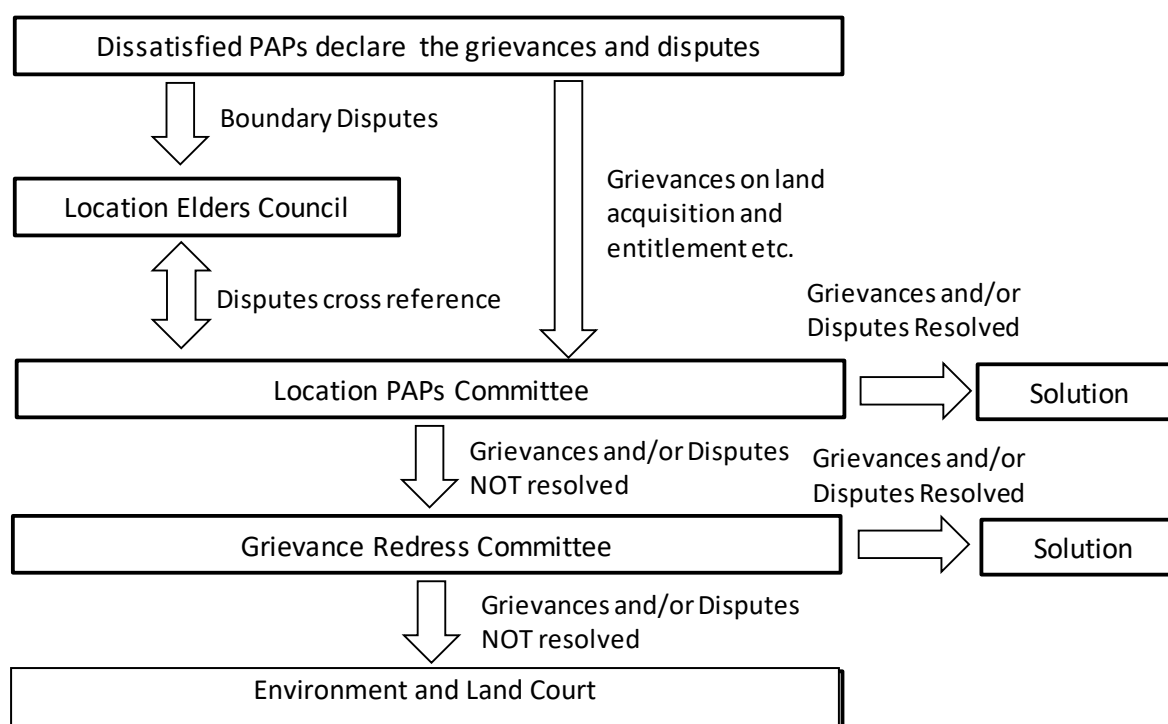


Figure 5.1: Grievance Redress Procedure

(i) PAP to PAP Counselling

Experience has it that farmers learn best from fellow progressive farmers and this premise permeates all spheres of rural life. Indeed, it is expected that any aggrieved PAP will first try to seek guidance from a fellow PAP or a respected neighbor in which case, and this presents an excellent forum that could be tapped to resolve and nip disputes at the budding stage. The proposal is for the GRC to invest

resources in extending intensive training and sensitization to all PAPs so that, armed with better understanding of the resettlement process, procedures and institutions, PAPs will be available to guide fellow PAPs to better understand their rights, jurisdiction of available conflict resolution organs and thus only approach the right organ for cases with merit, thereby cutting down on nuisance or otherwise unfounded claims and time wasted in cross referrals. Thus, one of the roles of the PMU through the Resettlement Officer will be to build capacity for PAPs and their organs.

(ii) The Location Elders Council-LEC

All attempts would be made to settle grievances and the project will use a local mechanism, which includes peers and local leaders of the affected people to ensure equity across cases, eliminate nuisance claims and satisfy legitimate claimants at low cost. The response time will depend on the issue to be addressed but it should be addressed with efficiency.

This RAP observed existence of a very strong social control system where elders' verdict is greatly respected and as such, this RAP recommends that Elders' Councils comprised of respected elders be set up at every sub location affected by the traverse. The Village Elders Councils will comprise of three members who are not associated/ stakeholders to the resettlement process and will filter all complaints emerging from the process and decide on those to be arbitrated at village level hence referring the rest to the next level. This RAP has noted existence of diverse disputes on boundary, inheritance and ownership which pre-existed the project but whose resolution has now become inevitable prior to the compensation process. It is recommended that such disputes be handled at the location level by the Location Elders Committees under the Chairmanship of the Chief.

At location level, those seeking redress and wishing to state grievances would do so by notifying their chief who will inform and consult with the LEC to determine a claim's validity. If valid, the chief will notify the complainants and s/he will be heard and the verdict communicated in writing to the PAPs Committee. If the verdict rendered by the LEC is acceptable, the matter will rest at this level otherwise; if the verdict is not acceptable to either the individual affected or the management committee, then the matter will be referred to the PAPs committee.

(iii) Location PAPs Committee (LPC)

PAPs in each of the 4 administrative locations traversed will appoint a Location PAPs Committee of their own to cater for interests. This committee will work in liaison with the LECs to cross refer and resolve disputes without duplicating or usurping roles. Thus, where disputes relating to boundaries or inheritance are referred to the LPC, the latter will refer the same to the LEC such that, the LPC will only deal with cases relating the Entitlement Matrix. Should a PAP be dissatisfied with the compensation offered, he/she will appeal to the LPC who will act as follows:-

- Maintain a register and files for all grievances raised,
- Hear the grievances of the PAPs, and provide an early solution to those they are able to,
- Refer boundary disputes to the LEC
- Immediately bring any serious matters to the attention of the GRC,
- Provide liaison and feedback mechanism between the PAPs and the GRC.

One of the vital roles of the LPC is to provide liaison between respective PAPs and the GRC so as to cut down on traffic of cases being submitted directly to the latter.

(iv) Grievance Redress Committee (GRC)

A Grievance Redress Committee will be constituted as an Organ of the PMU to provide leadership on the grievance process and hence resolution. The GRC will register all grievances forwarded by the PAPs representative committee endeavoring to build compromise on all matters either through series of conciliations, mediations and negotiations conducted with the PAPs. If PAPs accept the recommendations made by the committee, the committee along with PAPs who are willing to take part in these proceedings may hold mediations at the appointed places.

This GRC will provide anchorage and support to all conflict resolution in the RAP implementation and is thus quite pivotal to the successful implementation of the entire project. This is also the organ that will link the grievance resolution mechanism directly to other organs of government to secure requisite synergy while safeguarding sectorial interests in project implementation. It is the organ that will procure and administer funding to facilitate the resettlement process including:-

- Providing secretariat services,
- Capacity building for lower organs,
- Expeditiously arbitrating on all grievances
- Providing feedback on grievances resolved, and
- Liaising with and advising GoK organs through KENHA on status of resettlement implementation.

(v) The Environment and Land Court

In situations where PAPs are not satisfied with the decision of Grievance Redress committee, the PAPs can approach the Environment and Land Court in line with provisions of Lands Act 2012 and other relevant laws. Alternative dispute resolution mechanisms such as arbitration and mediation are also available; however the cost factor may be a limitation to the poor PAPs.

5.3: Costs in the Grievance Redress Mechanism

For purposes of fair play, aggrieved PAPs should be assisted to pursue justice contingent to which therefore, the PMU will identify and commit resources to support activities of the LEC, LPC, and the GRC. All PAPs pursuing grievances up to the GRC level is free of charge.

5.4: Inclusion of the landless, and women in Grievance Redress Mechanism

For purposes of fair play the GRM will consider and include the landless, and women as well as other special groups like the physically challenged, youth, and the aged to ensure a complete mechanism that caters for all interests. This will ensure the project has an effective way of handling multi-sectoral and diverse complaints from the different stakeholders.

CHAPTER 6: THE INSTITUTIONAL FRAMEWORK

6.1: Identification of Agencies Responsible for Resettlement Activities

6.1.1: Overview of the Institutional Framework

This RAP will be implemented as part of the Mombasa-Mtwapa-Kadzengo-Kilifi Project which is a project of the Government of the Republic of Kenya with the financial support of the AfDB. Project Implementation will therefore take place within the management of structures, policy and coordination mechanisms set by the Government of Kenya and the policies and conditions agreed upon with participation of strategic partners. Under this arrangement, implementation of the inclusive of the RAP will be spearheaded by the Ministry of Transport and Infrastructure Development (Sector Ministry) through the Kenya National Highways Authority (KeNHA) as the designated Implementing Agency of the GoK.

As a project within KeNHA, the development of the will be mainstreamed into the administrative and management infrastructure of this Authority with the Coast Regional Office assuming the project management role. In sections below, roles and responsibilities within this framework including requisite capacity building are analysed.

6.1.2: Levels of Project Implementation

The Institutional framework recommended for implementation of this RAP is provided in Figure. 5.1 below. Implementation will take place in three tiers namely:-

- National/Ministry of Roads level
- KeNHA HQ level
- KeNHA CRO/ PMU level
- Field level

Activities at each level will draw participation of diverse players all basically coordinated by the roads sector-namely the Ministry of Roads and KeNHA. As will appear, it will become necessary to create new structures to address emerging needs especially at project implementation level and below. In sections below, the roles and responsibilities of institutions at each level are analysed.

6.2: Roles and Responsibilities within the Institutional Framework

6.2.1: National Level Institutions

At national level, relevant institutions are identified as follows:-

(a) The Ministry of Transport Infrastructure, Housing & Urban Development

This is a project of the Kenya government through the Ministry of Transport and Infrastructure Development (MoTIHUD). In this capacity, the MoTIHUD will provide oversight supervision and technical direction to the Implementing Agency. The MoTIHUD will also interface with other ministries such as Ministry of The National Treasury and Planning on issues pertaining to project funding to ensure smooth flow of both internal and external funding. MoTIHUD will communicate directly with AfDB on technical issues related to project implementation including financial,

procurement and physical progress and all such communication will take place under the signature of the Permanent Secretary (or his designated representative) as the overall accounting officer for the Ministry.

(b) *The Kenya National Highways Authority (KeNHA)*

KeNHA is the State Corporation established under the Roads Act 2007 and charged with the responsibility for the management, development, rehabilitation and maintenance of the national trunk road system in Kenya. In the capacity of Executing Agency, KeNHA will be tasked with managing the development and implementation of all aspects of the Mombasa – Mtwapa – Kwa Kadzengo road including environmental and social mitigation.

The particular roles and responsibilities of KeNHA in RAP implementation will be as follows:

- Facilitation of commencement of the RAP implementation process and mobilization of all relevant stakeholders to participate in the various committees for RAP implementation;
- Implement the GRM strategy to handle grievances, training of committee members on grievance handling including alternative conflict resolution methods
- Payment of cash compensation to PAPs;
- Facilitation of Continuous stakeholder engagement including involvement of PAPs, RAP implementation partners and civil society relevant to RAP implementation;
- Facilitation of the RAP Monitoring and Evaluation (M&E) Program including:
- Mobilization of resources for M&E;
- Keeping of records;
- Facilitation of government agencies in implementation and audit of compensation and resettlement procedures like NEMA, NLC, DOSH, Labour etc;
- Facilitation of PAP and stakeholder participation in the M&E Program;
- Preparation of reports and provision of a central depository for all RAP implementation related documentation.
- Provision of the relevant documentation and facilities necessary to demarcate the project's newly acquired RoW to the County Governments of Mombasa and Kilifi. This is in a bid to support the County Governments in allocation of traders resettlement sites as near as possible to the current site as well as to prevent future encroachment into the project's RoW;
- Preparation of the ICR for RAP activities

(c) *National Land Commission*

The particular roles and responsibilities of KeNHA in RAP implementation will be as follows:

- Communication of intention to acquire land –through official Kenya Gazette Notice
- Survey & Loss assessment
- Validation of assets being affected and their assets owners
- Validation and Valuation of land, assets & livelihood to be lost
- PAPs Disclosure and Acceptance of compensation values
- Issue of new ownership documents in respect to title deeds
- Issue Notices to Vacate

(d) The African Development Bank-AfDB

AfDB is the strategic partner who is collaborating with MoTIHUD in the development of Mombasa – Mtwapa – Kwa Kadzengo road. In this capacity, AfDB has the pivotal role to finance the project in Partnership with the GoK.

