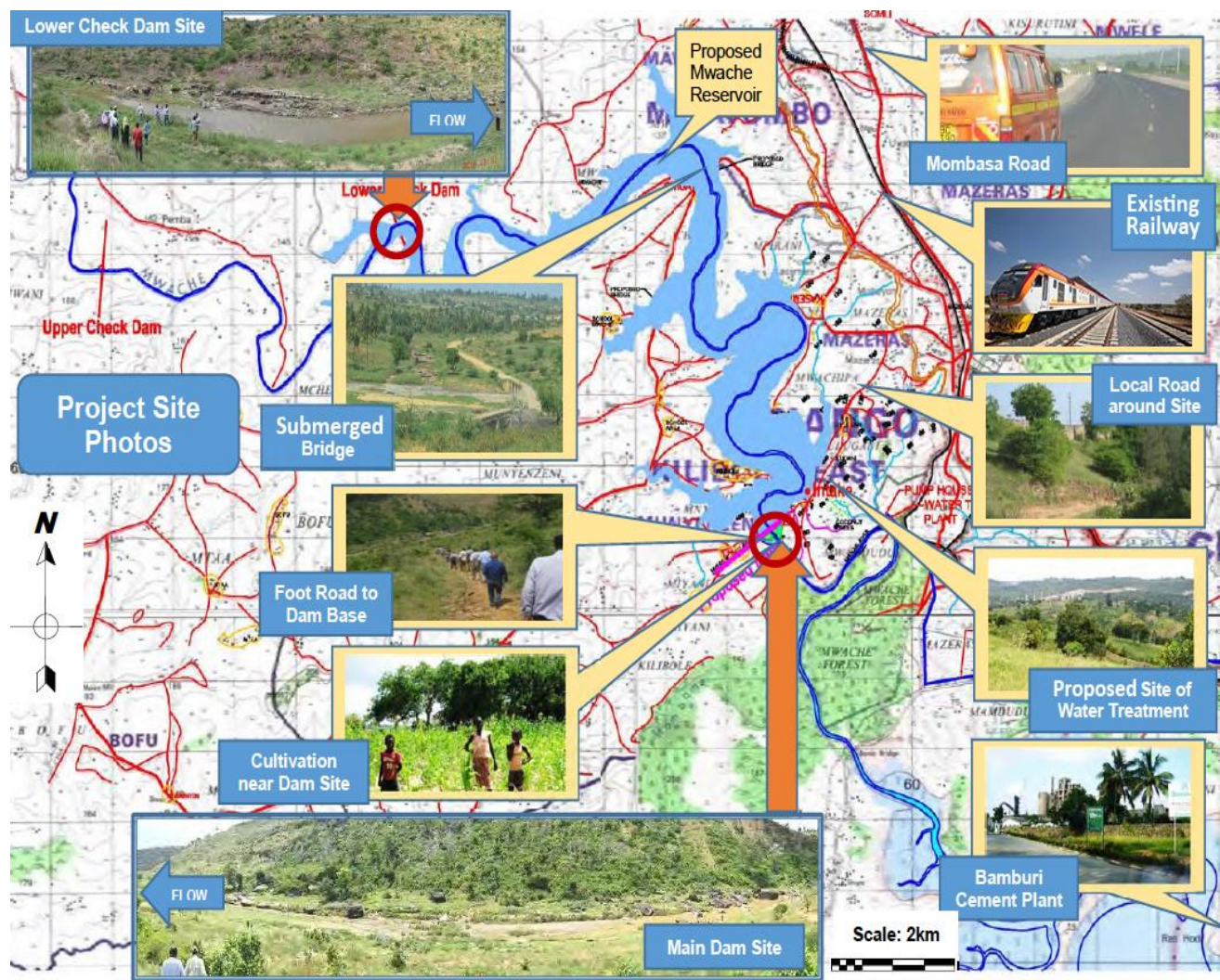


# RESETTLEMENT ACTION PLAN (RAP)

## Mwache Multipurpose Dam Project RAP 1

MINISTRY OF WATER AND SANITATION, KENYA



## Revised Draft Final Report- Vol.1-RAP 1a

JUNE 2019

KENYA WATER SECURITY AND CLIMATE RESILIENCE PROJECT (KWSCRIP)

## EXECUTIVE SUMMARY

The Government of Kenya (GOK) received credit financing from the World Bank through an International Development Association (IDA) loan to implement activities and projects under the Kenya Water Security and Climate Resilience Project (KWSCRП).

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

- Increasing the supply of bulk water to Kenya’s coastal region, including Mombasa; and
- Increasing access to water in the coastal region including Mombasa,
- Developing a demonstration irrigation project

One of the potential investments identified under the KWSCRП 2 is the Mwache Multipurpose Dam Project, a Vision 2030 flagship project, which has been given high priority by the Ministry of Water and Sanitation (MOWS), Kwale and Mombasa Counties.

This Resettlement Action Plan (RAP) referred as RAP 1 (split into Vol 1-RAP 1a and Vol 2-RAP 1b) has been prepared for Mwache Multipurpose Dam Project’s Main Dam and Lower Check Dam project areas and will be implemented by the Government of Kenya through the Ministry of Water and Sanitation (MOWS). Two separate Resettlement Action Plans; RAP 2 which is under preparation and RAP 3 which will be prepared later will cover areas affected by the proposed Upper Check Dam and additional roads around the dam area respectively. The main dam, lower and upper check dams will be located in Kwale County, Kinango Sub County in Coast region of Kenya. The main dam and lower check dam project area covers two administrative wards, three locations and 20 villages within Kinango Sub County. A total of 2,460 PAHs and 8 public Institutions will be affected as a result of this project.

### **Justification of RAP Review and Update**

The purpose of the Resettlement Action Plan is to identify and outline the resettlement needs and related impacts of the dam project, provide actions required to acquire land and relocate people affected by the Mwache Dam Project with provisions for livelihood restoration and grievance redress. The proposed project components related to construction of the dam requires compulsory acquisition of land and therefore leads to economic and physical displacement of persons who are within the proposed project area and therefore triggers the need for a Resettlement Action Plan (RAP) in accordance with OP. 4.12.

This RAP has been reviewed and updated and stems from the original RAP prepared in 2014 which was approved and disclosed by GOK and World Bank at that time. The reasons for reviewing and updating this RAP include: -

1. Delay in implementation of the RAP prepared and disclosed in 2014 which renders the census, socio-economic data, asset inventory and valuation data, cut-off date etc. outdated and not reflective of the current situation on the ground in view of the fact that the time lapsed implies a possible change in number of PAHs and changes in value of assets, socio-economic status, number of structures and change of land ownership through ‘willing buyer willing seller’ purchase or inter family transfer etc.
2. In order to optimize the dam operations, a design review was undertaken in 2016-2017 which triggered changes in the original dam design including among others: -

- Increase in dam height from 78m to 84m hence increasing the reservoir/flooded area and displacement footprint.
- Addition of other project components requiring land acquisition including silt pile area (for depositing of silt) that will be periodically removed from lower check dam; inclusion of access roads; inclusion of a health center and police station at the dam operation area that will require additional land. The dam operation area will in future accommodate the AFD financed water treatment plant.

### **Scope of RAP Review and Update**

The Resettlement Action Plan for Mwache Dam Project has been split into 4 RAP documents i.e. RAP 1a, RAP1b, RAP 2 and RAP 3 for ease of management of RAP preparation and implementation processes and in view of anticipated phased construction program and the wide geographical expanse of the dam project footprint and related resettlement needs.

### **Mwache Dam Project components and Impacts**

#### **RAP 1**

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

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

RAP 1a will cover ALL of Priority 1 works areas i.e. the lower check dam site and quarry site areas (part of which are in Mwavumbo Group Ranch) and main dam site and some operational areas, ALL of Priority 2 areas i.e. part of main dam operational and reservoir areas and PART of Priority 3 areas (part of main dam operational and impoundment areas and part of the lower check dam reservoir areas , silt pile) and Access roads A, F,& H, C, G and J.

RAP 1b will cover PART of Priority 3 i.e. the rest of the main dam and lower check dam reservoir areas all of which are within Mwavumbo Group Ranch.  
(Refer Annex 4)

#### **RAP 2**

RAP 2 will cover all resettlement activities associated with the upper check dam and pilot irrigation scheme areas. Works for upper check dam and pilot irrigation scheme are at design stage while the RAP is under preparation as well.

#### **RAP 3**

RAP 3 will cover all the remaining roads; E2 (15.8km), D (2.5km), the proposed permanent diversions (3km + 1.5km) which will all be greenfield roads and roads B (5.4km) and E1 (4.2km) which are existing roads. The development of the greenfield roads will involve acquiring additional land and will be needed and constructed in preparation for impoundment of the main dam and lower check dam reservoirs while the existing roads will be upgraded.

This report is part 1 of 2 reports and covers only RAP 1a. Part 2 of the report will be RAP 1b which is currently at an advanced stage of preparation. It will mainly comprise of PAP data and information and related summaries and various PAP categories similar to those represented in this RAP 1a. RAP 1a and RAP 1b are therefore considered one report (RAP 1) split into two parts.

### **Reason and implications of splitting RAP 1 into RAP 1a and RAP1b**

It was found in March 2019 that much longer time is required than expected to complete the new census within the MGR (for acquiring approximately 493Ha land under RAP1 (40Ha under RAP 1a and 453Ha under RAP 1b) out of a total MGR area of 24,908Ha). 453Ha is now being apportioned to the affected individual ranch members in the remaining sections under the ongoing RAP1b census. Upon consultation with Bank team, the GoK team decided to split RAP1 into RAP1a and RAP1b to be able to complete the RAP1a in April 2019. The splitting of RAP 1 will have NO implications on the integrated resettlement-construction schedule as the timing of implementing and completing resettlement activities in P1 and P2 remains the same as before.

### **RAP 1 Project Components**

The RAP 1 comprises of the components described below.

#### **a) Main Dam**

The main dam is located at Fulugani village, Kasemeni Ward, Kinango Sub-County of Kwale County, about 22 km northwest of Mombasa City. The proposed dam falls within the drainage system of Mwache and Mnyenzi rivers and their tributaries. The proposed dam is a concrete gravity dam with a height of 84m and with a reservoir capacity of about 118 million m<sup>3</sup>. The dam with its reservoir will supply domestic water of about 186,000m<sup>3</sup>/day to Mombasa city. The main dam has the following components.

The following are the sub components of the main dam and will be located in the area defined as main dam operational area.

- **Raw Water Transmission Pipeline**

This will be a gravity fed 500m long pipeline from the dam intake to the proposed water treatment plant. The pipeline will evacuate raw water from the dam to the water treatment plant. The land required for the laying of this pipeline is part of the land being acquired within the main dam operation area.

- **Raw Water Treatment Plant**

Agence Française de Développement (AFD) is funding the raw water treatment plant and has commenced detailed design studies. The location of the water treatment plant is within the main dam operational area and even though it is considered an associated facility, its land requirements are covered under this RAP.

- **Office, Police Post and Health Clinic**

The project will construct office facilities, police post and a health facility (clinic) within the main dam operation area. The office will initially be used by the supervising engineer then handed over to the operator upon commissioning of the project. The police post will accommodate security personnel to protect the dam and associated infrastructure while the health facility will initially provide medical services to the dam construction staff during the construction phase and will be handed over to Kwale County after the dam is completed for

use by the local community members. The land required for the office, police post and clinic is within the dam operation area.

- **Material Site (Quarry Area)**

A quarry site has been identified approximately 10km upstream of the main dam operational area. It is in close proximity to the existing Mwache Bridge along Mazeras - Kinango Road. The quarry site is part of the main dam reservoir area and will be flooded by the dam. The construction team will have sourced all the required construction materials from the quarry site before impounding the reservoir.

- **Base Camp for provision of accommodation facilities for dam operators**

A base camp will be designed and constructed for provision of accommodation and recreational facilities for the operator. It will be located on the west bank of Mwache River about 2 km north of the main dam operational area. The base camp will be built on an area of approximately 10ha and will comprise of 30 residential houses and community facilities. The base camp will be separated and different from the construction workers' accommodation camp, whose actual ground location will be determined and camp constructed by the contractor within the land acquired under this RAP. The base camp will serve as the dam operational and administrative center after the construction works are completed and the dam is operational.

- b) Lower Check Dam**

The proposed lower check dam is located approximately 8.1 km upstream of the existing Mwache Bridge and approximately 17.9 km from the main dam operational area. The lower check dam will be of concrete gravity with 29 m high. The lower check dam is designed to act as a silt trap for holding sediments originating from the degraded catchment with the objective of reducing siltation into the main dam. If the sediments were not to be trapped into the check dam, they would compromise the water holding capacity of the main dam. The silt will be removed periodically from the lower check dam and stock piled on the 130ha area identified next to the lower check dam before being utilized by the local communities or disposed of. Depending on the physical and chemical characteristics of the silt, it will either be collected by the local communities from the silt pile area for nutrient enrichments of their farm lands or it will be sold within the county for use as construction material. The stocked silt material will benefit members of the PAP and Host communities who will form committee(s) to manage the silt distribution.

- c) Access Roads**

Three (3) existing roads within the main dam and lower check dam areas will be expanded and rehabilitated and three (3) new ones will be constructed to ease access to the different project construction sites. The existing roads are A, F & H and are owned by Kwale County and Kenya Rural Roads Authority (KeRRA) while the new roads are C, G and J are routed within the main dam operation area.

The roads will be expanded and/or rehabilitated to allow for easy passage and movement of construction equipment and general vehicular traffic. The expansion and rehabilitation activities will occur within the existing Right of Way (ROW) hence no additional land will be acquired. However, the ROW is encroached with human settlements. The affected households will be compensated for the developments done on the RoW and resettled elsewhere away from the road reserve. Roads are mainly for ensuring equipment movement and access to the different locations of the project components.

The project will not block any existing access road nor footpath used by the community members in particularly accessing Mwache forest where traditional medicines are found. As a safeguard for any emerging access needs after fencing off the operation area, the project will leave access path between the SGR line and the main dam's operation area in Fulugani that will lead to the Kaya forest and other areas beyond the dam for use by the neighboring community members as maybe necessary. Currently, the community members access the forest from various informal accesses near their areas of residence. Flooding of the dam will not affect any forested areas as the impoundment areas are bear without much vegetation except for the crops that are planted/ grown by the subsistence farmers during the rainy season and the coconut trees found in various places along the river valley.