(e) The National Environment Management Authority (NEMA)

In the capacity of Environmental Regulator, NEMA will review the ESIA reports in respect of the Mombasa – Mtwapa – Kwa Kadzengo road to ascertain efficacy and adequacy of proposed Environmental management Plan and the RAP prepared towards guiding the compensation process. This RAP therefore will require be reviewing and clearing by NEMA before implementation and grant of Environmental Licenses.

(f) National Land Commission (NLC): The NLC is the designated Land Acquiring Authority in Kenya and will therefore facilitate all acquisition of land targeted in the Project. Upon receipt of application for acquisition from MOTIHUD, the NLC will gazette all target acquisitions and prepare public hearings then move to make and settle awards as per lands Act 2012.

6.2.2: Regional Level Institutions

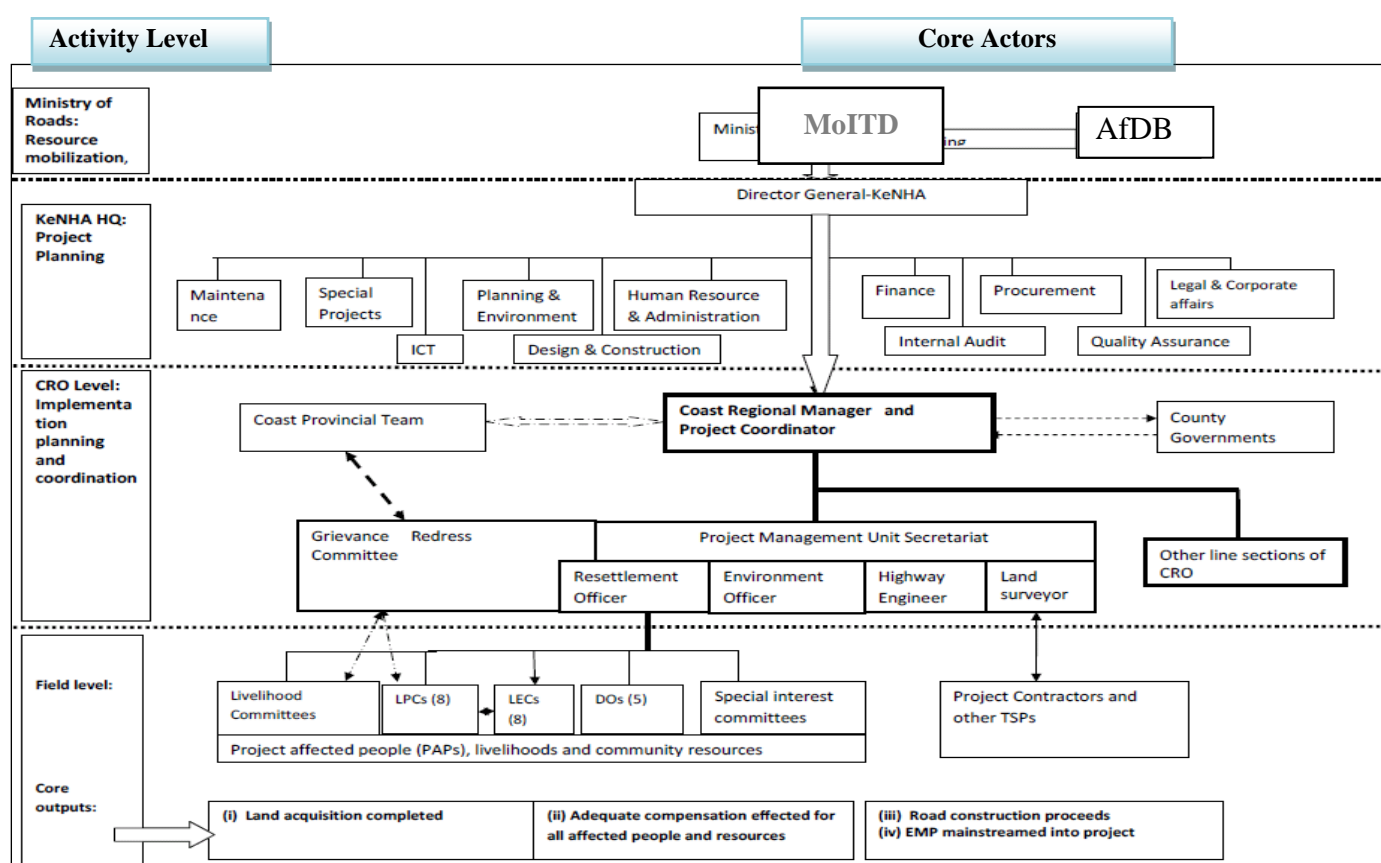
(a) The Coast Regional Office (CRO) of KeNHA

This office already exists and is headed by a Regional Manager (RM) overseeing diverse interest pertaining to development and maintenance of the rural trunk road network in coast province. The Coast Regional Office of KeNHA will provide backup to the Head Office in the supervision of Project Implementation including administrative leverage to the project through liaison with GoK Agencies relevant to project implementation.

(b) Project Management Unit

For a project of this magnitude, it is expected that a fully-fledged Project Management Unit (PMU) within the Coast Regional Office of KeNHA to take charge of project affairs. In this respect, it is recommended that the PMU to operate under the control of the Regional manager who will double up as the Project Coordinator supported by a complement of staff selected and committed entirely to this project. Such staff will include Civil Engineers (Supervisor of Works), Land Surveyor/ GIS Expert, among others. Among others, the PMU will serve the following roles and responsibilities:-

- i) Oversee and coordinate the land acquisition process and this will require the PMU to fill recruit a Resettlement Officer at inception.



F-figure 6.1: Proposed Institutions framework for RAP implementation

- ii) Facilitate site handover to the Contractor and introduce the latter to the local administrative set-up.
- iii) Provide liaison between the Project and other arms of government including the local political leadership through the county governments, provincial administration, etc.
- iv) Facilitate compensation for all displacement occasioned by the Project,
- v) Facilitate resolution of all disputes arising from project implementation-particularly land acquisition. Towards this, the PMU will require to create a semi-autonomous Grievance Redress Committee (GRC) and oversee creation of grass-roots groups to protect PAP interests as outlined in section 6.2.3 below.
- vi) To supervise project development including activities of the Project Contractor. This will require the PMU to employ a Highway Engineer to serve the role of Supervisor of Works (SOW).
- vii) Supervise implementation of the Environmental Management Plan of the Project,
- viii) Facilitate activities of all consultants and other Technical Service Providers (TSP) on the project.
- ix) Report on matters of Project development to KeNHA Headquarter.

The Project Coordinator will supervise PMU staff and Consultants and ensure that project implementation activities and reports are on schedule and in compliance with the financing agreement. The RM in capacity of PC will report to the KeNHA HQ who will liaise with the PS Roads on all emerging policy issues for decision at that level or beyond.

(c) *The Resettlement Officer*

Within the PMU, the role of the Resettlement Officer (RO) in driving the RAP implementation process is critical. Indeed, with the exception of the RAP process, there is currently no formal linkage between KeNHA and the potentially project affected people and it will be the role of the RO to identify and establish formal linkage with all potentially affected people. This will require that the RO to update data in this RAP report, following which, contacts and linkage will be established with groups listed in Table 6.1 below.

Table 6.1: Groups to be activated by the Resettlement Officer

Category of impacts	Mode of linkage	Remarks
Displacement of settlement and property	Establish LPCs in 5 locations within Mombasa and Kwale Sub Counties	Formation of LPCs will first require that the final alignment be established
	Make contact with all corporate and parastals individually	Some preliminary contacts have already been made
Displacement of community assets	Mobilization of LECs in all 5 locations	Location Elders Councils already exist under coordination of Chiefs and are useful in settling boundary disputes.

(d) *Grievance Redress Committee (GRC)*

The PMU will set up a Grievance Redress Committee to be coordinated by the Resettlement Officer for purposes of resolving all grievances arising from acquisitions and compensation. The Constitution of the GRC is outlined in Chapter Five above. This is the apex organ in the grievance resolution process for RAP implementation.

6.2.3: Project Level Institutions

A host of institutions such as the provincial administration at District and Divisional level, Local Authorities, respective parliamentary and civic leaders, financial institutions, NGOs, CBOs, and FBOs etc. will probably play a role in project implementation at local level and this RAP recognises their potential contributions in securing a smooth resettlement process. However, operationalization of the RAP including liaison with all relevant institutions will require that new institutions namely; - Location PAPs Committees (LPCs), Location Elders Committees and Special Interest Committees be mobilised to serve roles as outlined below.

(a) *The Location PAPs Committees*

It is expected that PAPs in each location will form their own committee which will henceforth liaise with the PMU/GRC on all aspects of resettlement. This is the committee that will also play a role in resolving basic conflicts between members. .

(b) *Location Elders Committees*

Inventory of Assets undertaken for this RAP came across many silent land disputes relating to inheritance, boundaries, etc. which is likely to intensify once the compensation process gets underway. As such, the Location Elders Forums which already exist within the traverse area will require be re-mobilising and energising to resolve all non-RAP land disputes whose escalation has potential to delay or derail project implementation. The LECs will also spearhead compensation for communally owned assets such as Kayas, water projects, communal graveyards, etc.

(c) *Restoration of Livelihood Implementing Agency*

KeNHA will engage an experienced Implementing Agency (IA) for implementation of the RAP in the field level in coordination with CRO KeNHA and PMU.

Implementing Agency will have to establish a Restoration of Livelihood section which will support vulnerable people with a Livelihood and Income Restoration Program (LIRP).

The RAP considered persons who live under a dollar a day as vulnerable since the project traverses an area that has impacts on economic losses especially within Mombasa County. The RAP has proposed a lumpsum cost for additional assistance to the 73 PAPS who fit this category alongside compensation for their losses.

6.3: Assessment of the Institutional Capacity of Agencies

In sections below, we identify capacity gaps whose resolution could greatly favour execution of the resettlement process.

6.3.1: Capacity Building Needs for KeNHA

According to the 2016/2017 Annual Report, KeNHA faces diverse challenges that constrain effective implementation of programmes:-

(i) Prohibitive Cost of Land acquisition: The Cost of land acquisition for projects remains high due to high property prices in the Country. This has led to inflated project cost against a background of limited budgetary allocation. This has often led to delays in commencement of projects as it takes time to secure the right of way. Similarly, the process of land acquisition often takes long forcing the project team to redesign the road alignment to fit within the available road corridor thus compromising the safety and aesthetics for the sections. The Authority is adopting forward planning and early acquisition of land to ensure that land is secured before works contracts are awarded. This however requires immense investment to clear the current pending bills on land acquisition and assign a budget for forward planning.

(ii) Inadequate legal provision for management of Road Reserves:

Sections 3(2) (b), 4(2) (b) and 10(2) (b) of the Roads Act place all Category A Road Reserves under the jurisdictions of KeNHA while under Section 27, the Authority has power to cause relocation of infrastructure from the road reserve thus:-

(2) Where any infrastructure utility is located within a road reserve, the provider or operator of such infrastructure utility shall, upon written request by the responsible Authority, relocate such infrastructure utility to a location or alignment approved by the Authority at no cost to the Authority.

(3) Where an Authority intends to exercise any power under subsection (2) it shall give reasonable notice of its intention to do so to the person having control of such infrastructure utility, and such person shall cause to be removed such infrastructure utility within sixty days.

(4) Where, under subsection (2) or (3), any person having control of an infrastructure utility fails to remove such infrastructure utility within the time stated in the notice, the concerned Authority may remove such infrastructure utility at the cost of the person who was unable to comply with the notice under subsection (3).

In spite of these provisions, Service providers are often slow in relocating services such as power lines, fibre optic cables, water pipelines and telephone lines from the road corridor, which occasionally leads to delays in the delivery of road projects and higher costs due to time extensions. Consultative meetings have been held with different stakeholders to harmonize standards in the utilization of the road reserve. The Critical Infrastructure Bill currently before parliament provides a framework for utilization and management of roads and other critical infrastructure which will be explored in ensuring prompt relocation of services.

(iii) Encroachment on road reserves:

Encroachment on road reserves is by far the most severe challenge to KeNHA and other managers of designated reserves. Encroachment poses a challenge for future expansion of roads and hampers safety of road users due to poor visibility within the road corridor. Clearance of these encroachments often results to destruction of livelihoods and additional costs in compensation to project affected persons. Public sensitization against encroachment, clear demarcation of the road corridor and clearance of encroachments were undertaken to secure the road corridor. The Authority also secured a GIS system through which all road network will be mapped and a database for land acquisitions be maintained.

(iv) Pending bills and delay in release of exchequer funds

The flow of Exchequer funds into the project account has remained slower than programmed during the year thus delaying release of payments to contractors for works that have been certified. These pending payments often attract interest charges because of the delays in payments. As at the end of 2016/ 2017 the Authority had approximately Ksh 16 Billion in spending bills. The Authority is in liaison with National Treasury, Ministry of Transport, Infrastructure Housing and Urban Development to harmonise project cash flow requirements with project funding cash flow to ensure that funds are available to clear all bills as they arise.

(v) Inadequate budgetary allocation for Construction and Maintenance of roads:

Allocation for road development and maintenance remains lower than the projected resource requirements. During the FY 2016/2017 the Authority received exchequer release of approximately Ksh 28,976,897,725.00 Billion against projected resource requirements of approximately Ksh 52,575,181,675 Billion. This financing gap has negative impact on projects which include:

- Budget shortfall crowds out forward development budgetary allocations as a significant amount goes to clearing accumulating debts;
- Project costs escalate due to the interest charged for delayed payment;
- Contractors/consultants slow down works eventually affecting the progress of works and ultimately end up requesting for extension of time;
- Inadequate maintenance hence the risk of reducing the project lifespan;
- Inability to open up locked up areas due to inaccessibility; and
- Inadequate budgets curtail the achievement of contracted performance targets.

Alternative financing models including Public Private Partnerships and Annuity financing were developed to supplement project financing. There are also consultations with Treasury and development partners to enhance budgetary allocation for road construction and Maintenance.

6.3.2: Capacity Building for Project Implementation**(a) Creation of Project Management Unit**

Successful implementation of the will require that a fully-fledged Project Implementation Unit –PMU be appointed and staffed with competent professional staff. The PMU will require to be facilitated with adequate operating budgets and other resources required in implementation of a project of this magnitude. As well, and, as part of capacity building, it may be prudent for the PMU to outsource certain services such as;- drafting of the Project Implementation Manual-PIM, confirmation of the Asset Register and List of PAPs, capacity building, etc. All outsourcing will be handled by the Procurement Section of KeNHA Headquarter upon request from the PMU. Procurement of Technical Service Providers (TSPs) will be integrated in the overall Resettlement Schedule to ensure optimum benefit to the process and a schedule is proposed in Table 6.2.

Table 6.2: Phasing of Recruitment and Deployment of TSPs

Requisite Service	Timing of procurement/ deployment	Procuring authority	Counterpart authority
Preparation of Project Implementation manual-PIM	Planning phase- 2 nd Quarter 2020	Procurement Section of KeNHA Hq.	Planning officer of PMU
Confirmation of Assets Register	Quarters 2&3 of 2020	As above	Resettlement Officer
Mobilization of PAP structures including pre-resettlement counselling	Quarters 3&4 of 2020	As above	Resettlement Officer

(b) Capacity Building for the Contractor Staff

This RAP recognises the Contractor for Civil Works as playing a crucial role in the replacement of communal assets which is critical to sustain public support to the project. It is recommended that a sensitisation session be mounted to induct the contractor staff on the requirements of this RAP and the Environmental Management Plan. Thereafter, the Resettlement Officer will be party to all Monthly Site Meetings where he will continue safeguarding the Resettlement Agenda and community Interest.

(c) Capacity Building for the GRC

The GRC will be appointed from people outside the project and with little exposure to conflict resolution. Initially therefore, the GRC will be taken through an induction training to expose them to the project including the scope of resettlement anticipated. Other training will focus on analysis of provisions of this RAP relative to requirements of fundamental legal authorities based on which, compensation has been packaged. An in-depth understanding of this RAP will save time and resources in approaching and resolving any would be grievances.

(d) Capacity Building for the LPCs

LPCs will be appointed from ordinary villagers whose skills mix may be inadequate to deliver on responsibilities conferred to them. Given that this is the group that will filter, synthesis and solve the bulk of grievances, there is need to equip this group with requisite skills. Training will therefore be organised to orientate LPCs with the Entitlement Matrix, grievance processing procedures, leadership, counselling etc. which would come in handy in the resolution of grievances at this level.

(e) Capacity Building for PAPs

PAPs will firstly require being orientated with the Entitlement Matrix so as to cut down on bloated expectations borne of misinformation-some PAPs are expecting land for land compensation in addition to cash. From this awareness, PAPs will provide useful checks on the expectations of others and hence cut down on nuisance claims. Prior to payment of compensation, all PAPs will undergo intensive training and counselling to in build positive/ productive attitudes towards the cash payments anticipated.

CHAPTER SEVEN: IMPLEMENTATION SCHEDULE

This chapter outlines the stepwise procedure in implementing this Resettlement Action Plan. The implementation schedule also identifies essential safeguards that require to be put in place to ensure a smooth resettlement process that is mutually beneficial to both the project and affected households.

7.1: Loan Effectiveness and Implementation Planning

Where the project is funded externally, the official effectiveness of the project will be marked by signing of the loan agreement between GoK and the Financier following which, KeNHA will move to fulfill conditions for loan effectiveness. During this preparatory phase, KeNHA will undertake activities as follows:-

(a) Constitution of a PMU at the KENHA

KeNHA will appoint a Project Coordinator and core staff of the PMU who will then move to plan for implementation.

(b) Planning for Implementation

Once appointed, the PMU will report within acceptable time and will immediately embark on planning for implementation. Presumably, a contractor will have been recruited at this stage and will also participate in some of the planning meetings. Core elements of the Work Plan to be developed include a procurement plan, staff recruitment and deployment, review of the RAP Implementation Schedule, Environmental and Social Mitigation Plan, etc.

(c) Orientation to the Project Affected Area

The PMU will take advantage of this Phase to familiarize with the route of traverse and essentially, the people likely to be displaced.

(d) Formulation of a Project Implementation Manual (PIM)

Project implementation will be guided by a Project Implementation Manual to be developed by the PMU and approved by KeNHA. Thus, as part of planning, the PMU will develop a Project Implementation Manual detailing the roles and responsibilities of PMU officers, operating procedures and rules, etc. In case of the RAP, the PIM will include guidelines on constitution of core institutions namely the LECs, LPCs, GRC, respective training modules, etc.

(e) Constitution of LPCs and the GRC

As part of orientation, the RO will make contact with PAPs and guide them to constitute LPCs based on criteria put forth in the PIM. Alongside this, local chiefs will also be contacted to mobilize LECs to collaborate with LPCs in projects implementation. The PMU in consultation will identify and recommend suitable candidates for the GRC who will then be appointed by the KeNHA Board.

7.2: Implementation Phase Activities

Implementation Phase activities will entail the following:-

(a) Mobilization of LPCs institutions

Once funding has been procured, the RO will move to mobilize the LPCs by ascertaining that there is one for each location Kongowea, Kisauni, Bamburi, Mtwapa and others along the traverse and that they have been appropriately constituted, and are adequate. Following this, the RO will arrange training schedules with a view to focusing activities of the PAPs and such training will cover aspects such as leadership qualities, roles, responsibilities and limits of the LPC, grievance registration procedures, approach to conflict resolution, need for impartiality, etc. Upon successful training, LPCs will be equipped with standard stationery including grievance registers, foolscaps, filing material etc.

(b) Mobilization of the GRC

The PMU will finalize constitution of the GRC and follow-up approval with the PS. This will be followed by induction meetings during which the GRC will be guided to establish procedures for grievance redress. A secretariat for the GRC will be established within the PMU with the RO as Secretary.

7.3: Compensation Process

7.3.1: Submission of the application bundles to the NLC

Guidelines for Compulsory land Acquisition issued by the NLC in line with requirements of Part VII of the Land Act 2012 will apply. In processing applications for Compulsory Land Acquisition in Kenya, the NLC requires as follows:-

- x) Section 107(1) of the Land Act 2012 requires the acquiring body to obtain prior approval from their respective Cabinet Secretary before the Commission commences the acquisition process
- xi) Cadastral drawings showing how the infrastructure excises each land parcel, the parcel list table detailing land parcel numbers, total area of land parcels and acreage affected by the infrastructure for each parcel. These drawings shall be submitted to the Commission for scrutiny and records
- xii) Provide a listing for parcel numbers indicating the plot reference number, registered owner and affected acreage column in acres (for easy appreciation by project affected persons). This should be submitted in both soft and hard copy
- xiii) Official searches of affected land parcels. The Commission shall assist where necessary.
- xiv) The Environmental Impact Assessment Report (EIA) and appropriate approvals/certification for the project.
- xv) The Resettlement Action Plan (RAP) report.
- xvi) Acknowledgement on availability of funds to allow prompt compensation as provided in the Constitution. The Commission will request the entities to remit compensation money into the Land Compensation Fund (Section 153 of the Land Act 2012) to be administered by the Commission. This is in the purview that in previous acquisitions, the compensation payments were delayed as opposed to the promptness required by the Law

- xvii) All applicants will have to take the Land Acquisition and Committee sub-committee members on a site tour for general appreciation of the project in respective locations that will be affected. This will enable informed decision making.
- xviii) A final survey for vesting of the acquired land to the National or County Government will have to be done by the acquiring authority. The Commission can assist in this exercise at costs borne by the acquiring body.

This is the process that will trigger land acquisition for the Road upgrading Project. However to safe on time, it is recommended for the Land Acquisition process to start and possibly end long before Construction Stage. Due process will follow as follows:-

7.3.2: Due process by the NLC

(a) Gazetting of all target parcels

Upon receipt of the application for acquisition from KeNHA, the NLC and KeNHA will arrange field visits to familiarize and confirm the, the final Bridge Alignment following which, the Assets register will be cross-checked on the ground to ascertain the final list of PAPs and the status of their assets. The NLC will then issue a Notice of Intention to Acquire and publicize the dates and venues for public inquiries.

(b) Public Inquiries

On appointed dates, the NLC will open public inquiries in which anybody with claims on target properties will present evidence and be cross examined under oath. At the close of the inquiry, the NLC will finalize the List of PAPs and proceed to revalidate the valuation.

(c) Making of awards

Upon revalidation of It is also expected that prior to payment, all those entitled to payment under a PAPs account will have been brought together to agree on monies due to them and on the mode of disbursement. This caution is issued as many households were observed to request that assets be recorded under one brother and this is likely to bring family conflicts once compensation is released. The LPCs will come in handy in fostering consensus among composite PAPs.

(d) Final Award and Signing of Contracts

Upon finalization of the assets register, and revaluation by the NLC, the final compensation sum will be computed and adjusted for inflation and other processes. Based on this sum, offers /contracts will be issued to PAPs who will sign their approval witnessed by their respective chairmen of LPCs and the area chief. Within this contract, each PAP will undertake to remove affected assets within one month of accepting payment. The PAPs will then be required to open bank accounts through which, payments will be made directly to PAPs.

(e) Preparation of PAPs by the PMU

Kenya is replete with people who squandered entire proceeds from compensation/ terminal benefits or even credit and ended up destitute and miserable. This normally is associated with ignorance and shock reaction to exposure to apparently huge amounts of money instantly. To forestall such incidence in the case of road upgrading project, the PMU will mount counseling sessions for all PAPs to empower them cope with the expected proceeds. Indeed, this RAP recommends that as part of the training, each PAP will be assisted to develop a budget for the

expected payment! The reality of how little the anticipated payments are, is likely to cut down on adventures.

7.4: Removal of Assets

(a) Removal of Economic Assets

From encounters with potential PAPs during entry point discussions and subsequent inventory of individual assets, this RAP can confirm a 100% support to the resettlement process. All households expressed willingness to remove the assets and pave way for power line construction in which case no resistance is anticipated. Thus in line with the Contract for compensation, each PAP will be expected to shift their assets within one month of receiving payment.

(b) Removal of Non-economic Assets

Some assets such as shrines and graves may prove difficult to remove by individuals and where such cases occur, the individuals will be assisted by the contractor upon successful completion of requisite cultural rites.