### **Project Components Triggering Displacement**

The construction of Mwache dam and related components will occur in privately owned land and will hence cause physical and economic displacement of the Project Affected Households (PAHs). 2,460 PAHs with a total of 7,541 PAPs are currently settled and deriving some livelihoods from these areas where land will be acquired for dam construction. In addition, 8 public/community institutions will be affected. This RAP study covers the following Project Components that will trigger displacement and resettlement of PAPs;

- Main Dam Area
- Lower Check Dam
- Access Roads

The economic and physical displacement as a result of land acquisition for dam construction activities will lead to loss of the following assets namely:

- Land
- Structures (residential and commercial)
- Crops and trees
- Community infrastructure (schools and health centre)
- Graves
- Shrines

### **The Duruma and the overall approach to resettlement in this RAP**

All the people displaced by this project are belong to the Duruma tribe and qualify for special consideration under the World Bank policy OP4.10 indigenous peoples. As such, the preparation of this RAP has followed the principles outlined in both OP4.10 and OP4.12. Specifically, OP. 4.10 stipulates that Bank-financed projects include measures to (a) avoid potentially adverse effects on the Indigenous Peoples' communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects. In the case of Mwache Dam, no alternative designs were able to remove the impact on the Duruma. Though in consultation with the community, measures were taken to minimize the impact on the community (such as reducing the silt processing site from 500 to 130 hectares) significant displacement remains necessary.

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

the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.”



As such, the RAP team undertook extensive consultations (documented in this RAP) with the affected community to both establish broad support for the unavoidable resettlement and develop a resettlement strategy that is compatible with the cultural preferences of the affected Duruma community and includes a land-based resettlement strategy that allowed the community to return to their traditional lands – as was their preference.

The project aimed at providing common resettlement sites where the affected communities and households could be resettled together and provided with the infrastructure and services required to effectively restore their livelihoods. Initial efforts to promote a standard land-based resettlement strategy for such communities (such as a resettlement village with accompanying farmland) was roundly rejected by the Duruma. Concerns over indiscriminate mixing of sub-clans, removal from traditional lands and commensurate loss of access to the sacred forest adjacent to the project area and a desire to share in the benefits of the dam were among the key reasons cited for rejecting this proposal. In addition, the community cited recent bad experiences from a number of development projects in the vicinity of the project area as a reason for wanting the autonomy afforded by cash compensation.

It was also noted by the RAP team, that efforts to develop a compensation package that accorded with the community's cultural preferences was complicated by the diverse views from within the community. While the community as a whole meets the conditions of OP4.10, traditional livelihoods and governance structures are increasingly under pressure within the community as proximity to Mombasa, access to education and diversified employment opportunities increasingly draw ever larger portions of the community away from traditional lifestyles. In these circumstances, insisting upon an exclusively land based resettlement strategy would disadvantage those members of the community with aspirations separate from the traditional lifestyle and prevent them from using their compensation money from supporting their new livelihood strategies.

In sum, initial field work indicated that over 99% of all project affected people covered by this RAP preferred cash as compensation for lost land and assets for the reasons stated above. However, cash compensation is known to carry considerable risks of impoverishment due to poor financial management for communities with land-based livelihoods strategies (and hence limited exposure to cash) such as the Duruma. As such, the RAP team undertook extensive additional consultations to determine a path to manage these risks which respected the cultural preferences and wishes of the Duruma.

Community consultations indicated the community preferred two principle compensation strategies: self-managed relocation and assisted relocation. Self-managed relocation is essentially cash compensation to enable PAHs to select land of their choice and relocate and reconstruct themselves. Assisted relocation involves cash either being credited to the PAH or to the project team who then provide assistance in identifying new land and either rebuilding structures or providing new structures as per their preference. These strategies had the advantage of enabling the choice of locations for PAHs to self-organize.

However, as the overwhelming majority of PAHs are considered vulnerable under OP4.12 (as 85.7% of the community are below the poverty line) and under OP4.10 (as the traditional livelihood of many in the community makes them additionally vulnerable to adverse impacts of physical displacement) these options were deemed unacceptably high risk without additional precautions to ensure each PAHs resettlement strategy was achieved. As such, the team undertook additional scoping studies to determine whether the PAHs preferred strategy was feasible (documented in this RAP page 47; Sec 5.6) and to determine what additional support

would help reduce the risks of community's preferred strategy.

Ultimately, it was determined that the best way to balance the communities wishes with project concerns about the risks associated with cash was to require additional conditions for the release of cash which would enable the project to track the progress of each PAH and provide additional assistance as necessary. In essence, the project would work with each household to develop a tailored livelihood restoration plan as a condition of the release of compensation under either strategy. Livelihood restoration plans would include standard livelihoods restoration activities (such as retraining and support for establishing alternative businesses, etc) but also assistance with land finding and purchasing land (such as conveyancing), assistance relocating land and structures and other reasonable assistance as necessary. For PAHs intending to move to Mombasa, (for example) the project would follow up with each household to ensure the use of compensation is moving in the right direction. Under either scenario, compensation for lost assets and land would be released to the PAPs before displacement.

Temporary resettlement will be avoided in principle and if not avoidable, the project will provide suitable temporary housing units to the PAHs. These will either be rented within the neighboring shopping centres or semi-permanent residential houses constructed by the project on suitable project acquired land selected in consultation with PAPs. The temporary housing units will be of equivalent functional spatial use to those affected and located within defined radius/areas. These units will be provided until the construction of the PAHs permanent houses is completed. The provision of these housing units will be in addition to their rightful compensation for all affected assets under the RAP. For the rented units, MOWS will pay monthly rent and utility bills for the period of occupation while water, electricity and sanitation facilities will be provided at the project constructed temporary areas. The constructed resettlement areas will be fenced off to ensure the security of the PAPS. MoWS and PAHS who will be provided with temporary housing units will enter into signed agreements: (i) For MOWS constructed housing: indicating where the PAH's final resettlement site/ land is located and establishing a maximum time required for MOWS to deliver their permanent housing unit/site and make it available for their occupation and providing for all necessary temporary support and subsidies; (ii) For PAHs constructing their own housing, MOWS will try to negotiate a mutually acceptable date for definitive resettlement and where necessary support construction support to meet the agreed deadline; in the exceptional cases where temporary relocation cannot be avoided, the PAH will be entitled to the same support as those waiting for MOWS constructed housing until the date agreed for the final move. All subsidies will be paid until the agreed date even if the PAHs move out ahead of schedule. Should the definitive move be delayed, rental and utilities subsidies will continue but any other subsidies will be continued only if delays are not attributable to the PAPs.

### **RAP Methodology**

The RAP was prepared in three stages. The first stage included literature review of relevant project design reports and maps. This was followed by consultation meetings and forums with the project staff from KWSCRPMU, CDA-PIU, Kwale County Government and the local communities to get additional information. The meetings also served to introduce the project to the project-affected persons (PAPs) and affected communities in public consultation meetings and personalized discussions with individual PAHs. During these meeting the PAPs elicited their views and concerns about the project.

The project documents that were reviewed included:

- a) Feasibility Study and Detailed Design Reports for Mwache Dam
- b) Mwache Dam Resettlement Action Plan prepared in 2014
- c) Vulnerable and Marginalized Group Plan

- d) Relevant Kenyan legal documents including
- Constitution of Kenya,

- Land Act,
  - Land Registration Act (2012)
  - Valuers Act (1985)
  - National Land Commission Act,
  - Land Registration Act
  - Community Land Act,
  - Water Act
- e) World Bank OP. 4.12 and OP 4.10
- f) KWSCR Resettlement Policy Framework

The second stage comprised field surveys – inventory of affected assets, socio-economic profiling of PAHs and recording preferences of each Project Affected Households (PAHs) with regard to resettlement and rehabilitation. The socio-economic survey was conducted between April 2017 and September 2018 alongside the census. Many consultations forums were held with PAP communities, relevant individual stakeholders and institutions instrumental in RAP preparation and implementation.

Third stage comprised RAP report preparation including valuation of affected assets, social economic data analysis and generating cadastral maps clearly illustrating all the parcels of land that will be acquired. The cadastral mapping was generated from intensive ground surveying technique and Geographical Information System (GIS) system enabled management of both the physical and attributes information of each plot of land. GIS data was synchronized with other PAP details from the legally registered land owner verification exercise.

This was useful to ensure that PAP data is confirmed in the RAP documents prior to RAP implementation. RAP implementation activities such as acquisition of land from the rightful owners and processing of all PAP entitlements has been facilitated by having verifiable data and information. This stage also includes stakeholders' meetings and updating of village-level impacts data in November and December of 2018.

After disclosure of the affected assets register to the PAP communities at the village level in November and December 2018, several PAHs indicated that their names and RAP information were missing on the register or had been recorded in other affected villages. Based on these grievances and complaints, a confirmatory exercise was conducted to determine and validate these claims. During the exercise, the RAP team went to each affected village and held further consultation sessions with the aggrieved PAHs and members of the PAP community. The asset register was thereafter updated by including PAHs whose personal details were confirmed to have been missed out during the census. Other community members that had claimed to be PAPs and were confirmed as not affected were made to clearly understand so. They could not show the claimed assets on the affected project areas or what they claimed to be their affected assets had actually been recorded against the legal owners and themselves recorded as claimants and not the primary owners in other confirmed instances. Further, during this validation period, a further verification was conducted aimed at determining who among the PAHs who own affected land had other parcels of land away from the project area where they would easily relocate to upon being displaced from the project area. The survey also aimed at determining PAHs who had already identified alternative relocation land on their own and waiting for compensation money to buy the land and those who for the various reasons given had not identified alternate relocation land.

## Legal Framework

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

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

## Summary of Impacts

The entire project area consists of a single ethnic group, the Duruma, which is part of the larger Mijikenda tribe. The Durumas are categorized as marginalized and vulnerable as a result of screening that was conducted accordance with OP. 4.10. The constitution of Kenya (COK 2010), has also categorized Kwale County as a vulnerable and marginalized County.

The project will physically and economically affect 2,452 households and 8 community/ public institutions. The 2,452 households are all categorized as vulnerable and marginalized due to the fact that they meet the criteria of World Bank's Indigenous Peoples Policy (OP4.10). 1,510 households will be fully displaced as a result of losing more than 20% of their agricultural land and residential structures. Of these 526 are informal occupants who will lose residential structures. They will depend on the current goodwill and family relationships with the legal owners of the land they occupy to share the replacement land with them so that they can build new residential structures on this land and resettle.

## Risk Profile of Impacts

Type of loss	No.
PAHs losing more than 20% of Land and residential structures	984
PAHs losing Primary Residential structures on another people's land	526
<b>Total Fully affected</b>	<b>1,510</b>
Less than 20% of land	142
PAHs losing trees and crops only	375
PAHs Losing Business Structure & loss of Business	39
PAHs Losing Business Only	1
PAHs owning Non-residential structures e.g. graves, shrines, (without claim to land)	385
<b>Total partially affected.</b>	<b>942</b>
<b>Total impact on HH</b>	<b>2,452</b>
<b>Public infrastructure fully demolished</b>	
Public Primary and Nursery Schools on their own land	3
JPA Mwache Church built on road reserve but used by community members	1
Nunguni Mosque built on private land but used by community members	1
<b>Public infrastructure partially impacted</b>	
Exterior walls on road reserves	3
<b>Total Community Institutions to be affected</b>	<b>8</b>
<b>Total Number of PAHs and Institutions affected</b>	<b>2,460</b>

## **Project Components and Impacts**

This RAP 1 includes the following components which all trigger economic and physical displacements and described in detail below.

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

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

RAP 1a will cover all of Priority 1 works areas i.e. the lower check dam site and quarry site areas (part of which are in Mwavumbo Group Ranch) and main dam site and some operational areas, all of Priority 2 areas i.e. part of main dam operational and reservoir areas and PART of Priority 3 areas (part of main dam operational and impoundment areas and part of the lower check dam reservoir areas , silt pile) and Access roads A, F,& H, C, G and J.

RAP 1b will cover part of Priority 3 i.e. the rest of the main dam and lower check dam reservoir areas all of which are within Mwavumbo Group Ranch.  
(Refer Annex 4)

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

1. Land
2. Crops and trees
3. Graves
4. Structures (residential and commercial)
5. Community infrastructure (schools and bridges)
6. Shrines (1 communal and 5 personal)

## **Physical Displacement Impacts**

As shown on the table below, 1,510 households (984 will lose more than 20% of their agricultural land and residential structures while 526 are informal occupants owning residential structures only) will be physically displaced. This will require increased project support and monitoring to mitigate against likely resettlement related risks and impoverishment of already vulnerable households.

#	Village	Number of owner households affected (PAHS) ( <i>&gt;20% of land with no residential structures + &gt;20% land and structures</i> )	Number of informal households (PAHS) ( <i>Owning structure only- Main Residential House</i> )	PAHs physically Displaced
1	Fulugani	177	247	424
2	Mwachipa	86	33	119
3	Mpirani	67	13	80
4	Bokole	65	4	69
5	Mwache	109	21	130
6	Hanje	79	17	96
7	Vikinduni	5	35	40
8	Ziwani	30	1	31
9	Majengo	17	1	18
10	Madewani	9	2	11
11	Chigato	92	19	111
12	Chinguluni	55	30	85
13	Chigomeni	29	16	45
14	Nunguni	103	11	114
15	Mtulu	11	17	28
16	Mazeras	0	56	56
17	Chigojoni	14	1	15
18	Mwatate(1A)	13	0	13
19	Luweni(1A)	12	0	12
20	Changa(1A)	11	2	13
	<b>Total</b>	<b>984</b>	<b>526</b>	<b>1,510</b>

### Land Acquisition Impacts

The project will result to land acquisition amounting to approximately 1,360Ha that belong to 1,394 households. Of these, 1,126 households are the currently registered land owners and have legal claim to the land they occupy while 268 households have an unregistered claim to the affected land. Of the households with legally registered claim to land, 984 households will lose over 20% of the land they own. Hence, they will be fully and physically displaced from the project sites and will be required to buy economically viable land elsewhere. However, 142 households will lose less than 20% of the land hence will have sufficient land remaining to enable them continue with their livelihood support activities in the neighbourhood the dam.

	Village	PAHs losing >20% land	PAH losing <20% land	PAHs with Title Deed	PAHs without Title Deed	Land PAHs	Acreage (Ha)
1	Fulugani	177	14	191	73	264	231.81
2	Mwachipa	86	2	88	14	102	120.46
3	Mpirani	67	6	73	10	83	79.04
4	Bokole	65	5	70	11	81	114.61
5	Mwache	109	8	117	24	141	146.2
6	Hanje	79	8	87	7	94	63.34
7	Vikinduni	5	1	6	0	6	12.13



	Village	PAHs losing >20% land	PAH losing <20% land	PAHs with Title Deed	PAHs without Title Deed	Land PAHs	Acreage (Ha)
8	Ziwani	30	4	34	0	34	37.41
9	Majengo	17	6	23	6	29	15.81
10	Madewani	9	1	10	4	14	14.46
11	Chigato	92	14	106	9	115	115.24
12	Chinguluni	55	4	59	11	70	79.37
13	Chigomeni	29	3	32	8	40	52.31
14	Nunguni	103	66	169	90	259	194.68
15	Mtulu	11	0	11	0	11	18.67
16	Mazeras	0	0	0	0	0	0
17	Chigojoni	14	0	14	1	15	25.38
18	Mwatate(1A)	13	0	13	0	13	10.31
19	Luweni(1A)	12	0	12	0	12	12.77
20	Changa(1A)	11	0	11	0	11	15.54
	<b>Total</b>	<b>984</b>	<b>142</b>	<b>1,126</b>	<b>268</b>	<b>1,394</b>	<b>1,359.54</b>

### Non-land Economic Displacement

415 households will be economically displaced as a result of losing business income (40 PAHs) and loss of crops and trees (375 PAHs) which they depend on to support their land-based livelihoods.

	Village	PAHs Losing Business Structure & loss of Business income	PAHs Losing Business Only	PAHs Losing Crop & Trees Only	Non-land Economic Displaced PAHs
1	Fulugani	5	1	111	117
2	Mwachipa	0	0	24	24
3	Mpirani	0	0	12	12
4	Bokole	0	0	17	17
5	Mwache	1	0	19	20
6	Hanje	0	0	31	31
7	Vikinduni	0	0	0	0
8	Ziwani	0	0	1	1
9	Majengo	0	0	5	5
10	Madewani	0	0	13	13
11	Chigato	4	0	22	26
12	Chinguluni	0	0	22	22
13	Chigomeni	0	0	38	38
14	Nunguni	0	0	42	42
15	Mtulu	0	0	2	2
16	Mazeras	29	0	10	39
17	Chigojoni	0	0	6	6
18	Mwatate(1A)	0	0	0	0
19	Luweni(1A)	0	0	0	0
20	Changa(1A)	0	0	0	0

	Village	PAHs Losing Business Structure & loss of Business income	PAHs Losing Business Only	PAHs Losing Crop & Trees Only	Non-land Economic Displaced PAHs
	<b>Total</b>	<b>39</b>	<b>1</b>	<b>375</b>	<b>415</b>

#### **Summary of Unique PAHs (highly impacted) and others with Minimum impact**

As shown on the table below, 1,925 households (1,510 physically displaced and 415 economically displacement households) are unique and hence will require project support and monitoring to mitigate against likely resettlement related risks. The KWSCRCP will ensure that the PAHs prepare and implement livelihood restoration plans, will encourage them to have land-based plans and avail all listed entitlements. Economically displacement households are mainly found on the existing access roads that are earmarked for expansion to increase carriage space for anticipated large construction equipment and increased traffic during the project construction phase. There are neither renters (tenants) and landlords as concerns all the affected structures identified in the project area.

527 households (385 losing none-residential structures and 142 losing less than 20% of their registered land) are less likely to be impacted negatively by the project but they will be encouraged to use the compensation money to develop the remaining large portions of land. Those losing less than 20% of their land will be among the many beneficiary of the dam project as they will be in the immediate neighborhood of the dam with their land bordering the dam buffer zone.

They will be direct recipients of the newly developed schools, improved water supply and transport infrastructure system and will use the dam water to irrigate their agricultural land.

	Village	Physically Displaced PAHs	Non-Land Economic Displaced PAHs	Unique PAHs	PAHs owning Nonresidential structures e.g. graves, shrines, (No claim to land)	Number of HH losing <20% of their land	Total PAHs
1	Fulugani	424	117	541	85	14	<b>640</b>
2	Mwachipa	119	24	143	17	2	<b>162</b>
3	Mpirani	80	12	92	10	6	<b>108</b>
4	Bokole	69	17	86	22	5	<b>113</b>
5	Mwache	130	20	150	24	8	<b>182</b>
6	Hanje	96	31	127	11	8	<b>146</b>
7	Vikinduni	40	0	40	0	1	<b>41</b>
8	Ziwani	31	1	32	10	4	<b>46</b>
9	Majengo	18	5	23	7	6	<b>36</b>
10	Madewani	11	13	24	17	1	<b>42</b>
11	Chigato	111	26	137	12	14	<b>163</b>
12	Chinguluni	85	22	107	38	4	<b>149</b>
13	Chigomeni	45	38	83	25	3	<b>111</b>
14	Nunguni	114	42	156	96	66	<b>318</b>
15	Mtulu	28	2	30	1	0	<b>31</b>
16	Mazeras	56	39	95	7	0	<b>102</b>
17	Chigojoni	15	6	21	1	0	<b>22</b>
18	Mwatate(1A)	13	0	13	0	0	<b>13</b>
19	Luweni(1A)	12	0	12	2	0	<b>14</b>

	<b>Village</b>	<b>Physically Displaced PAHs</b>	<b>Non-Land Economic Displaced PAHs</b>	<b>Unique PAHs</b>	<b>PAHs owning Nonresidential structures e.g. graves, shrines, (No claim to land)</b>	<b>Number of HH losing &lt;20% of their land</b>	<b>Total PAHs</b>
20	Changa(1A)	13	0	13	0	0	13
	<b>Total</b>	<b>1,510</b>	<b>415</b>	<b>1,925</b>	<b>385</b>	<b>142</b>	<b>2,452</b>

### **Total Number PAHS and PAHs**

The project will directly affect 2,452 PAHs and 7,541 PAPs as result of physical and economic displacement. In addition, it will affect 8 public/community institutions. These are Fulugani Primary School, Nunguni Primary School, Mwache Nursery School, JPA Mwache Church, Nunguni Mosque, Mazeras dispensary which will be permanently and fully affected. Perimeter fences of Mazeras High School and Coast Water Services Board (CWSB) facilities will be partially affected.

The ownership of the land where Mwache Nursery school is located was contested during the RAP census and asset inventory phase. An individual was claiming ownership of the communal land where the nursery school is built. The land however belongs to the County Government of Kwale who owns and manages the Nursery School. It was construed that the individual had tried to grab public land and hence his verbal claim to it. Legal ownership of the parcel of land will be confirmed as part of pre-compensation due diligence and any dispute will be addressed through the proposed grievance redress mechanism for this RAP with title determined by the National Land Commission as per Kenyan practice. It is not anticipated that this will impact project implementation

	<b>Village</b>	<b>PAHs &amp; Public Institutions</b>	<b>PAPs</b>
1	Fulugani	640	2047
2	Mwachipa	162	547
3	Mpirani	108	295
4	Bokole	113	271
5	Mwache	182	458
6	Hanje	146	420
7	Vikinduni	41	124
8	Ziwani	46	127
9	Majengo	36	121
10	Madewani	42	105
11	Chigato	163	458
12	Chinguluni	149	488
13	Chigomeni	111	331
14	Nunguni	318	1101
15	Mtulu	31	100
16	Mazeras	102	319
17	Chigojoni	22	59
18	Mwatate(1A)	13	60
19	Luweni(1A)	14	57
20	Changa(1A)	13	53
		<b>2,452</b>	<b>7,541</b>
	Public Institutions	<b>8</b>	
		<b>2,460</b>	

### Project affected institutions

#	Village	Name of Institution	Type of Impact	Land Ownership/Rights (Formal or without Formal Rights)
1.	Mwache	Mwache Nursery School	Full displacement	Land under dispute
2.	Fulugani	Fulugani Primary and Nursery School	Full Displacement	Formal title
3.	Nunguni	Nunguni Primary and Nursery School	Full Displacement	Formal title
4.	Mazeras	Mazeras Dispensary	Full Displacement	Formal title
5.	Mwache	JPA Mwache Church	Full Displacement	Informal Occupant
6.	Nunguni	Nunguni Mosque	Full Displacement	Informal Occupant
7.	Mazeras	Mazeras High School	Partial Displacement	Fence on ROW
8.	Mazeras	Coast Water Services Board	Partial Displacement	Perimeter Fence (stone wall)

### Number of Persons in affected institutions

#	Institution	Population and Additional Information		
		Boys	Girls	Teachers
1.	Mwache Nursery School	15	15	3
2.	Nunguni Primary and Nursery School	131	109	13
3.	Fulugani Primary and Nursery School	519	444	22
4.	JPA Mwache Church	No records		
5.	Nunguni Mosque	No records		
6.	Mazeras Health Centre	Vacant/ Not in current use		
7.	Mazeras High School	No physical displacement; Only the perimeter wall will be affected during road expansion		
8.	Coast Water Services Board	No physical displacement; Only the perimeter wall will be affected during road expansion		

### Vulnerable PAHs

#	Forms of Vulnerability	Number of PAHs
1.	Widowed	41
2.	Chronically Sick	28
3.	Elderly (over 65 years old)	91
4.	Physically challenged	25
5.	Household Headed by under 18 years orphans who have entitlement of the affected property (these are orphans who are in charge of households and extremely vulnerable).	4
	<b>Total</b>	<b>189</b>

### PAPs and Stakeholder Consultations

Key consultations with the PAHs and other relevant stakeholders were significant aspects in the RAP preparation. To achieve this, public participation forums were organized at strategic locations targeting PAPs and stakeholders. The participants included the following categories of project-affected groups and partners in the RAP process:

- The landowners, community groups, kaya elders, farmers, water users, institutions, as well as the key informants. Comprehensive consultations have been held with various stakeholders from the reconnaissance stage through to actual meetings.
- Key Informants at the county level in Kwale County- meetings/discussions were held with relevant government officials particularly in the County Administration, Agriculture, Water and Sanitation, Culture and Social Services, and Land sectors.
- Locational Chiefs - further consultations were conducted with Locational Chiefs as a major player in the RAP process and also provided some baseline information.

Table below shows the dates consultation forums were held with the different stakeholders, venue and number of participants. The mobilizations for the meetings targeted to direct PAHs in the project-affected areas.

#### Consultations done by the RAP Consultant during RAP Preparation

#	Dates	Venue	No. of Participants	Male	Female	Target Group (Villages)
1.	10 July 2017	Kasemeni DO's Office	117	71	46	Fulugani, Mwachipa, Bokole, Mwache, Mpirani
2.	11 July 2017	Mnyenzi Primary School	315	183	132	Chigato, Hanje, Madewani, Chigomeni, Nunguni
3.	25 Aug 2017	Bonje Beach Management Unit	39	31	8	Fishermen and women
4.	13 July 2018	Fulugani Village-Dam Site	148	101	47	Fulugani village
5.	3 Aug 2018	Methodist Church, Mazeras	170	129	41	Mazeras – Access Road 'A'
6.	3 Aug 2018	Chigato Dispensary	246	153	93	Silt Stock pile area – Hanje & Chigato villages
7.	26 Sept 2018	Chigato Dispensary	54	35	19	Silt Stock Pile area (Reduced)
8.	24 Sept 2018	Mazeras Methodist Church	8	7	1	Access Road 'A' – Reduced
9.	14 Sept 2018	Coast PMU Offices	4	4	0	Elected Leaders from Kinango Sub-County
	<b>Total</b>		<b>1,101</b>	<b>714</b>	<b>346</b>	

### Additional Consultations done by MWS/WB in November 2018, March & April 2019

#	Dates	Venue	No. of Participants	Male	Female	Target Group (Villages)
1.	9 Nov 2018	Shalmar Dreams Hotel	49	37	12	National and County Leaders from Kwale County
2.	14 Nov 2018	Dam View Hotel Mariakani	84	70	14	Village Elders from All the Affected Villages
3.	16 Nov 2018	Shalimar Dreams Hotel Mariakani	77	65	12	RAP Opinion Leaders Form All Affected Villages
4.	23 Nov 2018	Dam View Hotel Mariakani	86	81	5	Dam Committee
5.	11 Dec 2018	Mpirani Primary School.	30	25	5	Stakeholders Concern Road Network and Community Members
6.	21 Dec 2018	Silt Pile Area/ Chigato Dispensary	39	39	0	PAPS Committee Members and Community Members
7.	22 Mar 2018	Mwache ECD	23	13	10	School Board of Management
8.	23 Mar 2018	Fulugani Primary School	27	15	12	School Board of Management
9.	23 Mar 2018	Nunguni Primary School	29	18	11	School Board of Management
10.	8 April 2019	ACC Kasemeni Office Compounds	260	195	65	PAPs and local leaders
11.	9 April 2019	AIC Majengo Primary School	164	118	46	PAPs and local leaders
12.	10 April 2019	Ziwani ECD Mnyenzi	52	36	16	PAPs and local leaders
13.	11 April 2019	Nunguni Primary School	81	56	25	PAPs and local leaders
14.	12 April 2019	Mwashanga ECD Grounds	134	100	34	PAPs and local leaders
15.	13 April 2019	PEFA Church Pemba Village	169	126	43	PAPs and local leaders
<b>Total</b>			<b>1,304</b>	<b>994</b>	<b>310</b>	

### Consultations with Key Government Institutions

#	Dates	Venue	No. of Participants
1.	14 June 2017	CDA Offices-CDA team	13
2.	17 July 2017	Kasemeni DO's Office-Kaya Elders	12
3.	12 July 2017	Kinango-Lands Office	4
4.	22 July 2017	Beach Management Unit	10
5.	4 Aug 2017	CDA Debrief meeting	9
6.	4 Oct 2017	Dam Committee at project sites	15
7.	9 July 2018	KWSCRIP Offices – Coast – Additional Works	7
8.	10 July 2018	Kasemeni A.C. C's office – Additional Works	12
9.	10 July 2018	Mwavumbo Ward Administrator's office	6
10.	24 Sept 2018	Kwale County Headquarters	9
11.	16 Jan 2019	Coast PMU Offices with Kasemeni Ward, MCA Hon. Anthony N. Yama	2
12.	22 Jan 2019.	Various Project Sites with Officers from Security Agencies in Kinango Sub County	5
13.	24 Jan 2019	Mgandini Primary School with Ministry of Education Officials	6
14.	28 Jan 2019	Kwale County Offices, with County Government of Kwale County Secretary and Other Technical Staff	4
	<b>Total</b>		<b>114</b>

Table below, highlights some of the key concerns of the PAHs emanating from the consultations.