7.5: Costs in the RAP Implementation Schedule

Facilitation of the Resettlement Process will require funding channeled to KeNHA. In the estimate of this RAP, a sum equivalent to 1% of the Resettlement Budget has been allocated for this purpose and this should be sourced from the Exchequer. Details are in Chapter Eight below.

RAP implementation schedule

Activity	Time												
Year	2019				2020				2021				2022-24
Quarter	1	2	3	4	1	2	3	4	1	2	3	4	1
RAP preparation													
Verification of property/asset ownership													
Valuation and issue of awards													
Bank account opening													
Payment of compensation													
Issuance of vacate notice													
PAPs consultation and communication													
Formation and functioning of PAPs committees, CRC and PIU													
Contractor identification													
Removal of all affected structures													
Dispute /grievances resolution;													
Monitoring and evaluation													

CHAPTER EIGHT: VALUATION OF AND COMPENSATION FOR LOSSES

Introduction

Valuation for this project is based on principles provided in the ADB policy on involuntary resettlement as well as various national laws that are triggered by this project among them, the Constitution, Land Act 2012 (Chapter VIII: on compulsory acquisition), among others.

In property valuations there are 5 generally accepted methods or approaches to value. These are the Sales Comparison, the Contractors Approach, the Gross Replacement Cost Method (GRC), the Residual, and the Profits method:

The first method comparative approach to value that considers the sales of similar or substitute properties and related market data and establishes a value estimate by processes involving comparison. Property prices need to be analyzed and interpreted in order to obtain the corresponding values utilized in the comparison analysis. This method is the preferred approach in valuing land in an active market where a trend of prices can be established.

The second method is a contractor's approach that considers income and expense data relating to the property being valued and estimate value through a capitalization process. This method is applied when income generating capabilities are present and is considered by the market as forming the primary basis for value. The capital value arrived at is the value attributed to the right to an annual income stream. This approach, to name a few, entails a research and analysis of transaction prices of similar or comparably substituting properties, rental rates, expense ratios, yields, capitalization rates, tenant covenants, and risk. In essence this approach entails an income stream from which expenses are deducted, the net income is then capitalized (income is converted to capital) by dividing it with a capitalization factor. Although the value is determined by capitalization, the basis of information researched and analyzed by utilizing the comparison approach. This method, therefore, is a combination of income and expense data though valued by processes of comparison.

The third method, known as the Gross replacement Cost method (GRC) evaluates the current cost of replacing an asset with its modern equivalent asset less deductions for physical deterioration and all the relevant forms of optimization such as the expected optimum land productivity. It is also used in acquisition of properties. This is appropriate when little or no market evidence is available and the property does not transact readily in the market. The approach entails the measuring of the improvements (buildings, site works) to which the appropriate construction costs are applied, resulting in the new replacement (or reproduction) cost. The market value of the land as if unimproved is then to be determined and added to this amount with the total amount reflecting the market value for the property.

The fourth method, known as the residual method, is the estimated amount that an entity can obtain from the disposal of an asset after deducting the estimated costs of disposal, if the asset were already of the age and in condition expected at the end of its useful life. This approach is applicable where a valuation is to be conducted for undeveloped land or where redevelopment of an obsolescent piece of land demands it. The first step is to estimate the value of the development as complete, whether it's a township development or residential development or any other use or type of building. Then an allowance for development costs, professional fees, advertising and marketing costs, financing costs, developer's profit and risk is deducted from the value as complete which results in the residual value.

The fifth method is the profit's method and is sometimes referred to as the accounting method. The method entails an estimation of the gross annual income or turnover from which cost of sales and operating expenses are deducted. The net balance is then divided into a rent and profit split.

The rental split is capitalized at an appropriate capitalization factor. In addition, the goodwill is to be ascertained at a market related multiplier with the market represented by the total of these two amounts. The second approach takes the estimated net profit only, divides it into a rental and profit split, and capitalizes the rental amount in order to determine the value of the business “lock, stock and barrel”.

Valuation methodology analysis

A critical role of social safe-guards to protect the project affected persons from being adversely impacted by the project. As such, a sound basis of valuation is necessary to ensure fair compensation. The process for land valuation for compulsory acquisition is governed by provisions of the Land Act (No 6 of 2012).

The five principal methods that are applicable in the valuation of land and the assets there-in as highlighted above are summarized as shared with the affected person in the barazas. These include:-

- ✓ Direct comparison of capital values that entails the analysis of sales recorded over a period for properties with similar characteristics
- ✓ Contractors cost Method (replacement method) assumes that the buyer would be willing to pay for the property what it would cost him to procure similar accommodation elsewhere
- ✓ Profits method: Valuation is based on volume of trade or business carried on as reflected by records and compared with similar properties elsewhere
- ✓ The development or residual method is based on the present capital value of estimated future income less anticipated costs to be invested to realize the income including an allowance for risk inherent in such investment.
- ✓ Investment method entails establishing the present capital value of a future income flow discounted at an appropriate rate of interest. The income that the property will produce and the appropriate rate of interest at which to discount that income is taken into account.

For the purpose of preparing the Mtwapa-Kadzengo-Kilifi resettlement action plan valuation, the replacement method was disclosed to the people and utilized as the preferred method as it ensures that the project affected persons is restored at least to the level he would have been if there was no involuntary displacement and is in line with AfDB guidelines.

Basis for Valuation in the RAP

In preparation of the RAP, the consultant explained to would be affected persons the valuation process. This is premised on the national and international regulations that trigger resettlement whenever land is needed for public interest. Nationally the major regulations include Constitution of Kenya (2010), Land Act (2012), and Valuers Act Cap 532. Internationally, valuation is based on International Valuation Standards (IVS) following the principles provided in the ADB Policy on Involuntary Resettlement.

Structures

The method adopted is the Replacement Value Method and comparable method for land that evaluates the current cost of replacing an asset without depreciation. The approach entails the measuring of the improvements (buildings, site works) to which the appropriate construction costs are applied, resulting in the new replacement (or reproduction) cost. An addition of 15% is added to the value as statutory allowance to cater for disturbance.

Land Values

Establishing land values in this area was not difficult since there is a vibrant market and comparable sales are easily available and these figures were obtained and used. An average value was adopted per homogenous section. Projections were however considered since such a project is expected to bring about a substantial increase to prices as speculation causes demand that leads to escalation of land values.

Trees

The trees have been valued based on compensation schedules prepared by the Kenya Forest Service for various species depending on age and its future potential. The valuation of the trees has also considered the extent of utilization, type of species, quality of logs, diameter of the logs and quality of the log as well as the opportunity cost for fruit trees like mangoes and palm trees.

Crops

Though tree crops produce shall be harvested before the project commences, it is assumed that the owners will be duly notified not to replant any perennial crops like Cow Peas after the property is compensated to allow for project works. The crops which are on the affected land as at the time of construction will be valued based on the schedules prepared by the Ministry of Agriculture for various types and age but taking into account the level of management.

Businesses along Road Reserve

In the past, those who have encroached the road reserve are given notice to vacate failure to which the county removes them. The same notice will be given to those using the road reserve for hawking hence such businesses are not included in the valuation. From the analysis of the stakeholder consultations, and evaluation of the SME activities on various centres along the existing road, it is envisaged that the project will partner with the counties of Mombasa to relocate the traders at Kongowea Turnoff into the newly constructed Kongowea market, or the County of Kilifi to partner and construct new sheds where none exist, in places like Mtwapa to support roadside vendors allowing for inclusion and diversity.

CHAPTER EIGHT: COSTS AND BUDGET

8.1: Overview on the budgetary process

All resettlement funds will be provided by the KeNHA based on the financing plan agreed by the Government of Kenya and AfDB. Land acquisition, compensation, relocation and rehabilitation of income and livelihood will be considered as an integral component of project costs. The rehabilitation and training to the potential affected persons will be provided under the LIRP based on vulnerability and needs assessed through a special census and consultation exercise.

The estimate for land acquisition by the KeNHA will be prepared by CRO KeNHA and placed to the account of the NLC. The additional benefits as per the policy will be paid by the KeNHA through NLC. However, the CRO KeNHA will assess the quantity of losses and the eligible persons for resettlement benefits and produce a resettlement budget to NLC for approval and periodic release.

The RU of KeNHA will ensure that the land acquisition and resettlement budgets are delivered on time to the NLC's account, for payment of resettlement grant. The RU will also ensure that the RAP should be submitted to Donor for approval, and that fund for compensation and entitlement under the RAP are fully provided to APs prior to the award of the civil work contract.

The RAP budgets for compensation for land, structures, other assets, crops and trees, and special assistance will be calculated using the market rates reflecting replacement cost at the time of dispossession. The costs for relocation and special assistance will be consistent with the resettlement policy. Other costs involving project disclosure, public consultations and focus group discussions, training on IGA have been included in the RAP budget under 'Operation cost for IA' head. There is also a budget allocation for 1% as contingency.

8.2: The RAP Budget

8.2.1: Gross Budget

A summary of the Gross RAP Budget is shown in the Table 8.1 with a breakdown provided in Table 8.2 below. The Gross RAP Budget recognises cost heads as namely the Direct Costs, Operating Costs and Contingency. A Total of Ksh **3,242,915,769.23** will be required in the entire compensation process.

Table 8.1: Gross RAP Budget

Cost Item	Allocation (Ksh)
Gross displacement	3,059,354,499.28
Operation Costs	30,593,544.99
Contingency	152,967,724.96
Gross RAP Budget	3,242,915,769.23

Source: This Study

8.2.2: Direct Costs

Compensation for displacement: Compensation costs have been computed based on the entitlement as applied to the Assets Register to yield to the Costed Assets Register. Table 8.2(b) provides a summarised breakdown of the Costed Assets Register. Cost schedules applied in determination of direct costs have been generated through the Replacement Cost Study. A total of

Ksh 3,059,354,499.28 has been identified under this vote, of which compensation for land is the largest share accounting for 46% followed by loss of business at 28.3%.

Table 8.2: Summary and geographical distribution of components of the Direct Costs

Lot	Structures	Area (m ²)	Wall length (m)	Total for Structures (Ksh)	Total for Wall (Ksh)	Total for 2 mosques (Ksh)	Land acquisition (acres)	Costs to land (Ksh)	15% Top-up of CLA (Ksh)	Loss of business (Ksh)	Costs to trees	Costs to other assets (Ksh)	Gross displacement costs (Ksh)
Lot One	208	23273	18266	1240653630	36532860	52000000	37.5	1125000000	168750000	717654223	9999034	33750000	2604686490
Lot Two	65	7372	1697	993668400	14743636	0	9.4	282000000	42300000	179413556	1932000	5640000	1338352036
Sum	273	30645	19963	401570225	51276496	52000000	47	1407000000	211050000	897067778	11931034	39390000	3059354499
Share(%)				13.1	1.7	2		46.0	6.9	29.3	0.4	1.3	100

Source: This Study

8.2.3: Indirect costs

This RAP has allowed for three categories of indirect costs as follows: -

RAP Implementation Costs/Operation costs: A sum of Ksh 30,593,544.99 equivalent to 1% of Direct Costs has been provisioned to be drawn by KENHA in implementing the RAP. Expenses envisaged include field costs, capacity building for RAP structures, setting up of a Project Implementation Team, among others. The Exchequer should be approached to provision the funds alongside the Direct Costs Budget.

Assistance to Vulnerable PAPs: Some PAPs are considered too vulnerable on account of advanced age, poor health etc as to be able to manage relocation challenges on their own. As lumpsum of Ksh 10 million has been provisioned within the Operating Costs for use by KENHA in providing the additional assistance that may be called for in such cases. Of necessity, such a category of PAPs cannot relocate before provision of both compensation and the special assistance as proposed

8.2.4: Contingency Costs

From Table 8.1, an item of Ksh 152,967,725 equivalent to 5% of the total costs has been allowed to cater for contingencies in costs and unknown impacts.