### Summary of Concerns raised by the Project Affected Persons.

#	Issue/Comments	Responses
1.	How will the consultants know exactly the real PAHs?	There is a project design and related map that have been developed. The Consultants could therefore use these design maps to identify the affected area and hence the PAHs. Further, the census has generated a full and completed list of those affected by categories of impacts.
2.	What is the process of census, asset inventory and valuation as well as socio-economic survey?	The RAP consultants have prepared census questionnaires that has been used to enumerate the PAHs, undertake census and conduct valuation of assets. Another questionnaire has been used for socio-economic survey through a sample of the population in the project area.
3.	How will you handle land disputes? Because in the area there are a lot of cases in regard to land disputes.	<p>The Consultant scope of work is not to resolve land disputes but to inventory all land to be affected by project and record any related disputes when encountered. The PAPs are advised to strive to resolve land disputes using local/ existing dispute resolution mechanism before the census and asset inventory exercise</p> <p>Further, the RAP has provisions for dispute resolution through the Grievance Redress and Resettlement Committee (GRRC) to resolve grievances.</p> <p>Also, Kenya has a legal framework which provides channels for resolution of disputes over land through legal justice system. This is the Environment and Land Court which is an expensive last resort if all other local GRM were to fail.</p>
4.	How will the compensation be undertaken because in previous projects, locals have been	The Consultant team has valuation experts who are registered by the Valuation Board to undertake valuation of every affected asset including land, structures, trees and crops, cultural and



#	Issue/Comments	Responses
	complaining over low compensation	communal/public assets for the purpose of the RAP. The compensation will be at full replacement cost. The NLC; which is the legally mandated body will conduct another asset inventory and do their own valuation of the all the affected assets as provided for by the NLC Act.
5.	What makes this process unique from the 2014 one? How sure can we be that implementation will be done this time round?	The government Kenya and the World Bank are committed to ensuring that the project is implemented as part of the set developmental goals. Funds have already been secured and once the RAP study is complete and the report approved, compensation will follow and dam construction will commence.
6.	There are sacred places like the shrines where the community perform traditional rites and these will be affected by the project. Will we be compensated?	The dam design has taken cognizance of this and has tried to avoid impacting on such cultural shrines. However, where they will be impacted, the community will be compensated in line with traditions and culture of the community through the Kaya elders.
7.	How will the local community benefit from the project especially those not directly affected hence will not get any direct compensation nor other assistance?	Job opportunities will be created during the construction and operational phases of the project for the local community to be competitively considered for employment. Local access roads will be improved and other livelihood restoration initiative such as planned water supply will benefit the local PAP and host communities
8.	What will happen where disputes will arise on how to share compensation proceeds among family members or if a PAP is not satisfied with the compensation money provided?	The project will establish grievance redress committees at the various project levels, which will handle all disputes related to compensation and resettlement. PAHs will be informed of the actual dates and venues where the committees will be elected and formed by the PAPs themselves under the supervision of the local administration and the project team.  The formation of these GRCs will be accompanied by sensitization meetings to sensitize the PAPs on the purpose and usefulness of the GRCs. The PAPs will be encouraged to channel their grievances to the said committees. In case they would not be satisfied, they will be free to use other legal channels available.  The GRCs will be facilitated by the project to ensure they remain active, motivated and functional. The grievance redress and resettlement committees will be established before land acquisition and compensation of PAHs begins.
9.	When will the project implementation commence?	The project is expected to commence in mid-2019 subject to approval of the RAP and compensation to PAHs.
10.	Will the project compensate for affected graves as well?	The consultant team will record all affected assets including graves during the census and asset inventory and then compensation will be done in line with the traditional/religious norms/rites of the people affected and the NLC Act.
11.	The additional land requirement especially for silt pile at the lower check dam area is leading to acquisition too much land than that which the community had previously	This concern was noted and the client reviewed the detailed design to determine the optimum amount of land that will be required for the silt pile area and reduced to minimize impact.  The area was later reduced from the original 500ha to 130ha and now the Mwache Primary School will not be impacted by

#	Issue/Comments	Responses
	anticipated. This will lead to loss of valuable farmland including part of Mwache Primary School.	the project.

### **Cut-Off Date**

Persons who encroach on the area after the cut-off date are not entitled to compensation or any other form of resettlement assistance. Improvements made to homes or additional structures added by existing residents after the cut-off date are also not eligible for compensation and resettlement assistance. According to OP 4.12, Cut-off date is the date the census begins. The cut-off date could also be the date the project area was delineated, prior to the census, provided that there has been an effective public dissemination of information on the area delineated to prevent further population influx and opportunistic investments/claims.

Two Cut-Off-Dates were declared for the project areas affected by RAP 1. The first cut-off date was **23 July 2017** for the initial census and asset inventory that was carried out at the beginning of the RAP process. The areas covered by this cut-off date include the main and lower check dam walls, surrounding operation areas and their related reservoir areas. The second cut-off date was **28 July 2018** which was established because of an increased project scope that resulted to more land requirements to sufficiently accommodate new project components.

This need for additional land was identified after the initial cut-off date was established, communicated and census and asset inventory concluded. The additional project components that were added to the original project scope hence necessitating a second cut-off date are the silt pile area, access roads, health center and police station at the dam operation area.

The cut-off dates were publicly disclosed in the project areas and to all the PAHs. The disclosure was undertaken by the RAP Consultant teams, local administration jointly with the KWSCR team. The principle of the cut-off date was disclosed to the community prior to the field surveys. It was communicated to the affected communities during public meetings (barazas) and to individual PAHs during the fieldwork. They were clearly informed that persons moving to the project areas and those who may do further developments on their affected land after the cut-off dates would not be entitled for compensation and that persons settling in the project area after the cutoff dates may be subject to removal. The Asset register will be updated during RAP implementation as needed to reflect any additional information and justifiable changes and to correct any residual errors or omissions.

### **Land Rights and Ownership Issues in Project Area**

#### **Land Succession Issues**

There are several cases of land succession among the PAHs where existing title deeds are in the names of deceased persons. This situation is likely to complicate RAP Implementation by delaying compensation for affected land by the National Land Commission (NLC) as is the case in other projects in Kenya. According to NLC Act 2012 compensation funds are only given to the person whose is proved to be the legally registered title deed holder after an official land search is conducted at the Land Registrar's office. The RAP exercise identified PAHs who own land that has issues related to the legal transfer of title. PAHs with succession issues are those who have not formally had the land they occupy formally transferred or registered and transmitted from the former owner to the new owner.

As no one can be displaced until after they have received their just compensation, delays due to formalisation of title transfer pose a significant risk to project implementation which will be managed. The Project has engaged the services of a legal consulting firm to identify and resolve all the succession related cases to enable speedy compensation by NLC. The Terms of Reference for the legal consulting firm is included in **Annex 8**.

### **Land Inheritance and Gender**

A key highlight of the census was the patriarchal nature of the Duruma community where women would not be allowed to inherit land when they are widowed. PAHs who are widows expressed concern that they were unlikely to get their land succession rights respected and hence risk being denied being the legal administrators of their deceased husbands' estate. This would otherwise disadvantage the widows and hence the importance of the mitigation efforts by the project such as hiring the legal firm to conduct succession and ensure widows and other vulnerable groups are assisted to get legal representation and help when needed. There are 42 women headed households (all widows) affected by the project and who face the highlighted risk. The legal consultant will work closely with them to ensure that they obtain title deeds in their own name and also have compensation money paid in their own bank accounts in accordance with NLC Act 2012 which requires compensation payment to be made in a bank account bearing the name (in case PAP is single i.e. unmarried, widow or widower) or names (in case PAP is married) of affected land owner or land owners or person with a determined interest. A person with interest would include a spouse and other dependents of the living PAP or administrators of the affected asset if the registered land owner is deceased.

### **Mwavumbo Group Ranch**

Three (3) affected villages fall under Mwavumbo Group Ranch which has a single title deed held in trust by the management of the Ranch on behalf of the members (PAHs).

KWSCR, NLC, Kwale County Government, National Government have engaged with the members of the group ranch and reached an amicable resolution of the matter prior to compensation and have a clear and agreed upon procedure for compensating each PAH within the ranch. During RAP preparation period, affected assets within Mwavumbo Group Ranch were identified and inventoried, valued and have been included in the Asset Register. The members have resolved that the Ranch be dissolved and sub-divided into individual land parcels. However, since the process of dissolving the ranch will be ongoing or may not have completed when NLC carry out due diligence processes prior to compensation, a process similar to that done during the Standard Gauge Railway (SGR) project which recently crossed over the Group ranch and affected many community members will apply. This involves compensation being paid directly to the PAPs.

### **Valuation and Compensation**

The assets affected by Mwache Dam Project have been categorized as:

- Land
- Structures
- Trees and crops
- Communal assets (including graves, personal and communal shrines, roads, bridges and schools, health centre)

All affected assets have been valued on the basis of full **replacement cost**<sup>1</sup> for compensation purposes:

### **Compensation Principles and Strategies**

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

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

- Avoid or minimize adverse resettlement impacts including physical and economic displacement. Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits.
- Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs in accordance with the principles outlined in OP4.10 and the project VMGP.
- Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
- Mitigate adverse social and economic impacts from land acquisition by:
  - Providing compensation for loss of assets at full replacement cost;
  - Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected; and
  - Improve or at least restore the livelihoods and standards of living of affected people.
- Provide additional assistance and opportunities (e.g., credit facilities, training, or job opportunities) and improve or at least restore the income-earning capacity, production levels and standards of living of economically displaced persons whose livelihoods or income levels are adversely affected;
- Provide transitional support to affected people, as necessary, based on a reasonable estimate of the time required to restore their income earning capacity, production levels, and standards of living.

The key principles of this RAP are based on the requirements of OP. 4.12 and OP. 4.10 and constitute the following: -

- Compensation and resettlement of project-affected people will be carried out in compliance with Kenyan legislation and World Bank operational policies OP 4.12 and OP 4.10;
- Where Kenyan legislation is less favourable to PAHs than the requirements of OP 4.12 and OP4.10 the latter shall apply;
- All physically and economically displaced people will be offered an option between either a full resettlement package, including the provision of replacement structures or cash compensation;
- The Project will provide for measures to support sustainable use of cash compensation (money management training) and for mechanisms within the overall monitoring framework to follow up the use of cash compensation;

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<sup>1</sup> The market value of land of equal productive use or potential located in the vicinity of the affected land, plus the cost of preparation to levels similar to or better than those of the affected land, and transaction costs such as registration and transfer taxes.

- The Project will assist PAHs in restoring their livelihoods to at least their previous levels through the development and implementation of tailored livelihoods restoration packages for each household
- The Project aims to ensure PAHs are Project beneficiaries; targeted livelihood restoration programs will have this as a core strategy to achieve this goal.
- The RAP implementation and outcomes will be monitored and evaluated as part of a transparent process.
- The PAHs in the project area meet the criteria for OP. 4.10 and hence in the preparation of the RAP, free, prior and informed consultation resulting in broad community support constituted a significant aspect of the RAP preparation including the use of consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples' (IP) communities and their local conditions.
- Key methods of consultations with the IP communities included Focus Group Discussion, Key informant interviews, barazas using Duruma (the local language) at venues identified and agreed upon via consensus.
- In accordance with OP. 4.10, in view of the fact that it was not feasible to totally avoid relocation, broad community support for relocation was obtained from the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process.

This RAP was prepared in accordance with the requirements of OP 4.12, Involuntary Resettlement, and OP 4.10 Indigenous Peoples and is compatible with the Indigenous Peoples' cultural preferences, and included a land-based resettlement strategy. To meet this requirement and as part of the RAP process, additional consultation meetings were held in November and December 2018 with the PAPs and the local leaders to establish the viability of the communities preferred land-based resettlement strategy. The PAPs were jointly and individually consulted and engaged by a combined team comprising of the WB, the Ministry of Water and Sanitation, the RAP Consultant, Coast Development Authority and the Kwale County Government. A number of the households provided the team with information relating to their individual land-based resettlement plans given their stated preference for cash compensation. Specifically, information was sought as to how they intend to ensure they replace the affected land by acquiring alternative land upon receipt of cash compensation. Getting resettlement land will ensure that the PAPs households get good opportunity to build new homes and continue with their land based agricultural activities as opposed to what was then the preferred cash for land compensations.

Particular attention was given to the customary rights of the Duruma community, both individual and collective, pertaining to lands that they traditionally owned, or customarily used or occupied, and where access to natural resources such as Kaya shrines and caves is vital to the sustainability of their cultures and livelihoods.

### **Eligibility for Compensation**

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

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

1. Those who have formal legal rights to land (including customary and traditional rights recognized under the laws of Kenya)
2. Those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets provided that such claims are recognized under the Kenyan laws or become recognized through a process identified in the resettlement plan
3. Those who have no recognizable legal right or claim to the land they are occupying.

According to the census, all PAHs in the area of the main dam, lower check dam and silt processing site have formal legal rights to land including customary rights<sup>2</sup> recognized under the laws of Kenya and hence falling under category 1 as described above. In some of the access roads (specifically roads 'A' and 'H' as identified on the figure 2) there are encroachers and therefore not entitled to compensation for loss of land but still eligible for compensation for loss of other assets and livelihood restoration if this will harm their livelihoods strategy.

### **Land Compensation and Relocation Strategies**

The land ownership in the project area is private with PAHs in 17 out of the 20 affected villages having individually registered land hence formally owning the land they occupy. The remaining 3 villages share a single title deed with many other members of the Mwavumbo Group Ranch. However, during RAP preparation period, affected assets in affected section of the Ranch were identified and inventoried, valued and have been include in the Asset Register and compensation will be paid directly to the affected ranch members who area PAPs.

### **Duruma Traditional Land Tenure System.**

The Duruma are one of the nine (9) sub-tribes of the Mijikenda community. Together with the Digo they are mostly found in Kwale County. The other seven (7) namely Giriama, Chonyi, Rabai, Kauma, Jibana, Kambe and Ribe are found in Kilifi County.

The Duruma are divided into two (2) major subsets of clans; namely; Arima and Amwezi.

No	Amwezi.	Arima.
1	Mwakai	Achanda
2	Mwayawa	Mwanyota
3	Mwamundu	Mwabeja
4	Mwadzine	Mwalukuta
5	Mwatsangari	Mlaire
6	Mphande	Mwamkala
7	Mwachingodza	Mwachenda.

Any member of the Amwezi clans for example, has traditionally been allowed to live and farm in any land owned by the clan outside of clan land without paying anything. One only had to obtain consent from the elders to cultivate a parcel of land. He was free to plant both annual (Maize, cassava, yams, green grams, and cowpeas), and permanent crops (Mango, Coconut, Cashewnut, Citrus etc). A female member of the clan related through marriage, was also allowed to farm.

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<sup>2</sup> A customary land right is not same as communal land rights.

A member from either Amwezi or Arima clans interested in farming in the other subset, had to pay a token fee known as “Kadzama” to the Elders to be given a piece of land to build a house and cultivate. He, however, was allowed to grow only annual crops. This is because he had no absolute rights to the land.

If a member of a family were to lose a structure or structures (say to fire or storm damage), it was the responsibility of the family to assist the affected person to rebuild. Contributions in materials, cash and labour were always made towards assisting the family member.

For a person who was a “living guest” (or clan member who resided elsewhere (perhaps a city) permanently but belonged to the clan) of the clan or family, he too was assisted. If he moved out of the family land, he was still considered the rightful owner of the permanent crops he farmed during his stay. He had control over them. For the “living guest” from the other subset of clans, assistance was not automatic. Factors such as, character, behaviour etc were scrutinized before they were allowed to farm. One was sometimes assisted on humanitarian grounds.

Since the adoption of the 2010 Constitution, changes made to land laws, and payments of the SGR compensation, the Duruma people have become more enlighten and aware of their land rights to the extent that they do not want to observe or follow traditional land tenure practices to the full. They have begun the process of formalizing individual titles over the land they have farmed and when dispossessed of that land demand compensation for any loss of land or livelihood. This is, for example, why members of Group Ranches are calling for their dissolution and land parcels to be sub divided to be known by individual members.

#### **Land owners with and without Title Deeds; Land owners losing <20%> of land**

#	Village	No. of PAH with Title	No. of PAH without Title	No. of PAH losing >20% of their land	No. of HH losing <20% of their land
1	Fulugani	96	107	118	6
2	Mwachipa	63	15	62	2
3	Mpirani	39	21	47	3
4	Bokole	53	11	50	3
5	Mwache	99	25	95	7
6	Hanje	87	07	79	8
7	Vikinduni	06	00	05	01
8	Mtulu	11	11	11	00
9	Chigojoni	07	00	07	00
10	Ziwani	26	00	25	01
11	Majengo	21	7	16	6
12	Madewani	11	02	10	01
13	Chigato	87	7	77	10
14	Chinguluni	58	12	54	04
15	Chigomeni	33	07	30	03
16	Nunguni	159	81	102	66
17	Mazeras	All PAHs are on ROW. No Land Acquisition will take place			
18	Mwavumbo Group Ranch	Has one single title			

	<b>TOTAL</b>	<b>834</b>	<b>337</b>	<b>787</b>	<b>121</b>
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However, this RAP notes that not all PAHs can lay legal claim over the land they occupy and use. These PAHs are mainly adult sons of the registered owner who are still residing on land owned by their father within a homestead and who are yet to be formally transferred to the land that they occupy and use. This is the case where freehold land title has been issued to the registered owner without recognized user rights identified against those titles. This category of household therefore has claim over primary residential structures, crops and trees but remain constrained in legally claiming the land they occupy. They remain at the mercy of the legal title holders on whose land they reside and use through customary inheritance. The legal title holders are highly unlikely to disinherit them as the Duruma cultural traditions prohibit disinheritance. Care will be taken to ensure that legal title holders do not fail to move with their sons and families and anyone else who has interest in the land to the new relocation sites or refuse to share land compensation funds with them and enable them purchase land on their own. These interests are reflected in the asset register and will be compensated as noted above.

This RAP notes that this is complicated by the NLC Act which compensates persons who produce title deeds in their names. This RAP requires that all PAHs including those who have not had land that they occupy formally transferred to them be entitled to full compensation i.e. land crops, trees etc. This is reflected in the asset register at Annex 3. These cases will be addressed as indicated in para. 3.3 and 9.3.

Note, on land registered as community or customary land, such as the Mwavumbo group ranch these customary rights are determined during the registration process and as such, user rights have a basis in Kenyan Law. This customary interest on affected land is provided for in the Land Act and all the persons with determined interest to the land are entitled to compensation as per the Land Act; Subsidiary Legislation Part V COMPULSORY ACQUISITION OF INTERESTS IN LAND para 27. These rights are recognized under Kenyan Law and will be compensated accordingly.

Land use in the project affected area is also split into two uses where a portion of the parcel of land is used for residential purposes (homestead with primary residential structures) and the remaining portion (often the largest) serving as agricultural land.

Based on the results of the census and socio-economic survey conducted in 2017, the preferred form of compensation by 99% of PAHs is cash compensation for affected land while only 9 % had other parcels of land away from the project area where they could resettle upon being displaced by the project. Although the PAHs expressed preference for cash compensation for all affected assets including land, a cash only option is undesirable under the World Bank indigenous peoples policy OP4.10 and involuntary resettlement policy OP4.12 due to the vulnerability levels of the affected PAP population and the generally known risks associated with cash compensation for vulnerable and marginalized groups such as the affected Duruma Community.

#### **Additional consultations to Understand the risks of self-managed and assisted relocation.**

To better understand the risks associated with cash compensation, establish the viability and impact of the affected community relocating within the project area and develop further systems for managing the risk of cash compensation, additional field validation activities became necessary. The activities were aimed at determining the PAHs who have alternative parcels of land hence able to self-relocate vis-a-vis PAHs without alternative land and therefore needing additional assistance in identifying alternative land.

This validation exercise was undertaken through a participatory process which involved 913 affected land owners out of a total of 1,359. 446 affected land owners did not participate in the validation exercise for various reasons.

The exercise targeted only land owners, so impacted households without formal title in the project area were not consulted in this process. This activity took place between 26 and 30 November 2018 in all the affected villages through administration of questionnaires to the PAHs. It was aimed at verifying the following.

Number of PAHs who attest to currently owning another parcel of land of their own in a different location. These PAHs indicated their ability to self-relocate and did not require project assistance in identifying relocation land.

- Number of PAHs who currently have no alternative land of their own to resettle but have identified resettlement land on their own and only need to be compensated by NLC for loss of affected land in cash and offered additional support during relocation and resettlement. These PAHs indicated their ability to self-relocate and did not require project assistance in identifying relocation land.
- Number of PAHs who currently have no alternative land of their own to resettle on and are unable to/have not identified alternative ideal resettlement land on their own and hence needed project support in identifying resettlement land and offered additional support during relocation and resettlement.
- Number of PAHs with no alternative land but want cash compensation and do not want project assistance. These intend to move away from the community and resettle elsewhere.

The table at section 5.6 in the main text shows the results of this validation exercise.

Out of the total 913 PAHs interviewed, 55% of the respondents have a clear and documented plan for relocation; of this, 35% have their own residual land while 20% have identified land parcel for relocation and will pay for the land parcel once they received compensation from NLC. All affected households in these two categories requested support during the relocation process such as transport or conveyancing. Experience drawn from other resettlement projects in Kenya shows that as and when dam construction is about to commence, the PAPs will seek additional support for their resettlement plan. This support will be available through the RAP IT.

Another 45% of the respondents do not have other parcels of land and have not identified potential resettlement land. This category of PAPs will require addition assistance in the identification of resettlement land.

They will require transport and personnel to help them in moving around the host communities' areas and identify suitable land and negotiate with the potential land sellers. This particular group of PAHs will require addition project intervention during resettlement process.

It is worthy of note that the largest single category of this exercise were those that declined to respond to the questions. As the dam project has been in the offing for a long time with studies after studies conducted on the project, the PAPs have over time become fatigued with consultations and skeptical about the project and do not want to commit more time and resources on project related activities such as above requests to authenticate their resettlement plans.

As noted above, due to cultural considerations and a lack of trust in government, the community overwhelmingly expressed a desire for cash compensation to facilitate self-managed relocation. To manage the risks self-managed relocation entails, the project is putting in place systems to safeguard against the irresponsible use of cash and the resultant destitution.

The system will operate on the principle that cash compensation will only be paid once the RAP IT has identified a viable relocation strategy together with the individual PAH. Support will be provided to this process through the RAP Implementation Team (RAP IT). Refer to Annex 9 for draft TOR of RAP IT—which will be updated to reflect the final RAP).

Where PAHs decline to avail themselves to the RAP IT assistance, the RAP IT will prepare a report detailing the situation and recommending how to proceed, including monitoring and alternative forms of engagement and assistance where appropriate.

Based on the RAP IT report and the criteria established for this purpose, the RAP Implementation Steering Committee (Refer Annex 14 for TOR) will determine whether the relevant PAHs require additional support and how their relocation strategies will be facilitated and/or monitored. Where a vulnerable PAH declines to avail himself/ herself for resettlement assistance and a finding of vulnerability is confirmed but engagement with the PAH fail, a social worker will monitor the PAH by visiting every three months until the PAH is restored or an LRP is agreed. Where regular monitoring becomes impractical or a period of 24 months lapses without the PAH being fully restored, necessary remedial measures determined by the RAP Implementation Steering Committee and favorable to the PAH will be taken. Under any scenario, compensation for assets and land lost will be paid to PAPs before displacement.

As per the different groups of land owners identified above:

35% of PAHs who claimed to have alternative land and 20% who claimed to have already identified alternative and suitable relocation land on their own and are only waiting for compensation to purchase the land. During the RAP validation exercise, efforts were made to ascertain and confirm the true position of PAHs who made the above claims by conducting visits to the claimed parcels of land and inspecting ownership documents. This move was not supported by the PAHs and their leaders who indicated that this due diligence not possible until the PAP affected assets and land values have been determined and the quantum of compensation owed to each PAP was understood. That is, households had different plans in mind depending on the amount of compensation they received and they wanted to keep their options open.

### **The approach to Resettlement.**

In order to manage the risks of cash compensation, the RAP implementation Team under the guidance of the RAP Implementation Steering Committee will guide NLC on the appropriate time to release the money to each PAH. Money will only be released to PAPs after the RAP IT confirms that the PAPs have established appropriate plans for the compensation money. This will be done in concert with the development of tailored livelihood restoration plans for each household.

These LRPs will hence include a statement of the PAH's plans for the compensation money, a list of assistance with land acquisition and relocation the PAH requires from the RAP IT and a tailored livelihoods restoration package to help the PAH achieve their relocation objectives, unless PAPs decide to opt out.

This will involve the RAP IT either identifying appropriate parcels of land for PAHs or confirming parcels identified by PAPs exist; confirm ownership of land through review of title deeds (or other proof of ownership i.e. customary); and confirm if the sellers agree to the sale arrangements with PAH. After above confirmation, (and when the PAH have agreed to a tailored livelihood restoration package with the RAP IT) PAHs, will receive cash compensation

from NLC to facilitate the self-managed relocation strategy or the assisted relocation strategy will be executed.

PAHs who refuse to take part in this process, i.e. opt out, will be considered at very high risk due to the project and their cases will be evaluated by the RAP IT and referred to the RAP Implementation Steering Committee with an evaluation and recommendation report from the RAP IT. The Steering Committee will consider each case individually to determine whether any tailored support is needed and how each case can be monitored. A written agreement with the PAH will document the decision to opt-out and the agreed follow up actions.

For PAHs who neither have other parcels of land nor have identified potential resettlement land, the RAP IT will support the PAHs to identify suitable resettlement land and to conclude the sale agreements with sellers, transfer of cash to the sellers and successfully transfer of land ownership to the PAPs. (See **attached in Annex 8 the TOR for the conveyancing lawyers to support land transfers to facilitate this process and Annex 9 the draft ToRs of the RAP Implementation Consultant** currently being hired).

### **Compensation for Structures, Crops, Trees and Other Assets**

Compensation for these assets will be cash at full replacement cost.

### **Compensation for Community Resources**

Because of the nature of communal resources, the definition of impact should not be limited to the PAHs which were surveyed. Communal resources are used by the wider community and it is impossible to determine and verify who exactly used communal resources in the Project Area in any given time period. Therefore, the loss of communal resources will be compensated through restoring these resources and making them available to the PAP and host community. They include five (5) schools, a health centre (perimeter wall) and office housing water utility company (perimeter wall removed). Three (3) schools will be completely displaced and require relocation while perimeter walls of two (2) schools will be relocated away from the road's RoW.

### **Livelihood Restoration Strategy**

As noted above, to manage the risks associated with the community's stated preference for self-managed relocation as their preferred land-based resettlement option, a livelihood restoration plan tailored to each individual household will be a prerequisite for the payment of compensation unless PAPs opt out. As such all affected households are expected to benefit from the project's livelihood restoration strategy. The livelihood restoration strategy outlined in this RAP was developed as a result of extensive discussion held with PAHs and key stakeholders and were based on the needs as presented and prioritized by the PAHs during these community consultations.