8.3: Other Assistance measures

8.3.1: Assistance to Vulnerable groups:

Additional measures will be pursued as follows:-

- e. **Creating of special programmes:** While ordinary PAPs will undergo training on modalities of coping either the displacement, elderly and sick PAPs will not be available for such. It will thus require the Resettlement Officer to tailor make special programmes to reach out to such people and help them understand and cope with the shock of displacement. If not properly cushioned, such PAPs may find the shock to be too much to handle.
- f. **Monitoring management of proceeds from compensation:** If left alone, some PAPs have no capacity to manage monies accruing from compensation and would end up losing the money without replacing lost assets. The Resettlement Officer will require to network with PAPs to establish modalities of how such PAPs can be assisted to re-place lost assets without being exploited.

g. Project related job opportunities:

Severely affected persons will be prioritized in gaining employment in the works linked to the Project. KENHA will ensure that this is included in the contractors' specifications wherever possible.

h. Assistance through Corporate Social Responsibility (CSR) Programme:

The CSR programme should aim at addressing community felt needs as documented during in the socio-economic survey conducted for this RAP, among which is poverty alleviation. With this in focus, KENHA will explore means of remaining engaged in communities adversely affected by the road upgrading project with possible entry points as follows:-

- Support to local community infrastructure projects.
- Support to local reforestation and conservation groups,

CHAPTER NINE: PROCEDURE FOR MONITORING AND EVALUATION

This Chapter unveils the Monitoring and Evaluation Plan for the RAP Implementation process.

9.1: The Monitoring Strategy in the Project

The M&E Plan for RAP allows two levels of monitoring thus:-

- Internal Monitoring
- External Monitoring

In sections below, the process for both levels of monitoring are highlighted

9.1.1: Framework for Internal Monitoring

Figure 9.1 outlines the schematic procedure for internal monitoring proposed for the Road dualling Project.

Focus of Internal for Monitoring: For purposes of this RAP, internal monitoring will focus on tracking implementation of the Entitlement Matrix. Delivery of outputs outlined in the Entitlement Matrix will be monitored routinely and reported through periodic reports produced by the PMU and backed up by signed consent certificates by PAPs. These reports will form the basis for routine external monitoring by both GoK agencies and the Financier.

Responsibility for Internal Monitoring: Routine monitoring and reporting will be the responsibility of the PMU reporting to KeNHA. Indeed, project monitoring for RAP will fit in the overall monitoring plan of the entire project under auspices of the KeNHA. Within the internal monitoring framework, the Resettlement Officer of the PMU will file Status Reports to the Project Coordinator who will review, collaborate and submit to the KeNHA Head office. The latter will review and synthesize monitoring reports to:-

- Provide timely information about all resettlement arising as a result of development of the road upgrading project ;
- Identify any grievances that have not been resolved at local level and require resolution through the involvement of the PMU;
- Document the timely completion of project resettlement obligations for all permanent and temporary losses;
- Evaluate whether all PAPs have been compensated in accordance with the requirements of this RAP and that PAPs have higher living standards in comparison to their living standards before physical or economic displacement.
- Evaluate whether all PAPs have been compensated in accordance with the requirements of this RAP and that PAPs have higher living standards

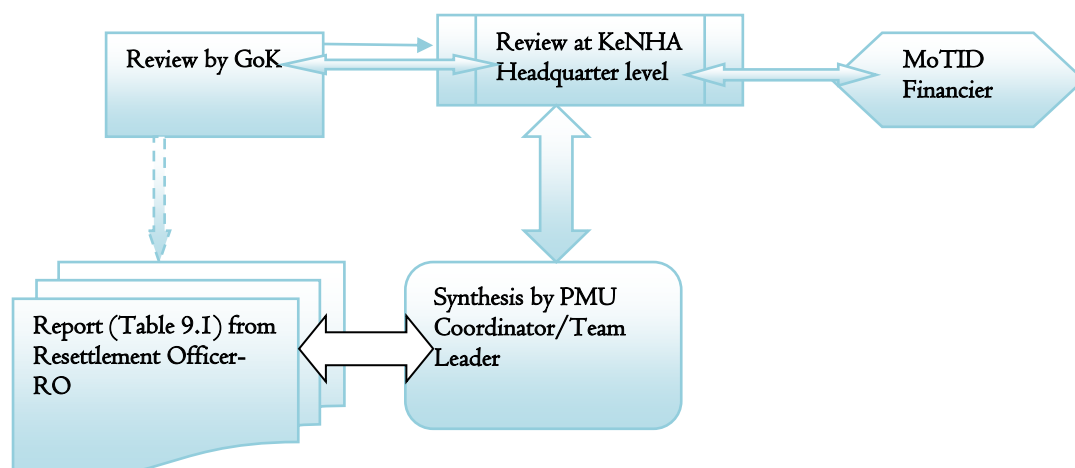


Figure 9.1: Framework for Internal Monitoring

Upon internal verification of all reports, KeNHA will submit the same to both GoK and the Financier for review and advice through a feedback mechanism Appendix 9.1 provides a format through which, monitoring output will be reported to the KeNHA Board.

Criteria for Internal Monitoring: Internal monitoring will employ criteria as outlined in Table 9.1 below.

Effect Monitoring: Table 9.1 also includes a component for Effect Monitoring which will be used to measure the extent to which the immediate objectives have been achieved and give an idea of the results emanating from implementing the RAP e.g., percentage of new investments made by PAPs on account of being successfully resettled. Effect monitoring especially through end of term Project Evaluation is also useful in documenting lessons learned from project implementation which can also be replicated elsewhere. Effect monitoring will be best achieved through routine and End Term Project Evaluation conducted by the KeNHA.

Frequency of internal monitoring: Internal monitoring will be a routine process. However, Table 9.1 will be used to file quarterly reports. Specifically, this is the system that will generate data to gauge success towards implementation of this RAP in terms of impact of the resettlement on the PAPs.

Table 9.1: Criteria and Indicators for quarterly monitoring and reporting in RAP implementation

Criteria for Internal Monitoring	Indicators for Monitoring	Specifics	Quarter No.. review (%)	Cumulative (%)	Recommended Action	Responsibility
On land acquisition and resettlement	Are resettlement implementation activities being achieved against agreed implementation plan?					
	Percentage of scheduled funds received by the NLC?					
	Number of PAPs signing consent papers	Kongowea				
		Kisauni				
		Bamburi				
		Mtwapa				
	Percentage of land acquired for Project	Kongowea				
		Kisauni				
		Bamburi				
		Mtwapa				
	Percentage of PAPs received entitlements according to numbers and categories of loss set out in the Entitlement Matrix?	Kongowea				
		Kisauni				
		Bamburi				
		Mtwapa				
	Progress in restoration of social infrastructure and services?	Specify by component				
On livelihood restoration	Are PAPs able to access schools, health services, public transport, cultural sites and activities?	Specify concerns per location				
	Percentage of PAPs receiving income and livelihood restoration activities	loss of jobs				
		rental income				
		loss of fisheries				
		loss of trade				
	Percentage of businesses received entitlements including transfer and payments for net losses resulting from lost business and stoppage of production?					

Criteria for Internal Monitoring	Indicators for Monitoring	Specifics	Quarter No.. review (%)	Cumulative (%)	Recommended Action	Responsibility
Disclosure	Number of consultations taken place as scheduled including meetings, groups, community activities?					
Grievance Redress System	Number of complaints by Non PAPs	Kongowea				
		Kisauni				
		Bamburi				
		Mtwapa				
	Number of disclosure meetings taken place?					
	Have LPC and LECs been constituted for Kongowea, Kisauni, Bamburi, and m Mtwapa?					
	Number of grievances handled by LPCs	Kongowea				
		Kisauni				
		Bamburi				
		Mtwapa				
	Has a GRC been set up within KENHA ?					
Assistance to Vulnerable Groups	Number of Vulnerable Groups identified	Kongowea				
		Kisauni				
		Bamburi				
		Mtwapa				
	Action taken to cushion vulnerable Groups by location					
	Number of complaints received from Vulnerable Groups					
Effectiveness of the GRC	Number of conflict resolved by GRC					
	Number of grievances refer to the Environment and Land Court					
Effects Monitoring	What changes have occurred in patterns of occupation, production and resource use compared to the pre-project situation?					

Criteria for Internal Monitoring	Indicators for Monitoring	Specifics	Quarter No.. review (%)	Cumulative (%)	Recommended Action	Responsibility
	What changes have occurred in income and expenditure patterns compared to pre-project situation? What have been the changes in cost of living compared to pre-project situation? Have PAP incomes kept pace with these changes?					
	What changes have taken place in key social and cultural parameters relating to living standards?					
	What changes have occurred for vulnerable groups?					
Assessment	Over-all assessment of success in implementation of the EM					

9.2: External Monitoring

Right from the onset, this RAP acknowledges that, given the scope, magnitude and strategic importance of the Transmission Line, it will attract huge attention from many stakeholders who will keenly monitor progress. It is thus important for the project to develop their own database that will be readily availed to interested parties.

External monitoring of the RAP will be undertaken alongside that of other project components. It is expected that KeNHA will mount routine monitoring in response to PMU reports while other agencies will routinely monitor progress including implementation of both social and environmental mitigation. Other External Monitoring will take place as follows:-

- **Baseline Monitoring:** The monitoring shall be applied within three months of contract date. For this, suitable baseline indicators related to income, assets, land ownership, expenditure pattern of key activities, housing conditions, access to basic amenities, demographic characteristics, indebtedness, etc. shall be applied.
- **Midterm Monitoring:** The project will undergo monitoring after two years to determine status of resettlement process alongside other components. Midterm monitoring will be useful in determining whether the Resettlement Process is both on track and on schedule and could occasion necessity to review project goals, objectives and even strategies towards enhancing delivery of resettlement assistance to PAPs. Midterm monitoring will also screen the project for emerging concerns/ impacts not anticipating in the design stage and hence allow for early resolution. Conditions and modalities for midterm monitoring are mirrored in the Post Project Monitoring briefly discussed below.
- **Post Project Monitoring:** In order to determine final impacts of the resettlement activity, a final evaluation cum an impact assessment will be undertaken 72nd month after conclusion of resettlement to evaluate whether the intended objectives were realized. For this, suitable baseline indicators related to income, assets, land ownership, expenditure pattern of key activities, housing conditions, access to basic amenities, demographic characteristics, indebtedness, etc. will be applied. Table 10.2 outlines the criteria that will be applied towards gauging and documenting project impacts.

Support for External Monitoring: It is expected that KeNHA in the capacity of Implementing Agency will identify and procure the services of a competent agency to undertake both the Midterm and Post Project Monitoring. Independent external evaluation will preferably be undertaken by an outside research or consulting agency, university department or development NGO. The tasks of the external agency are to:

- Verify results of internal monitoring;
- Assess whether resettlement objectives have been met; specifically, whether
- Livelihoods and living standards have been restored or enhanced;
- Assess resettlement efficiency, effectiveness, impact and sustainability, drawing
- Lessons as a guide to future resettlement policy making and planning; and
- Ascertain whether the resettlement entitlements were appropriate to meeting the objectives, and whether the objectives were suited to PAP conditions.
- Undertake any other assessment relevant to the resettlement process.

Comprehensive TORs to guide recruitment and conduct of the External Monitoring Expert are provided in Appendix 9.2. Essentially, the TORs outline the core pillars of the evaluation studies namely;-

- Aims and objectives of external M&E in relation to objectives of RAP and Financier Policy
- Information needed to meet these objectives, with reference to the RAP
- Method and approach to provide the information
- Detailed methodology, use of the existing baseline census and survey, periodic updates, sampling frame, arrangements for data collection, collation and analysis, quality control, and development of a recording and reporting system
- Participation of key stakeholders, especially PAPs, in monitoring and evaluation
- Resources required, including expertise in sociology, social anthropology and resettlement
- Time frame for M&E
- Reporting requirements

Table 9.2: Criteria (Themes) in External Monitoring

Component	Unit Total	Completed (%)	Cumulative Achievement Total (%)	Completed (%)	Progress During Reporting Month			Status & Remarks
					Target	Achievement	%	
Resettlement Preparation								
Distribution of Brochures								
Identification of PAPs								
Consultation Meetings								
Formation of CRO/GRC								
Payment of Compensation								
Compensation for land								
Compensation for tree/crop/fish								
Res/Commercial structure								
Payment for rent/leaseholder								
Shifting/relocation costs								
Social Development Activities								

Grant for loss of wages								
Loss of business grant								
Business restoration grant								
Payment for indirect impact								
LIRP activities								

Source: This Study

CHAPTER 10: STAKEHOLDER CONSULTATION

The guiding principle in this preparing this RAP is the need to ensure fairness and fair play developing the proposed by pass road including the need to safeguard the rights of all potentially affected people in light with the Spirit and letter of National Constitution. Section 40 (clauses 3-6) of the National Constitution inter alia, state that the state shall not deprive a person of property of any description unless in the public interest but provided that prompt compensation is available and affected dissatisfied persons have recourse to legal procedure. In light of aspirations of this supreme law and other relevant Policy Tools, an all-encompassing study methodology that involved the full and informed participation of all affected and interested people was designed.

This Chapter outlines the progress and outcome of Stakeholder engagement under auspices of the ESIA for the Mombasa-Mtwapa-Kadzengo -Kilifi Road Project.

10.1: LEGAL FOUNDATION FOR STAKEHOLDER CONSULTATION IN KENYA

10.1.1: Provisions of the National Constitution

Section 35 of the National Constitution 2010 provides for access to information as follows:

35. (1) Every citizen has the right of access to (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom. Further, Section 69 (1) (d) requires the State to encourage public participation in the management, protection and conservation of the environment, thereby giving legal foundation for stakeholder consultation in environmental assessment process. Stakeholder consultation as conducted for this ESIA was partly in fulfilment to above stated legal obligations.

10.1.2: Requirements of EMCA 1999 (Cap 387)

Legal Notice 101 of June 2003 requires that all environmental assessment process in Kenya to incorporate public consultation. This is a requirement informed by the awareness that stakeholders are largely in the constituency likely to be impacted by proposed developments and it is imperative that they be informed of the project following which they can make informed comments and reactions to the proposed development. It is also important to ensure that all stakeholder concerns as well as aspirations are identified and incorporated in project development, implementation and operation. Against such background, a number of consultations have been undertaken with cross sections of stakeholders to the Project Road with objectives as follows:-

- i. To inform primary, secondary and other stakeholders of the proposed development;
- ii. To clarify stakeholder interests and concerns in the Master Plan area;
- iii. To better define scope and magnitude of potential impacts of implementing the Master Plan based on stakeholders' feedback.

10.2: APPROACH TO STAKEHOLDER ANALYSIS

10.2.1: Criteria for Stakeholder Identification/Stratification

Stakeholder identification in the ESIA applied three core criteria as follows.

(i) Fundamental Right Holders (FRH): These may hold fundamental rights to strategic resources in the traverse and receiving area and may include:-

Stakeholders to land: This category includes individual, corporate and other categories of owners and occupants to land and land based resources in the traverse area.

Residents along the traverse: These is the category who will have their lives changed either on account of displacement of private or common property, intensified pressure from land speculators, exposure to traffic accidents, imposition of barriers to movement and access to resources, among others.

Operators of capital resources: This category includes utility providers owning water, power supply and oil pipelines which may be affected by the road,

(ii) Legal Mandate Holders (LMH) within target jurisdiction:

Stakeholders identified under this category include those in National Government, County Government and State Corporations whose mandates confer jurisdiction over areas traversed by the project road. From analysis of the legal framework as documented in Chapter Three, 10 Statutes are deemed to have over-bearing influence on the area to be traversed by the Project Road while simultaneously conferring specific mandates to 9 respective institutions (**Table 10.1**) as the *bona fide* Legal Mandate Holders for the area.

Table 10.1 Analysis of Legal Planning Mandates Covering the Traverse area

SN	Legal Tool	Custodian	Legal mandate	Relevance to Project Road
1	Kenya Roads Act 2007	KeNHA	Development and maintenance of classified roads in Kenya	KeNHA is proponent in the Project Road Project
2	The Physical Planning Act Cap 286	State Department of Physical Planning and County Governments	Coordinate all spatial planning at National and county level	Proposed road development has to harmonize with the CIDP
3	County Government Act of 2012	County Government of Mombasa and Kilifi	Have planning jurisdiction within traverse	Planning for road development has to harmonize with requirements of respective CIDPs
4	Water Act 2002	WRMA	Is legal custodian of national water resource base including riparian areas	All water abstraction in road construction including works in riparian areas require WRMA authorization
		Coast Water Service Board (CWSB)	The CWSB main responsibility is the provision of efficient and economical water and sanitation services to the people of the Coast Region.	CWSB owns the Baricho water Mains Pipeline along the Project Road
5	CDA Act Cap 446	CDA	Coordinate all development	Has undertaken spatial planning for the area under jurisdiction

SN	Legal Tool	Custodian	Legal mandate	Relevance to Project Road
			Planning in the Coast region	
6	Forests Act 2005	KFS	National custodian for all vegetation including that in non-gazetted Kayas and sacred groves	Requires closely monitoring vegetation clearing and offering requisite advice in mitigation.
7	National Land Commission Act 2012	National Land Commission	NLC is legally mandated land Acquiring authority in Kenya jurisdiction on all non-registered land in Kenya	NLC will acquire land for the proposed roads
8	OSHA 2007	Directorate of Occupational safety and Health Services	Has regulatory mandate on Occupational Safety and Health matters.	Road construction sites will comprise working places under jurisdiction of the DOSHS
9	EMCA 1999	NEMA	Has national mandate for environmental regulation.	Need for proposed Roads Project to conform to environmental regulatory standards set by NEMA.
10	Companies Act Cap 486	Kenya Power Transmission Company Ltd (KETRACO)	To build and operate power transmission lines	Road will displace several power transmission lines

Source: This Study

iii) Third party interests (TPI)

This includes any interests outside categories (i) and (ii) such as non-classified access routes traversing the jurisdiction, wildlife migratory corridors in private lands, informal traders, CBOs, NGOs, FBOs within the traverse area.

10.2.2: Stages in Stakeholder Consultations

Stakeholder Consultation in the ESIA process took place in 2 stages as follows:-

- **Preliminary Stage Consultations:** This targeted sensitisation aimed at building consensus on selection of alternative by pass alignments.
- **Design Stage Consultations:** Activities at design stage built on consultations already undertaken at prefeasibility with the aim of consolidating broader stakeholder input in the process.

Progress achieved so far is highlighted in sections below.

10.3: PROGRESS AND OUTCOME FROM STAKEHOLDER ANALYSIS

10.3.1: Preliminary Stage Consultations

Prefeasibility Stage Consultations is summarised in Table 10.2 below. Stakeholder engagement entailed activities as follows:-

- (i) **Public Hearing meetings:-** A total of 6 public hearing meetings were held for purposes of sensitising residents along the proposed traverse on the road development project. Through this method, over 603 residents were accessed while others were met during on the ground traversing.

Table 10.2: Summary of the Pre-feasibility Stage Consultations

Meeting	Date	Target	Attendance
Jambo travellers hotel-Mtwapa	27th June 2018	Leaders for Kilifi County	92
Baobab Resort- Nyali	28th June 2018	Leaders in Mombasa County	52
Kongowea Community Hall	28th June 2018	Public Baraza	233
Mtwapa Community Ground	27th June 2018	Public Baraza	101
Mtwapa Professional Forum	14th September 2018	Plemary Session	50
Dissemination meeting	31st Oct 2018	Leaders from Mombasa and Kilifi	75
Total			603



Plate 10.1: The Meeting at Kongowea Social Hall

- ii) Meetings with Special Interest Groups





Meeting at Jambo Travellers Hotel

iii) Meetings with Special Interest Groups



Meeting at Baobab Resort

Three meetings were held bringing together 198 participants as tabulated below.

Meeting	Date	Target	Attendance
Chief's Office	10 th July 2018	Roadside Traders Leaders	122
MPC Mtwapa	24 th July 2018	Mtwapa Boda Boda Leaders	47
MPC Mtwapa	24 th July 2018	Mtwapa Church Leaders	29
Total			198

(iii) **Focus Group Discussions:** Numerous FGDs were held for purposes of explaining the project to special interest groups namely;- NEMA, KFS, Bamburi Cement Ltd (2 meetings) among others.

(iv) **Key Informant Interviews:** Under this category, a cross section of stakeholders were met and these included; civil servants, local government officials and the local residents. Consultations took place in respective offices and in the field where possible. Consultations were made either with individual officers or in Focus Group Discussions involving several officers in a group. For this category of stakeholders, a semi-structured questionnaire was used. Discussions started with the consultant team explaining the project to the target officer following which, they were asked to identify their fundamental concerns on the same. After discussion, the officers were requested to fill and sign the form administered by the consultant. This system was deemed useful and as a strategy to cut down on paperwork work while capturing signed comments of target informants.

A total of 27 other meetings were held with Key Informants either in or outside of government (Table 10.2). Majority were with GOK and County Departments whose opinion was sought towards harmonizing the proposed development with sectoral policies and strategies.

10.3.2: Comments/Concerns from the Public Hearing Meetings

Core comments and outcome of the Public hearing meetings are summarised in tabular form below.

Table 10.3: Summary of Comments from Public Hearing Meetings

Forum	Core concerns/ outcome
Jambo Travellers Hotel- Mtwapa	<ul style="list-style-type: none"> Kilifi County Government supports the project and will collaborate with KeNHA and National Government to ensure success. Former Mtwapa MP recommended then Mtwapa Intergrated Development Plan that he lobbied for to be harmonized with the proposed road designs. Khan Muhamed stated that one of the major causes of traffic congestion in Mtwapa is the weigh bridges. He suggested the designs to locate weigh bridges away from the main carriage way. Mr. Baya noted that the recent demolitions of structures on the road reserve were done with biasness. Madam Nina stated that Mtwapa has no functional drainage and the proposed road project will further harvest storm water and that proper drainage system should be incorporated in the design. David Wahome suggested that the designs should incorporate footbridges and stages for picking and dropping passengers.
Baobab Resort- Nyali	<ul style="list-style-type: none"> MCA Frere Town requested for provision of bus stops at the service lanes. Mr. Francis noted that a lot of traffic is experienced around sports and ziwa la ngo'mbe and with that the design should

Forum	Core concerns/ outcome
	<p>incorporate foot bridges around the area and all other areas that are highly populated to ease for pedestrian crossing and safety and noted that there was no notice issued on the demolitions on the road reserve. In future demolitions, there should be public participation and people be informed on when the project will begin unlike the previous demolitions of structures on the road reserve.</p> <ul style="list-style-type: none"> • Engineer Howard made it clear that the demolishing was done to recover the road reserve and stated that there is a procedure for demolishing where notices are given and are followed through sensitization meetings where the affected agree on timelines for demolishing so that the owners can salvage any materials they may need. The procedure is important because most of those who have encroached the road reserve earn their livelihoods there. He further urged the stakeholders to help in securing the road reserve and he also noted that there was a program for marking the extent of the road reserve with marker posts which had already started. • The consultant noted that KeNHA is in the process of marking the extent of the road reserve and if there will be any acquisition with the proposed project, there will be compensation that will be followed by a 30-day notice. • The Regional Director KFS noted that the proposed project will affect mangroves and several trees along the road reserve and thus plans of rehabilitation for the degraded areas should be made clear. • The consultant noted that an inventory of all the mangroves damaged will be done and compensated by planting them somewhere else. Trees to be cut are those that will be on the construction area and the same types of trees will be replanted during reforestation. • Marine Officer from NEMA regional coordinator emphasized the need for Environmental Management Plan factoring in on how to manage forestry; identify the size of area to be affected and compensate the same area of lost cover. He also suggested that it would be important to identify where the storm drain will drain to avoid affecting another place. • The consultant made it clear that the proposed storm drain will be provided underneath the road and discharge at Nyali creek. The discharge will collect oils and other pollutants which will collect at the sea. However, there will be installation of grease filters and the necessary measures to reduce contaminants discharging into the sea will be applied and that all run off will be treated before it is disposed into nature. • The Marine officer advised that it should be ensured that the design does not omit footbridges in the most critical areas