That said, they are intended as indicative and each household's preference will still be considered irrespective of its inclusion in the strategy outlined in this RAP.

The entitlement matrix overleaf further shows the livelihood restoration options for each category of PAH. A tentative budget for the development of the LRP has been included in this RAP but will ultimately be determined by a competitive procurement process. The strategy presented here includes the following types of activities: -

- Financial training for the sustainable and prudent use of cash compensation (including training on the maintenance of a bank account, on small household investments, saving strategy and financial planning on the household level);
- Business skills training for alternative income generating activities;
- Establishing businesses and other income generating activities from compensation monies saved after resettlement and grants given to PAPs under the livelihood restoration plan;

- Agriculture and livestock development projects and support programs targeting the PAHs and host communities;
- Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;
- Additional care will be taken for community members with special needs such as orphans persons with disability and those HIV affected to assist them to access support services in areas of new settlement;
- household level monitoring of resettlement.

## Entitlement Matrix

The Table below highlights the entitlement matrix for all the categories of PAHs as identified in the RAP.

### Entitlement Matrix

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Entitlement	Restorative
1.	Dwelling structure used as primary residence	Rightful owners of the affected house and structures who choose to receive cash compensation for the affected houses	<p><b>Option 1:</b> Cash compensation for all structures at replacement cost, based on professional valuation.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period given to vacate as defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p>	<p><b>Option 1:</b> Cash compensation to owners of affected structures that are either complete or incomplete. All structures must have been present within the project area at the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p>	Financial training for the sustainable and prudent use of cash compensation	Monitoring mechanism at main stages of construction of dwelling units.
		Rightful owners of the affected houses and structures who choose to have replacement houses/	<b>Option 2:</b> Constructed in kind replacement house of size (measured floor area or number of rooms) at least equivalent to the PAH's pre-resettlement housing, with consideration of functional		Financial training for the sustainable and prudent use of cash compensation	Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		structures replaced in kind (built by the Project)	<p>spatial use, at location of owner's own choice but within Kinango Subcounty. Choices of standardized replacement house design(s) offered to PAHs must comply with County Government building/ planning standards, take spatial and cultural function into consideration and comply with minimum standards of safety and allotments of space per occupant. Houses are to be constructed from durable wall and floor materials and with permanent roof. Houses will be considered complete when constructed as described above and fitted with lockable inner and outer doors and windows and connected with agreed services. Housing unit that meets minimum standards of safety, local housing codes and minimum allotment of space per HH member. will be provided to all PAHS who choose in-kind housing unit replacement regardless of the value of PAH's prior dwelling. If the PAHs prior dwelling was larger or of significant better quality or value than the basic units offered, the PAH can 1) agree with the MOWS on optional housing plants/ models; and/or 2) opt to receive the balance of the compensation in cash.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative.</p> <p>For PAHs who choose to have project build their houses, an agreement will be</p>	<p>by NLC.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All PAHs in this category must prove that the affected structure is their primary residence.</p>	<p>Transport to new place of abode for all movable assets as well as registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of construction of dwelling units.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>



#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Entitlement	Restorative
			<p>signed with the PAHs describing the house to be built, the location and the expected time of final relocation (in principle should not exceed 6 months)</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period given to vacate defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p>			
		<p>Rightful owners of the affected houses and structures who are on priority areas required by the contractors sooner than the project or the PAPS upon receipt of compensation money can construct permanent relocation homes</p>	<p><b>Option 3:</b> Provision of suitable temporary rented houses of equivalent functional spatial use to those affected and located within <b>defined radius/areas</b> until their permanent houses are complete. This is in addition to their rightful compensation for all affected assets under the RAP. They will use the temporary accommodation as residences until their relocation homes are constructed. The construction of the relocation homes will be monitored by the project to ensure that steady progress is made and PAPs are able to relocate to permanent houses as quickly as possible.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced.</p>	<p>All listed vulnerable PAPs and other PAPs who will be required to move out of the project priority areas to enable commencement of project construction activities as they construct permanent or have replacement houses constructed for them at their own selected and acquired resettle land.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All PAHs in this category must prove that the affected structure is their primary residence.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Assistance in identification of rental houses and negotiation of the monthly rent with the potential landlords if preferred.</p> <p>Execution of tenancy agreement for the rented houses between KWSCR and the landlords if preferred option is renting</p> <p>Timely payment of monthly rent and utility bills for the period of time in temporary housing</p>	

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>For PAHs who choose to have the project build their houses, an agreement will be signed with the PAHs describing the house(s) to be built, the location and the expected time of final relocation (in principle should not exceed 6 months)</p> <p>PAHs choosing to build their own homes will, in principle relocate directly to their final relocation sites within an agreed time frame of not less than three months from the notice to vacate and receipt of compensation or as otherwise agreed. Should the project require that they relocate sooner than the time they need to rebuild, the PAHs and the MOWS will sign an agreement stipulating the amount of cash needed to build the home to be paid in advance of the move, identifying the new home site and establishing a maximum time at which the PAH expect to be ready to relocate permanently. The PAHs will receive the balance of their compensation upon final relocation.</p> <p>PAHs who will not be able to relocate directly to their new housing will also receive additional moving assistance and an additional subsistence allowance to compensate for any other verifiable costs of the transition (additional transport costs to work, inability to plant subsistence crops, lost wages or other income, need for additional assistance of any kind).</p>		<p>Transport to new place of abode for all movable assets as well as registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>
2.	Structures used for secondary purposes e.g. commercial/	Rightful owners of the affected structures	Cash compensation for all structures at replacement cost, based on professional valuation.	Ownership established through final asset surveys.	Financial training for the sustainable and prudent use of cash compensation

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Entitlement	Restorative
	business structures		<p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period to vacate defined by the project schedule and prior to demolition.</p> <p>Compensation for loss of income for three months or the period of the time actually required to re-establish the business elsewhere if greater</p> <p>3 months' written notice to vacate the project area.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p> <p>Any other transitional costs such as extended storage, lost wages by other HH members, etc.</p>	<p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Cash compensation to owners of affected structures that are either complete or incomplete</p> <p>All structures must have been present within the project area by the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p> <p>PAP must provide proof of business income generation at the affected structure and by the related business carried out at the structure through business records.</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/ Registered Valuers</p>	<p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>	

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		Renter/Tenants	<p>Reimbursement for unexpired tenancy / lease period or the amount of deposit or advance paid by the tenant to the landlord or the remaining amount at the time of expropriation, or three months' rent, whichever is greater.</p> <p>Compensation for loss of income for the period of the time required to re-establish the business elsewhere: 3 - 6 months' income (or longer if justified)</p> <p>3 months' written notice to vacate the project area.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Any other transitional costs such as extended storage, lost wages, deposits and transaction fees, etc.</p>	<p>Proof of a formal tenancy agreement for the occupancy of the affected houses has to be provided.</p> <p>In the absence of a formal agreement, a month rent receipt has to be provided.</p> <p>PAP must provide proof of business income generation at the affected structure and by the related business carried out at the structure through business records</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/ Registered Valuers</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Assistance in locating and negotiating replacement rental premises</p>
		Workers	Three months lost wages	Proof of income or minimum wage	Assistance to facilitate relocation with business owner or obtaining alternate employment
3.	Loss of business income/wages	Persons earning livelihoods (income or wages) from affected assets such as stone quarrying and sand harvesting and running businesses in structures that will be affected	<p>Compensation for loss of income for three months or the period of the time actually required to re-establish the business elsewhere if greater</p> <p>3 months' written notice to vacate the project area.</p> <p>Taxes and fees, and registration costs for Registration of property to be paid for</p>	<p>PAP must provide proof of business income or wages generated from the affected resource and affected business</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/ Registered Valuers. Workers will receive minimum wage.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p>

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

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

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

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
7.	Permanent loss of agricultural farming land	Registered owners or claimants of customary held lands	<p><b>Option 1:</b> Self-managed relocation (Cash compensation with relocation plans overseen)</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Assistance in conveyancing and transferring title</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law</p>	<p>PAPs must prove ownership (either through formal or traditional verification processes) at the time of NLC verification</p> <p>Acceptable Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Payment of compensation for lost assets and land made before displacement.</p> <p>PAHs must give proof of ownership of other suitable parcel of land or a verifiable intention to enter into a binding/ written sale agreement with a potential seller of the suitable parcel of land before release of cash compensation.</p> <p>To ensure security of tenure to the resettled PAHs, the Legal Consultant will facilitate the execution of Sala Agreements between the sellers of land and the PAHs.</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/ Registered Valuers</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Agriculture and livestock development projects and support programs targeting the PAHs and host communities</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>



#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
8.			<p><b>Option 2:</b> Assisted relocation (Cash compensation held by project and land and structures identified and acquired by the project)</p> <p>RAP Implementation Consultant assist willing PAHs to identify suitable resettlement land whose value does not exceed the total compensation and is within the defined project area and to negotiate and conclude the sale agreements with sellers, transfer of cash to the sellers and successfully transfer of land ownership to the PAHs.</p> <p>Assistance in conveyancing and transferring title.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law</p>	<p>PAHs must prove ownership (either through formal or traditional verification processes) at the time of final asset surveys.</p> <p>Acceptable Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Payment of compensation for lost assets and land made before displacement.</p> <p>All listed vulnerable PAHs and all PAHs who neither own other resettlement land nor have identified suitable resettlement land.</p> <p>This is the is also a risky category of land PAHs who will require direct project intervention during RAP Implementation</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Transport and personnel to help PAHs in moving around the host communities' areas and to identify suitable land and negotiate with the potential land sellers.</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p>
9.	Permanent loss of grazing land	Registered owners or claimants of customary held lands	<p>Registered owners or claimants:</p> <p>Cash compensation of the value of the land at replacement cost.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Provision of support registration cost and</p>	<p>For cash compensation, persons must prove ownership and interest (either through formal or traditional verification processes) at the time of final asset surveys. NLC will require to confirm the bona fide person(s) who have determined interest on the affected land and issue awards to them as provided in the Land Act</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>required formalities to ensure security of tenure.</p> <p>Assistance in conveyancing and transferring title.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p>	On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.	<p>Agriculture and livestock development projects and support programs targeting the PAHs and host communities</p> <p>Monitoring mechanism at main stages of resettlement</p>
10.	Annual Crops	Owners of crops on farm land	<p>The project will make every effort to ensure land is taken after annual crops have been harvested. In such circumstances, no compensation for annual crops will be paid.</p> <p>Where crops are planted as part of the regular farming cycle in the project area and land is required, prior to harvesting, Crop Owners receive:</p> <p>Cash: damaged crops will be compensated in cash as mature crops at agreed rates determined annually based on replacement cost determined by Ministry of Agriculture based on market prices plus transaction costs</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p>	Crop owners identified through final asset surveys by NLC and verified by RAP IT	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Agriculture and livestock development projects and support programs targeting the PAHs and host communities</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p>
11.	Perennial Crops (Including fruit and economically valuable trees)	Owners of crops on farm land	Cash compensation based on replacement cost determined by Ministry of Agriculture and Kenya Forest Service for crops/ fruit trees and trees of economic/ medicinal value respectively based on market prices plus transaction costs	Crops or trees in place (rooted) at cut-off date and identified through final surveys by NLC and verified by the RAP IT	Household level livelihood restoration plan as a condition of compensation payment.

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>Compensation according to defined growth stage or size categories.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p>		
12.	Restricted access to natural resource and recreational areas provided by river Mwache	Natural Resource and recreational users	<p>Project to address access restrictions through improved access to alternative natural resource areas or substitute the resource base by providing other water sources for the households who depend on the Mwache River as a source of meeting their domestic water needs.</p> <p>Secondly provide other recreational facilities to the PAPs and host communities who used the Mwache river as swimming grounds especially the young children who are often seen swimming at various spots of the river.</p>	Persons who gather natural resources such as medicinal herbs, thatching grass, timber or mushrooms and the boys and men who swim in river Mwache and the women who wash clothes and draw water from the river	Participation in Livelihood Restoration Programmes to restore livelihoods to pre-resettlement levels. This may include provisions to provide access to alternative resources (such as seedlings and accessible water points)
13.	Loss of agricultural employment	Agricultural workers	Three months lost wages at documented level or minimum wage, whichever is greater	Wage workers on agricultural parcels	Assistance to facilitate moving with employer or obtaining similar employment
14.	Vulnerable Support Program (Tailored)	All PAPs in the project area are considered vulnerable due to poverty and are hence entitled to livelihood restoration support. This category refers to PAHs with other forms of vulnerabilities which may require special consideration.	<p>Transitional hardship assistance program appropriate to specific cases and based on Project assessment, including: -</p> <p>Priority in physical mobilization and transfer to resettlement plot;</p> <p>A preference for in-kind compensation</p> <p>Assistance in the compensation payment procedure</p>	Identified through final census survey based on agreed vulnerability criteria relevant to Project.	<p>Special assisted transit to new land;</p> <p>Additional moving, loading and unloading assistance, if necessary;</p> <p>Other specific support related to moving process (e.g. medical assistance) identified by support case workers.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		Vulnerable individuals and families who may find it difficult to cope with the Transition e.g. the elderly (over 70 years old), physically challenged, those suffering from chronic illness; widows and children who are under 18 years	Resettlement near to kin and former neighbors to maintain informal support networks where feasible		<p>be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Follow up on orphans to make sure they identify and register in school upon relocation. The Persons with Disability (PWD) and those HIV affected access support services in areas of new settlement.</p> <p>Widows, orphans and affected vulnerable persons to be assisted through local administration and family for issuance of land registration documents;</p> <p>Relocation of the widows, orphans and vulnerable persons to be facilitated and receive adequate notice to relocate</p> <p>Assist and monitor orphans to make sure that these children get back to school in case of relocation and ensure they are compensated</p> <p>The vulnerable such as mentally sick, people with disabilities, aged, chronically ill to access information and opportunities</p> <p>Monitor the resettlement of the vulnerable e.g. orphans to make sure</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
					they gain school transfers; the HIV affected and chronically ill have access to medication and the persons with disability are locally registered with APDK office.
15.	Graves/cemeteries	Family and community members	<p>Complete relocation of graves (exhumation, transportation and reburial) to designated cemetery around the project area or at the PAPs resettlement land as per individual preference</p> <p>Cash compensation at a rate/ grave that is determined by NLC in consultation with the PAHs and project staff. This cash is meant to assist the affected PAHs and communities to conduct customary ceremonies during the relocation of graves. This was specifically requested by the PAPS at various consultation forums.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p>	<p>Familiar graves identified during asset inventory and/or confirmed through the Cultural Heritage survey.</p> <p>Unmarked graves identified through chance-find do not qualify for ceremonial assistance and will be dealt with in accordance with the Chance Finds Procedure in the Cultural Heritage Management Plan.</p>	Contractors equipment/ excavator to relocate the graves when requested by the PAPs or community members
16.	Shrines	Family and community members	<p>Complete relocation of shrines in designated area around the project area</p> <p>Cash compensation at a rate/ shrine that is determined by NLC in consultation with the Kaya Elders and project staff. This cash is meant to assist the affected communities to conduct customary ceremonies during the relocation of shrines.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p>	<p>Shrines identified during asset surveys and/or confirmed through the Cultural Heritage survey.</p> <p>Cultural Heritage Management Plan to be adhered to.</p>	None