Forum	Core concerns/ outcome
	<p>and that mapping should be done for the entire corridor to identify where people are crossing frequently and install footbridges.</p> <ul style="list-style-type: none"> • KWS Officer noted that the marine park neighbours the corridor and the drainage will affect the coral reefs because of the sediments and will also lead to soil erosion. The consultant made it clear that sediment traps will be applied in discharging run off and will not be discharged in any coral reefs. • Design Engineer from Mombasa Water Sanitation and Supply requested for provision of adequate road crossings for pipelines at designated intervals, underground service tunnels as opposed to foot bridges since the tunnels will serve the pedestrians and provide for the pipelines way leave and are also easier to clean and maintain as compared to service ducts. Also adequate way leave for other utilities like electricity poles and the network cables. Adequate notice to be given to the owners of such utilities so that they can be moved before construction commences. • Francis Mwange from PCEA Milele Church was concerned how people will be able to access the road at bamburi since there will be an interchange. It was agreed that there will be an interchange at Mtopanga and service lanes and since the design is still in the development stage, there will be considerations for all the accesses. • Archeologist from National Museums of Kenya stated that there are several monuments along the corridor; Kengeleni bell tower, A.C.K Emmanuel Church Frere town and an adjacent school, Kongowea cemetery which is the only identity of Frere people to their cultural heritage. At Mtwapa creek, there is archeological resource since the ancient community might have occupied the area and if there will be any excavations, it should be ensured that the archeological resource is covered. • It was agreed that there will be further consultations with the National Museums of Kenya. • The area chief Mkomani requested for clarification on whether those who were affected by demolitions on the road reserve would be compensated for the loss. • Development board member from the MCA'S office suggested that during implementation the community should contribute by providing human resource for skilled and unskilled labour. It was agreed that the community has a right to employment and sub- contract and in every big project, there has to be 40% contribution from the community including employment and trade. • Assistant Chief Shanzu requested leaders on the ground to be involved in any project and stated that they were not

Forum	Core concerns/ outcome
	<p>consulted in the previous demolishing and urged that similar stakeholder meetings be conducted at the grassroots.</p> <ul style="list-style-type: none"> • Village elder Frere town stated the importance of involving the local administration in mapping of structures to be affected and copies of those affected and what to be affected to be distributed to the community. • MOKIFA chairman noted that in some of the projects there has not been replanting of trees and requested the proposed project consider landscaping and replanting of trees that have been cut during the construction
Mtwapa Baraza	<ul style="list-style-type: none"> • The community supports the project and also want to be part of the development. • The traders requested a space to be segregated for them along the road reserve after the construction to allow them continue operating their businesses. • The traders requested that a market center be constructed for them to allow them operate their businesses with minimal disturbance. • The proposed project along Mtwapa is an overpass and the consultant recommends that the traders to have a place for them to operate below. • The traders request compensation for lost property and businesses. The Consultant assured the community that anyone who will be affected by the project or their property, there will be an inventory of all those affected and their property and a report will be submitted to the NLC who decide on the compensation. • The extent of the road reserve should be clearly marked.
Kongowea Baraza	<ul style="list-style-type: none"> • The traders requested that the extent of the road reserve be clearly marked. It was agreed that KeNHA had started marking the road reserve and assured the community the extent will be marked clearly with marker posts. • The community requested that before demolitions in the future, there should be a public participation forum and when the landlord is issued with a notice, the tenants should also be informed. • Traders claimed that demolitions had led to destruction of property and loss of businesses • Traders requested compensation for property destroyed and business lost during demolitions. • Most traders had acquired loans to run the affected businesses. • The demolitions exceeded the extent of the road reserve. • The Consultant stated that if anyone will be affected or their property, the necessary procedures will be followed where there will be an inventory of all the assets, valuation will be done and the report submitted to NLC. He also added that

Forum	Core concerns/ outcome
	those whose businesses will be affected, they will receive six months compensation of average income.

10.3.3: Comments/Concerns from Special Interest Groups

Comments from this category are summarised in Table 8.4 below.

Table 10.4: Comments from Special Interests Groups

Forum	Core Issues/Outcome
Roadside Traders Leaders	<ul style="list-style-type: none"> • A census survey will be carried out on all the roadside traders. • The area chief urged the leaders of roadside traders to work closely with estate elders in order to provide a genuine list of truly affected individuals. He cautioned the estate elders and leaders not to serve their own interest and exaggerate the list. • The survey is not to be used for compensation of the roadside traders but it will help guide in project decision. • The leaders asked for a fresh count of the traders and not use the list provided during the meeting on 28th June 2018 since the list had not captured all the roadside traders who will be affected by the proposed project. • It was agreed that the leaders will only be given lunch allowances since the exercise will also help them in identifying all the traders in their areas. • It was agreed that for the sand traders, only those selling along the road reserve and their employees will be enumerated but not their clients. • It was made clear that during the census only basic information will be collected but after the census, some traders will be sampled for socio-economic survey after obtaining the actual number of traders.
Mtwapa Bodaboda Leaders	<ul style="list-style-type: none"> • All feeder roads to be provided with smooth access with the proposed project since most bodaboda operators use the feeder roads. • There is a likelihood that the bodaboda stages will be affected and the operators requested that the proposed project to consider providing bodaboda stages. • Provide local employment opportunities during implementation. • Since the proposed project will be a highway, there will be more traffic and the project has to consider the safety of the people by providing footbridges and underpasses to reduce potential accidents. • Provision of bus stops and parking shade for the bodaboda. • Capacity building to be done for the motorists and pedestrians since most of them are not conversant with traffic rules and road usage.

	<ul style="list-style-type: none"> • The current Mtwapa Bridge experiences drainage issues; water collecting at the bridge and requested this be addressed in the proposed bridge. • Use proven technology to protect the bridge and not road blocks since it causes traffic. • Provide security at the footbridges and the underpasses.
Mtwapa Church Leaders	<ul style="list-style-type: none"> • It was agreed that land acquisition will be done from plots adjacent to the road reserve which will be compulsory acquisition but for the earlier demolitions, it was for property on the road reserve. • On acquisition of land with no title deed, the constitution empowers the National Land Commission to negotiate with the non- title deed holder and compensate them on good faith. It was made clear that the consultants will not be involved in solving land disputes but only record and forward to National Land Commission. • The current Mtwapa Bridge cannot withstand the anticipated traffic but it will still remain to be used as a service lane or pedestrian walkway. • Traffic surveys and census will be conducted to determine the location of crossing infrastructures. • Footbridges and underpasses to be provide near the various institutions for easier crossing by the pedestrians and even cater for the need of people with disability and the elderly. • Access to the churches should not be restricted during construction. • Provide adequate information and give advance notices before conducting activities that affect people's properties. • With the proposed acquisition, there will be no destruction of private property before compensation, notices will be issued and the affected given time for salvage their property.

10.3.4: Comments/Concerns from Key Informants and Lead Agencies

A total of 40 Key Informants were consulted in Both Mombasa and Kilifi Counties with outcome as tabulated in 8.5 below.

Table 10.5: Comments from Key Informant Interviews

Institution	Name	Designation	Issues Raised
Department of Environment	Dr. Neto	Chief Officer- Environment	<ul style="list-style-type: none"> • Raw materials for road construction will be mined from the town resulting to open quarries and thus there should be proper management plan to mitigate on the impacts.

			<ul style="list-style-type: none"> • The county is thinking of rehabilitating quarries and may be interested in waste generated during construction to backfill the quarries. • Sensitive areas along the traverse are the Mtwapa creek and Haller Park. • The livelihood earners along the road to be clearly documented. • Dust must be well managed since most hotels and restaurants are along the road. • Construction should not disrupt traffic because there are a lot of activities along the traverse particularly Kongowea, Bombolulu and Pirates. • The stretch between VOK and Bombolulu has poor drainage and needs to be addressed. • There is heavy traffic along Kongowea, Mwishomoroni, Kisauni and Nyali and designs to provide correctional measures (interchanges) at heavy traffic junctions.
Mombasa County	Stephen Wambua Kitunga	County Director	<p>The following are issues that should be considered;</p> <ul style="list-style-type: none"> • The road traverses sensitive ecosystem (Mtwapa Creek) • Flooding around pirates should be solved with the proposed project. • There should be a compensatory program for Mangroves that will be destroyed along Mtwapa Creek. • There is likelihood of siltation of the Mtwapa creek hence need for a comprehensive mitigation plan. • Provide a documented plan for implementation for dust mitigation. • All borrow pits to be subjected to EIA if not captured under the current study. • All borrow pits to be subjected to EIA • Traffic management plan to be developed for implementation with clear alternative routes. • Storm water drains to be provided in the design and implemented. • Walkways and foot bridges to be provided in the design and implemented. • Full disclosure of the proposed project to all relevant and interested stakeholders.
National Museums of Kenya	Philip Wanyama	Archeologist	<p>The likelihood of availability of cultural resource e.g. archeological material and natural heritage resource of sacred forests within the traverse and National Museums of Kenya team should be involved during feasibility and pre-development</p>

			<p>planning of the proposal development both in Mombasa and Kilifi counties.</p> <p>Heritage resource can be known (declared as monument as per Heritage and Museum Act 2006).It can also be unknown since archeological material is presumed to be available anywhere and thus proved/unproved through scientific study.</p> <p>National heritage can also be found both on land and underwater contexts.</p>
NEMA Regional Coordinator	Martin Shimba	Compliance/ Enforcement	<ul style="list-style-type: none"> • There should be close collaboration with department of trade on how to engage the small traders at Nyali and Bombolulu who will be displaced. • The road should not hamper movement of people along the public beach. (Human traffic is high during weekends and school holidays. • There is a likelihood that Mangroves and marine life at Mtwapa creek will be impacted and a study should be undertaken to assess the impacts. • Compensation should be effected for any acquisition along the traverse. • A study should be done on the wetland at KwaKadzengo to assess biodiversity/hydrological impacts and WRA should be involved. • Find out on any proposed infrastructure like water, communication or sewer from Mombasa County Government and Kilifi County Government and find out how they can be integrated with the proposed road development. • Design of the road should take into account future developments.
	James Kamula		<ul style="list-style-type: none"> • There should be compensation for any loss of mangroves to be experienced at Mtwapa creek. This can be done by providing in the EMP planting of mangroves elsewhere covering same area or more to be affected. • A comprehensive social and economic assessment should be done to establish the number of homes and businesses to be affected and compensation should be done to the affected. • Project has the potential to make flood situation in Mombasa worse if the dual carriage is done without drainage thus the design should incorporate drainage systems to take care of surface run-off.

			<ul style="list-style-type: none"> The traffic is likely to get worse if dual carriage is done without interchanges at road junction points like Bamburi and lights.
Kenya Forest Service	Simon Wahome	Regional Director	<ul style="list-style-type: none"> Mangroves will be affected meaning marine ecosystems will be displaced even though minimal. There should be rehabilitation through replanting of mangroves in the neighboring lands. Trees will be cut along Nyali- Mtwapa road affecting the good scenery. Permits should be acquired from KFS before cutting the trees and plot owners neighboring the reserve should be encouraged to plant trees. Environmental management plan to factor in all trees. There is a need to come up with an inventory of all the trees animals within the project area. Endemic birds are found in ArabukoSokoke forest and thus the project area is an important bird area.
Coast Development Authority	J. Wainaina	Manager engineer services	<ul style="list-style-type: none"> Three areas currently experience traffic bottlenecks; Nyali junction, Bombolulu and Mtwapa- hence design to be considerate of pedestrians and should not disrupt flow of pedestrians particularly around Kongowea market. Provide footbridges at key markets and junctions and an additional foot bridge at maweni junction. Underpasses are not recommended due to security matters. Consider another bridge only dedicated to Nyali traffic while the current one remain for north bound traffic.
Department of Trade, Industrialization, Cooperative Development	Abdulwah Mbarak	Chief officer	<ul style="list-style-type: none"> The county has lost revenue as a result of the demolitions and has not been able to settle the traders who were affected by the demolitions. 2 types of traders will be affected; those operating on the road reserve and those operating within a shop. The county proposes a piece of land to be acquired for the traders and proposes VOK land since it is easy to acquire public land than private land. Traders operating outside Kongowea be captured especially those using hand carts should be considered.