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
17.	All Actual transitional losses	All	In-kind assistance, subsistence allowances, lost income or wage extension payments, demonstrable additional expenses and any verifiable loss incurred during the transition period and prior to completion of the restoration process and not explicitly covered by allowances included above. These transitional support allowances should be phased out gradually as living conditions and livelihoods/incomes are restored.	Ensure that PAPs whose asset substitution or LRP takes longer than three months, or who experience additional transitional costs are properly supported during transition and compensated for any losses	

## **Grievance Redress and Management**

The objective of RAP Grievance Redress Management (GRM) is to provide a set of clear and traceable procedures by which any grievance arising from the Implementation of this RAP can be reported. Grievance can be reported by an affected person/household, community member, it is then heard and resolved. An effective GRM is mainly done through an informal, alternate dispute resolution process that is consistent with best practices and is in conformity with the requirements of OP. 4.12 before pursuing legal formal justice (judicial process) which still remains the right of every affected person in the project area. A five-level grievance management is provided for in this RAP to ensure amicable review and settlement of grievances. The grievance levels include: -

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

## **RAP Implementation Institutional Arrangements**

The RAP will be implemented within one overall organizational set up, by multi-disciplinary teams on different levels. A mix of institutions—government agencies at the Sub County, County and national levels, technical agencies and consulting firms recruited by KWSCRCP will be involved in RAP implementation as described in summary below.

### **a) National Government-Ministry of Water and Sanitation**

Ministry of Water and Sanitation (MoWS), through Kenya Water Security and Climate Resilience Project (KWSCRCP) will be responsible for the overall RAP implementation and coordination or related activities. MoWS is responsible for mobilization of financing from The National Treasury (NT) and sourcing for grants where necessary for the successful implementation of this RAP. MoWS has been given money by the National Treasury for RAP implementation and has in turn given a deposit of the required funds to NLC to compensate the first batch of PAHs in accordance with the National Land Commission (NLC) Act 2012.

### **b) KWSCRCP-National Project Management Unit and Project Management Units**

The KWSCRCP has 2 full time safeguards-dedicated staff based at the NPMU office in Nairobi and a full-time Social Development Officer based at the Coast PMU Office in Mombasa. These 3 experts have directly been supporting and supervising the RAP Consultant in preparing the Mwache Dam RAP and hence have in-depth knowledge of the social setting of the Duruma community and their complex land tenure system. They are therefore well prepared to support the PAP community during the RAP Implementation phase to ensure they have a safe landing in their new resettlement areas. PMU is currently recruiting one Communication Expert and one Social Safeguards Expert. These additional staff will be mobilized at the project area by the start of the resettlement activities. This PMU team of experts will provide the management and technical support and supervision necessary to ensure successful RAP implementation. PMU is headed and all coordination meetings chaired by the Project Manager.

### **c) Safeguards Project Implementing Unit**

In addition, a Safeguards PIU has been constituted with the mandate of specifically managing and supporting the Mwache Dam RAP implementation related activities on a full-time basis.



The Safeguards PIU team will have 44 members who include all the above described staff from the PMU, staff sourced from the CDA PIU, Kwale PIU, RAP Implementation and RAP Legal Conveyance Firms of Experts and Grievance Redress and Resettlement Committees. (Refer to **Annex 11** for the Safeguards PIU Organogram).

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

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

Another team of Safeguards PIU surveyors and sociologists will support the PAPs in the various ways as per the RAP entitlement matrix under the guidance of the firm's team leader and supervision of the Social Safeguards Specialist.

**d) RAP Conveyance Consultant**

The project has engaged a legal conveyance consultant to address the issues with respect to land ownership rights which have significance on the ability by NLC to award compensation. The consultant is required to assist all Project Affected Households (PAHs) with succession issues including lack of title deed resolve these issues and obtain title deeds in order to receive compensation as required by NLC Act 2012. The RAP Conveyance consultant reports directly to the KWSCRPNPMU. Refer to ToR in Annex 8.

**e) RAP Implementation Team**

The project is recruiting a RAP Implementation Team (firm of experts) who will among other tasks support in development of and implementing the household level Livelihood Restoration Plans (LRPs) and communal LRPs in cases where a number of PAHs decide to relocate and resettle together.; Provide support and assistance in relocating PAHs in accordance with their preferences and the commitments outlined in the RAP; Facilitate the process of land identification and acquisition for PAHs who wish to acquire land and have not identified potential parcels; Provide financial training to PAHs prior to receipt of cash compensation to help manage their compensation; Provide of business and vocation training opportunities to the PAHs; Ensure that livelihood support activities capitalize on the project benefits to the community, such as improved access roads, provision of irrigation and potable water to be provided under the project; Ensure that additional assistance is available and provided to people vulnerable to disproportionate harm due to the project; Prepare a working schedule for RAP implementation with appropriate budgetary provisions. The RAP Implementation Consultant will report to the KWSCRPNPMU Project Manager through the Social Safeguards Specialist. Refer to draft ToR in **Annex 9**.

**f) Grievance Redress and Resettlement Committees**

The grievance redress and resettlement committees will be established at different administrative levels and will be instrumental in resolution of grievances in an amicable and timely manner supplementing use of formal environment and land court.

**g) RAP Implementation steering committee**

Given the large number of actors involved in the implementation of this RAP and the atypical arrangements under which cash compensation will be released under this RAP, there is a significant requirement for multi-stakeholder coordination and decision making. As such, RAP implementation will be overseen by a steering committee chaired by the Governor of Kwale county with the KWSCRП providing the secretariat. The committee will include CDA, Kwale county, KWSCRП, the NLC, the ministry of lands and planning, and the RAP implementation team. The Steering committee will provide a forum for coordination and resolving problems associated with RAP implementation. In addition, the Committee will provide the RAP Implementation Team with guidance on how to proceed in any individual case where the PAH insists on opting out of an assisted Livelihood Restoration Plan as a pre-condition for release of cash compensation. The draft TORs for this committee are at Annex 14.

**RAP Implementation Schedule**

Total construction period is estimated to be 34 months. However, the RAP implementation period and timelines will at least be 5 years particularly the livelihood restoration programs which will last beyond the project construction phase. Refer to **Annex 12** for the Integrated RAP Implementation and Construction Schedule.

**Monitoring**

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

**a) Internal monitoring and reporting**

The RAP requires Safeguards PIU to engage in continuous, pro-active and comprehensive self-monitoring of the activities related thereto all adverse impacts, and compliance. Starting from the beginning of preliminary works and consequent construction phase Safeguards PIU will be responsible for monitoring the infrastructure construction of the resettlement areas and will establish a monitoring group for this purpose. The monitoring staff will report regularly to the KWSCRП safeguards unit of the NPMU. Self-monitoring and reporting by the Safeguards PIU to KWSCRП is intended to be the chief (but not exclusive) means of ensuring compliance with its obligations.

- **Monitoring of Construction Activities**

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

- **Monitoring of Resettlement Activities and Measures**

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

**b) External Monitoring and Reporting**

- **RAP Audit Consultant**

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

- **Disclosure of Monitoring Reports**

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

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

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

**RAP Disclosure**

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

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

- a) KWSCRCP
- b) Coast Development Authority
- c) Ministry of Water and Sanitation
- d) County Government of Kwale

e) World

Bank

external

affairs

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

- a) KWSCRP Nairobi Office
- b) KWSCRP Coast Office
- c) CDA office
- d) Kwale County Headquarters
- e) Office of contractor
- f) Kwale Sub County Office
- g) All locational offices affected by the project
- h) All Ward offices affected by the project

### **RAP Budget**

The total budget for resettlement compensation is Kshs. 3,904,699,941.33 including disturbance allowance and livelihood restoration costs. In addition, administration cost of 15 percent for the RAP implementation and monitoring and evaluation has been considered. All costs associated with this RAP as highlighted in Table below will be met by KWSCRP. However, the total costs of the RAP are bound to change as the unit prices will further be reviewed by NLC at the early stage of implementation to reflect the market prices and/or value and hence full replacement cost at that time.

### **Total RAP Budget**

	<b>Total RAP Cost</b>	<b>Amount (Ksh)</b>
1	Land	1,001,335,390.37
2.	Structures	284,457,620.50
3.	Crops and Trees	126,923,544.00
4.	Loss of Business	61,264,200.00
	<b>Sub Total 1</b>	<b>1,473,980,754.87</b>
5.	Disturbance Costs (15%)	221,097,113.23
	<b>Sub Total 2</b>	<b>1,695,077,868.10</b>
6	Livelihoods Restoration Activities/ Community Projects (SC 1.3)	1,983,524,960.00
7.	Facilitation of Grievance Redress and Resettlement Committees	5,000,000.00
8.	Contingency Costs (15%) of RAP cost	221,097,113.23
	<b>Sub Total 3</b>	<b>2,209,622,073.23</b>
	<b>Grand Total (2+3)</b>	<b>3,904,699,941.33</b>

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## ACRONYMS

ADR	Alternative Disputes Resolution
AFD	Agence Française de Développement
BoQs	Bills of Quantities
CAJ	Commission for Administration of Justice
CDA	Coast Development Authority
CFP	Chance Finds Procedure
CoK	Constitution of Kenya
CPMU	Coast Project Management Unit
CSDO	County Social Development Officers
CWSB	Coast Water Services Board
DPE	Dam Panel of Experts
ECD	Early Childhood Development
EEZ	Exclusive Economic Zones
ESIA	Environmental Social Impact Assessment
ESP	Economic Stimulus Project
GBV	Gender-Based Violence
GDP	Gross Domestic Product
GIS	Geographical Information System
GoK	Government of Kenya
GRC	Grievance and Redress Committee
GRCC	Grievance Redress and Compensation Committee
GRM	Grievance Redress Management
GRPC	Grievance and Resettlement Planning Committee
HIV/AIDS	Human Immunodeficiency Virus
HTPs	Harmful Traditional Practices
I&D	Irrigation and drainage
ISK	Institute of Surveyors of Kenya
IWUA	Irrigation Water User Association
KALRO	Kenya Agricultural and Livestock Research Organization
KWSCR	Kenya Water Security and Climate Resilience Project
KCPE	Kenya Certificate Primary Education
KeRRA	Kenya Rural Roads Authority
ROW	Right of Way
KIHBS	Kenya Integrated Household Budget Survey
KKV	Kazi Kwa Vijana
KMTC	Kenya Medical Training College
KNBS	Kenya National Bureau of Statistics
KNCHR	Kenya National Commission for Human Rights
KSG	Kenya School of Government
KWAWASCO	Kwale Water Sewerage Company
LARC	Livelihood Activity Restoration Committee
LRP	Livelihood Restoration Plan
MDG	Millennium Development Goals
MGR	Mwavumbo Group Ranch
MoWI	Ministry of Water & Irrigation
MOWASCO	Mombasa Water Supply and Sanitation Company
NLC	National Land Commission
NPMU	National Project Management Unit
NT	National Treasury
PAHs	Project Affected Households
PAIs	Project Affected Institutions

PAPs	Project Affected Persons
PAVs	Project Affected Villages
PDIS	Pilot Demonstration Irrigation Scheme
PID	Preliminary Index Diagrams
PIU	Project Implementing Unit
PRA	Participatory Rural Appraisal
RAP	Resettlement Action Plan
RAP IT	RAP Implementation Team
RIM	Registered Index Map
RPF	Resettlement Policy Framework
SC	Sub Component
SGR	Standard Gauge Railway
STDs	Sexually Transmitted Diseases
VAC	Violence Against Children
VMGP	Vulnerable and Marginalized Group Plan
VRB	Valuers Registration Board
WASH	Water Sanitation and Hygiene
WaSSIP	Water Supply and Sanitation Improvement Project
WB	World Bank
WRUAs	Water Resources Users Associations
WTP	Water Treatment Plant

## GLOSSARY

**Census:** An activity carried out to identify and determine the number of all project-affected persons (PAPs), their assets, and potential impacts; in accordance with the procedures satisfactory to the relevant government authorities, and the World Bank Safeguard Policies.

**Compensation:** The payment in kind, cash or other assets given in exchange for the taking of land, or loss of other assets, including fixed assets thereon, in part or whole.

**Cut-off date:** The date at which the property identification and valuation exercise and the census of PAPs within the project area boundaries commenced. This is the date on and beyond which any person whose land is planned for and/or occupied for project use will not be eligible for compensation. This is also used to minimize and/or control any fraudulent claims by new migrants in the project area to benefit from project implementation.

**Project-affected persons (PAPs):** Persons who, for reasons of the involuntary taking or voluntary contribution of their land and other assets under the project, result in direct economic and/or social adverse impacts, regardless of whether or not the PAPs physically relocate. PAPs can be through involuntary displacement and involuntary land acquisition.

**Project-affected household (PAH):** A household that is affected if one or more of its members is affected by sub-project activities, either by loss of property, land, loss of access, or otherwise affected in any way by the implementation of the project activities.