Kenya Urban Roads Authority	Eng. Abdul Majid Salim	Assistant director	<ul style="list-style-type: none"> • Consideration of facilities like foot bridges to allow free movement of pedestrians once the road is dualled. • Check with county government on Mombasa storm water drainage master plan study since storm water drainage is a challenge for the area particularly bombolulu
Department of transport, Infrastructure and public works.	Eng. Albert T. Keno	Chief officer	<ul style="list-style-type: none"> • Flooding around bombolulu should be addressed in the proposed project. • Traffic Management at designated turning points to avoid direct access to main carriage way. • Service lanes to be incorporated all the way. • Design to incorporate footbridges, street lighting along the stretch for security purposes. • Take care of the displaced persons using the necessary procedures.
Youth, Gender, Sports and Cultural affairs Department	Joseph Kamau Elvina Mzungu	Manager Snr. Social Worker	<ul style="list-style-type: none"> • Displacement of youth, women and PWDs who may have benefited from county through loans to run their businesses. They should be compensated where possible through a compensation plan. • Provision of jobs to the local youths, women and PWDs; all semi-skilled and non-skilled jobs be given to the local people and procurement opportunities following best practice. • There's an APDK workshop around Bombolulu-Safety measures should be put in place. • Provide foot bridges where necessary for safety. • Provision for sensitization meetings during implementation since there are several social concerns among them are; <ul style="list-style-type: none"> • High unemployment rate • High illiteracy level • Mismatch in skills • Drug and substance abuse. • Prostitution • HIV/AIDS • Street families • Gambling
County Government of Mombasa		County Secretary	Consult widely on displacement and where land acquisition is eminent involve NLC Utility services will be affected by the road development, therefore consult and integrate available plans e.g. ISUDP (MV2035) and Mombasa city master plan.

Water Resource Authority	Susan Mwangi	Ground Water Officer	<ul style="list-style-type: none"> • Ground water resource pollution and over abstraction of ground water resources. • There should be compliance on all activities touching water resources. • A study should be carried out on the KwaKadzengo wetland to assess the impacts. • Continue in a regular basis engagement during the entire project period.
County Occupational safety and health officer	Samuel Kimani	County Occupational Safety and health officer	<p>KENHA should engage with DOSH to ensure smooth running of the project.</p> <ul style="list-style-type: none"> • There should be adequate induction of the workers to ensure they are aware of their rights in safety health and welfare. • There may be need for KENHA to facilitate DOSH execute its mandate by for instance building capacity.
Ministry of Agriculture, Livestock and Fisheries	Hassan Mwamtoa	County Executive Committee Member	<ul style="list-style-type: none"> • Drainage and storm water can be harvested and redirected towards Mwakirunge to provide for the much needed water for irrigation. The county can provide political good for the same. • There are two landing sites at Mtwapa which will be affected; marina and kidongo. The fisheries department should be notified on any meetings in order to send representation. • There is a proposed fish caging along Mtwapa Creek. Plans have been fronted at the county level for fish caging along the creek. • The creek is also a breeding area for various fish species thus there should be minimal impact on mangroves because when affected the entire breeding province of marine fish is affected. • Involve the fisheries department at all level of planning.
Shimo La Tewa Prisons	J.M Maingi	Officer in Charge	<ul style="list-style-type: none"> • Compensation should be done prior to start of any civil works. • Restrict acquisition on the right side of the prison • Provide direct access to the prison and avoid underpass and Foot Bridge near the prisons. • Avoid raised roads and consider via ducts near prison. • CSR- Consider renovating and building a new wall for the prison. • Design to provide crossings for staff and designated bus stop for prison staff and family whose population is 3,000.

			<ul style="list-style-type: none"> • Compensate for all trees and tree nurseries but should allow the prison to salvage all their trees and other affected property. • Consultations should also be done with the regional headquarters (Coast), Prison headquarters (Nairobi) and the ministry.
Shanzu Law Courts	Robert Kioko	Executive Officer	<ul style="list-style-type: none"> • Development of a highway is welcomed and will correct constant traffic congestion along the road. • Provision of access points to the court should be considered.
Kenya Wildlife Service	Sirya Mwakkamsha Karisa		<ul style="list-style-type: none"> • Flooding and drainage system mostly from the main tunnel that might emanate from Bombolulu – Nyali site might carry insolvent sediments into the sea and other pollutants which might smother coral reefs, speed the growth of damaging algae, and lower water quality. • Sea level is rising at about 1 millimeter per year, which, under normal circumstances, habitats can adapt to, but the loss of inshore coral reefs and coastal mangrove forests adds to the potential damage caused by sea level rise and coastal erosion. Already the loss of coastal land due to erosion is an ever-growing concern to developers along the Coastal line. • Terrestrial sediment fluxes can result in increased sedimentation and turbidity in receiving marine waters, with detrimental impacts on coral reef ecosystems. • A water harvesting and collection facility to be thought as a better alternative and a more viable solution to environmental related problems. When this water is well treated, it could be useful to the 2 Counties – Mombasa and Kilifi - in many ways.
Mombasa Water Supply & Sanitation Company	David Ngumbao	Planning and Design Manager	<ul style="list-style-type: none"> • Provision of adequate pipeline crossings and service tunnels that is free from infrastructure on top of it. Wayleave should be adequate enough to allow for access and maintenance. Service tunnels would be ideal for bigger diameter pipelines of diameters of equal to or exceeding DN200mm. pipeline crossings for smaller diameter pipelines of diameter of and not exceeding DN150mm may be provided as service ducts of adequate diameter for ease of operation and maintenance.

			<ul style="list-style-type: none"> • Design to consider providing pedestrian under passes which may double as pipeline service tunnels. • Acquisition of land for the road project should consider provision of adequate pipeline way leave for relocation of existing water and waste water assets or proposed pipelines. • Design for relocation of water and waste water assets should be undertaken concurrently with the road design to avoid overlooking some concerns. • The consultant and KeNHA should maintain the good communication throughout the project period.
Kenya Power Lighting Company	Mzee Mwajabe	Property expert KPLC	<ul style="list-style-type: none"> • The draft design should establish how many lines are affected and the study should incorporate space of relocation for utilities. During acquisition, there should be acquisition for utilizes on the road reserve. • The road reserve is the best corridor for the utilities because of ease of maintenance and safety. • In most cases the design incorporates acquisition for road reserve but during implementation it appears it was not acquired thus becoming a challenge. • The time of relocation is handled on case to case basis and delays affect delivery of services to people which at times goes contrary to the agreement and according to the Energy Act KPLC has the mandate to provide power 24hrs a day, 7 days a week. • Walkways, bus parks and stages should be incorporated in the design.

10.4: WAY FORWARD WITH THE STAKEHOLDER ENGAGEMENT PROCESS

10.4.1: Public Review as part of the ESIA Process

Stakeholder engagement is a continuous process. With the ESIA process now proceeding to the Public Review Stage, it is expected that more stakeholder comments will be received to further shape and inform project development.

10.4.2: Public Hearings by the National Land Commission

Upon receipt and verification of the RAP Report and Assets Register submitted by KeNHA, the National Land Commission will move to gazette all lands targeted for acquisition following which public hearings will be staged to receive and scrutinise all claims. This forum offers an additional opportunity for resolution of outstanding/emergent stakeholder concern not addressed in the RAP Process.

CHAPTER 11: CONCLUSION AND RECOMMENDATIONS

11.1: OVERVIEW

This study set out to prepare a legally anchored framework to guide resolution of all displacement impact occasioned by the GOK and AfDB funded project in the dualling of the Mombasa-Mtwapa-Kwa Kadzengo-Kilifi Section of the A7 Highway. Development of the Project was guided by an overriding goal of minimizing displacement impact coupled with formulation of a RAP to resolve any inevitable displacement.

11.2: DISPLACEMENT IMPACT

11.2.1: Land assets

Outcome of the Census Survey/ inventory of potential PAPs is summarized in Table ES 01. From inventory of PAPs undertaken, development of the 56.1Km Road Project inclusive of a the Second Mtwapa Bridge is likely to affect a total of 378 land parcels accounting for 19 hectares of land. Bulk of land is public owned by institutions such as NITA, KRA, Mombasa School for Physically challenged, State Department of Water, Shanzu TTC, Shimo la Tewa Primary School, Shimo la Tewa Prisons and Shanzu Law Courts. With the exception of the last part of the Bamburi-Shanzu transect, which are essentially low density population areas. the Project traverse is essentially through urban and peri-urban high-density settlements which explains the high number of plots traversed.

11.2.2: Total structures

The entire road project will displace a total of 273 structures shared at a ratio of almost 76.2/ 23.8 between Mombasa and Kilifi. 208 structures equivalent to 91.9 % of total tally are single storied and mainly semi-parament. Total tally of buildings standing 3 storeys and above is 4 with the highest being 4 storied. The Mombasa Section (Lot One) of the Project traverses some heavy population density settlements on which account, displacement is likely to be high. The bulk of displacement is encountered between Km 0+800 to Km 4 + 200 where the project traverses the three informal settlements of VOK Settlement, Ziwa La Ngombe and Bombolulu in Mombasa County. The rest of the traverse is through land commanded by Institutions and Corporate Players such as Bamburi, Shanzu TTC, Shimo la Tewa Prison among others.

11.2.3: Potentially displaced population

Computation of the potentially displaced population has been informed by provisions of OS2 of the AfDB which covers:- economic, social and cultural impacts associated with Bank-financed projects involving involuntary loss of land, involuntary loss of other assets, or restrictions on land use and on access to local natural resources that result including:-

- Relocation or loss of shelter by the people residing in the project area of influence;
- Loss of assets (including loss of structures and assets of cultural, spiritual, and other social importance) or restriction of access to assets, including national parks and protected areas or natural resources; or
- Loss of income sources or means of livelihood as a result of the project, whether or not the people affected are required to move.

Going by provision of OS2 of AfDB which is considered more comprehensive that Kenyan legal framework for compensation in compulsory acquisition, 3 categories of PAPs can be recognised in the Projects Area of Influence namely;

- (i) Those who have formal legal rights to land or other assets recognised under the laws of the country concerne
- (ii) Those who may not have formal legal rights to land or other assets at the time of the census/evaluation but can prove that they have a claim that would be recognised under the customary laws of the country
- (iii) Those who have no recognisable legal right or claim to the land they are occupying in the project area of influence and who do not fall into either of the two categories described above, if they themselves or witnesses can demonstrate that they occupied the project area of influence for at least six months prior to a cut-off date established by the borrower or client and acceptable to the Bank A total of 1531 PAPs falling in the 3 categories are likely to be displaced. Property owners are significant at 16.12% but are likely to account for the bulk (81.7%) of the compensation budget (land 68.4% and structures 13.3%).

11.2.4: Displacement of livelihoods

Project development will displace 572 business tenants and 120 employees accounting for 45.2% of all PAPs.

11.2.5: Displacement of Trees and crops

A total of 7269 assorted trees are likely to be displaced in the dualling of the Mombasa-Mtwapa-Kadzengo-Kilifi Road.

11.3: RECOMMENDATIONS

Fair, just and prompt compensation: This RAP recommends that fair and just compensation be paid promptly for all livelihoods, shelter and assets marked for displacement by the Project. Article 40(4) of the Constitution should be invoked to allow compensation for land and developments to non-title deed holders and squatters who have no access to any other land and shelter.

In all cases, compensation will be paid upfront of site hand-over to contractors in order to allow all aggrieved parties adequate time to amicably resolve disputes.

The need for PAP revalidation before compensation: PAPs and properties are dynamic and property trading is very vibrant within the traverse area. As such, and in order to safeguard interests of new purchasers, asset inventory as conducted for this RAP should be revisited at the time of compensation.

Management of the time lag between the RAP Process and actual compensation: The RAP Process served to arouse expectation for prospective monetary gains amongst PAPs which are subsequently quite high. It is important that such expectations be toned down through regular release of information especially on project timelines.

More severely, soaring expectation is likely to stimulate property market in the neighbourhood with the consequence of pushing up market prices for land to way above current levels. As such, there is a possibility that, if compensation is delayed, the Compensation Bill will skyrocket on accounts of a thriving property market. All efforts should be made to effect payment in the course of 2019 to cut down on escalating costs.

Volume Two-Appendices :

Appendix One: Profiles for the RAP Team

Appendix 3.1: Assets Registers:

3.1(a): Assets Register for Mombasa Island

3.1(b): Assets Register for Mombasa Mainland South

Appendix 3.2: Pictorial Assets Register

Appendix 6.1: PAPs Committees

Appendix 8.1: Costed Assets Registers

Appendix 9.1: Format for Internal Monitoring

Appendix 9.2: Terms of Reference for External Monitoring Consultant

Appendix 10.1: Record of Stakeholder Consultations