**Project-affected sites:** Clearly defined and/or surveyed areas or places earmarked for takeover, permanently or temporarily, for purposes of implementing project activities.

**Involuntary displacement:** The involuntary taking of land resulting in direct or indirect economic and social impacts caused by:

- loss of benefits from use of such land;
- relocation or loss of shelter;
- loss of assets or access to assets; or
- loss of income sources or means of livelihood, whether or not the project-affected person has moved to another location.

**Involuntary land acquisition:** The taking of land by the government or other government agencies for compensation, for the purposes of a public project/interest against the will of the landowner.

**Land:** Agricultural and/or non-agricultural land and any structures thereon whether temporary or permanent and which may be required for the project.

**Land acquisition:** The taking of or alienation of land, buildings or other assets thereon for purposes of the project activities implementation using eminent domain as per law of the country. Any purchase of land through negotiation, unless specified by law, would not constitute acquisition.

**Resettlement Action Plan (RAP):** Also known as a Resettlement and Compensation Plan, a resettlement instrument (document) prepared when sub-project locations are identified and involves land acquisition which leads to or involves the physical displacement of persons, and/or loss of shelter, and/or loss of livelihoods and/or loss, denial or restriction of access to economic resources. RAPs are prepared by the project owners (managers or their appointed representative) impacting on the PAPs and their livelihoods and contain specific and legally binding requirements for compensation of the PAPs before the implementation of such project activities.

**Replacement cost:** The replacement of assets with an amount sufficient to cover full replacement cost of lost assets and related disturbance and transaction costs. In terms of land, this may be categorized as follows:

**Replacement cost for agricultural land:** The pre-project or pre-displacement, whichever is higher, value of land of equal productive potential or use located in the vicinity of the affected land, plus the costs of:

- preparing the land to levels similar to those of the affected land;
- any registration, transfer taxes and other associated fees.

**Replacement cost for houses and other structures:** The prevailing cost of replacing affected structures of the quality similar to or better than that of the affected structures in an area. Such costs shall include:

- building materials;
- transporting building materials to the construction site;
- any labour and contractors' fees; and
- any registration costs.

**Resettlement assistance:** The measures to ensure that project-affected persons who may require to be physically relocated are provided with assistance such as moving allowances, residential housing or rentals, whichever is feasible and as required, for ease of resettlement during relocation.

**Livelihood/Disturbance allowance:** Part of resettlement and livelihood restoration assistance to PAPs whether they relocate or not. It is provided for under the Kenyan government legislation and has been considered under this RAP at 15 per cent.

**Vulnerable PAPs:** Socially and economically disadvantaged groups of persons such as widows, the disabled, very old persons or household heads who are likely to be more affected by project implementation or are likely to be generally constrained to access or seek out their entitlements promptly. Vulnerable households by implication also include:

- Incapacitated households with no one fit to work owing to advanced/old age-associated incapacities, disabilities etc.; and
- Child-headed households and street children.



# 1. INTRODUCTION

## 1.1 Background of the Assignment

In Kenya, water security is a key issue, given that the people and economy are highly vulnerable to erratic climatic patterns and limited water availability due to their reliance on key sectors (agriculture, tourism, hydro-energy, etc.) that depend on rainfall and water availability. Kenya has limited freshwater endowments and is classified as a chronically “water scarce” country in absolute and relative terms.

In the coastal region, the water is generally scarce. Demand largely exceeds water supplied into the systems, non-revenue water is high, revenue collections are low, and the utilities – the Mombasa Water Supply and Sanitation Company (MOWASCO), the Kwale Water and Sewerage Company (KWAASCO), and others – are technically insolvent, with expenditure obligations exceeding cash income. The total water demand for the coastal region has been projected at 364,243 m<sup>3</sup> per day for 2015 and is expected to more than double by 2035 (887,253 m<sup>3</sup> /day).

The Government of Kenya (GOK) received credit financing from the World Bank through an International Development Association (IDA) loan to implement activities and projects under the Kenya Water Security and Climate Resilience Project (KWSCR). The Kenya Coastal Region Water Security and Climate Resilience Project (KWSCR-2) was approved by the World Bank Board on December 16, 2014. The project development objective of the KWSCR 2 is to improve water security and build climate resilience, sustainably increase bulk water supply and increase access to water and sanitation in the Coastal Region by:

- Increasing the supply of bulk water to Kenya’s coastal region, including Mombasa; and
- Increasing access to water in the coastal region including Mombasa,
- Developing a demonstration irrigation project

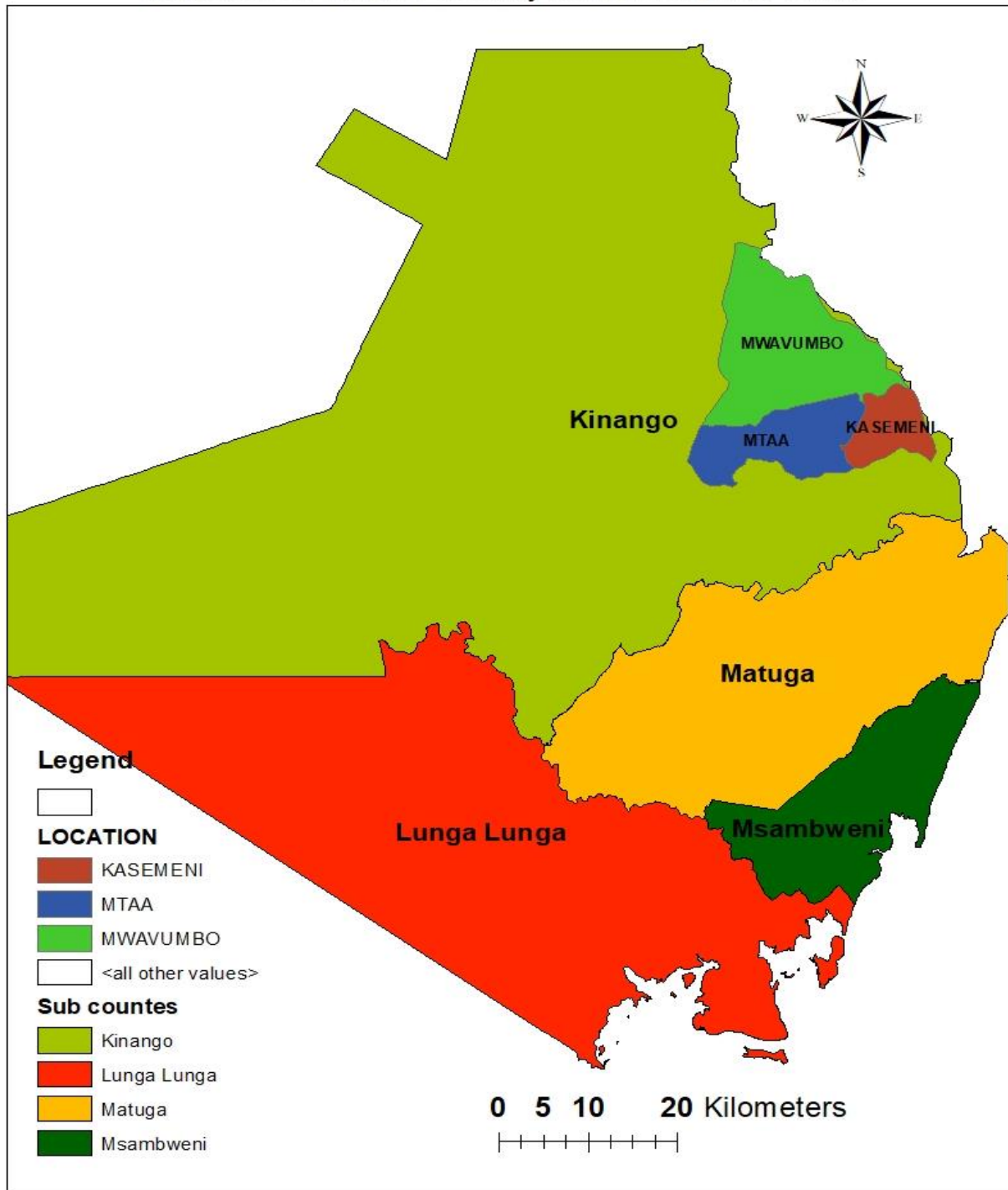
One of the potential investments identified under the KWSCR II is the Mwache Multipurpose Dam Project, a Vision 2030 flagship project, which has been given high priority by the Ministry of Water and Sanitation (MOWS), Kwale and Mombasa Counties.

This Resettlement Action Plan (RAP) referred as RAP 1 (split into Vol 1-RAP 1a and Vol 2-RAP 1b) has been prepared for Mwache Multipurpose Dam Project’s Main Dam and Lower Check Dam project areas and will be implemented by the Government of Kenya through the Ministry of Water and Sanitation (MOWS). Two separate Resettlement Action Plans; RAP 2 which is under preparation and RAP 3 which will be prepared later will cover areas affected by the proposed Upper Check Dam and additional roads around the dam area respectively. The main dam, lower and upper check dams will be located in Kwale County, Kinango Sub County in Coast region of Kenya. The main dam and lower check dam project area covers two administrative wards, three locations and 20 villages within Kinango Sub County. Refer to Figure 1.

2,460 PAHs with a total of 7,541 PAPs will be affected as a result of this project. In addition, 8 public/community institutions will be affected.

**Figure 1: Project Administrative Boundaries (Counties and locations)**

**Location of Kwale County administrative units**



## 1.2 Justification of RAP Review and Update

The purpose of the Resettlement Action Plan is to identify and outline the resettlement needs and related impacts of the dam project, provide actions required to acquire land, relocate people affected by the Mwache Dam Project and provide a livelihood restoration strategy and give a robust grievance redress mechanism.

The proposed project components related to construction of the dam requires compulsory acquisition of land and therefore leads to economic and physical displacement of persons who are within the proposed project area and therefore triggers the need for Resettlement Action Plan (RAP) in accordance with OP. 4.12.

This RAP has been reviewed and updated and stems from the original RAP prepared in 2014 which was approved and disclosed by GOK and World Bank. The reasons for reviewing and updating this RAP include: -

1. Delay in implementation of the RAP prepared and disclosed in 2014 which renders the census, socio-economic data, asset inventory and valuation data, cut-off date etc. outdated and not reflective of the current ground situation in view of the fact that the time lapse implies increase in number of PAHs and changes in value of assets, socio-economic status, number of structures and change of land ownership through 'willing buyer willing seller' purchase or inter family transfer etc.
2. In order to optimize the dam operations, a design review was undertaken in 2016-2017 which triggered changes in the original dam design including among others: -
  - Increase in dam height from 78m to 84m hence increasing the reservoir/flooded area and displacement footprint.
  - Addition of other project components requiring land acquisition including silt pile area (for depositing of silt that will be periodically removed from lower and upper check dams; inclusion of access roads; inclusion of a health center and police station at the dam operation area that will require additional land

### **1.3 Scope of RAP Review and Update**

The Resettlement Action Plan for Mwache Dam Project has been split into 4 RAP documents i.e. RAP1a, RAP1b , RAP 2 and RAP 3 for ease of management of RAP preparation and implementation processes and in view of anticipated phased construction program and the wide geographical expanse of the dam project footprint and related resettlement needs.

### **1.4 Mwache Dam Project Components**

#### **1.4.1 RAP 1**

1. Main dam area comprising of;
  - Reservoir area (quarries of high potential rock material have been identified in parts of the reservoir areas for supply of dam building materials prior to the impoundment of the reservoir),
  - Base camp area,
  - Dam operational areas (raw water treatment plant and transmission pipeline, police post, clinic/health facility will be constructed within the dam operation area.)
2. Lower Check Dam including silt pile area
3. Access Roads A, F & H, C, G and J. These access roads have been named alphabetically will be constructed within the project area for movement of construction equipment and to cater for increased motor vehicle traffic. Refer to Figure 2.

**Table 1: Access Roads under RAP 1a**

<b>Access Roads</b>	<b>Route</b>
Access Road ‘A’	Kinango stage (Mazeras Town)-Mazeras Boys High School Junction
Access Road ‘F’	Near Mwache Bridge-Chikomani/Nunguni Junction
Access Road ‘H’	Fulugani Primary School-Base Camp
C, G and J	Routed within the main dam operation area.

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

RAP 1a will cover all of Priority 1 works areas i.e. the lower check dam site and quarry site areas (part of which are in Mwavumbo Group Ranch) and main dam site and some operational areas, all of Priority 2 areas i.e. part of main dam operational and reservoir areas and PART of Priority 3 areas (part of main dam operational and impoundment areas and part of the lower check dam reservoir areas , silt pile) and Access roads A, F,& H, C, G and J.

RAP 1b will cover PART of Priority 3 i.e. the rest of the main dam and lower check dam reservoir areas all of which are within Mwavumbo Group Ranch.  
(Refer Annex 4)

#### **1.4.2 Splitting RAP 1 into RAP 1a and RAP1b**

This report is part 1 of 2 reports and covers only RAP 1a. Part 2 of the report will be RAP 1b which is currently at an advanced stage of preparation. It will mainly comprise of PAP data and information and related summaries and various PAP categories similar to those represented in this RAP 1a. RAP 1a and RAP 1b are therefore considered one report (RAP 1) split into two parts.

#### **1.4.3 Reason and implications of splitting RAP 1 into RAP 1a and RAP1b**

It was found in March 2019 that much longer time is required than expected to complete the new census within the MGR (for acquiring approximately 493Ha land under RAP1 (40Ha under RAP 1a and 453Ha under RAP 1b) out of a total MGR area of 24,908Ha). 453Ha is now being apportioned to the affected individual ranch members in the remaining sections under the ongoing RAP1b census. Upon consultation with Bank team, the GoK team decided to split RAP1 into RAP1a and RAP1b to be able to complete the RAP1a in April 2019. The splitting of RAP 1 will have no implications on the integrated resettlement-construction schedule as the timing of implementing and completing resettlement activities remains the same as before.  
(Refer Annex 12)

#### **1.4.4 RAP 2**

RAP 2 will cover all resettlement activities associated with the upper check dam and pilot irrigation scheme areas. Works for upper check dam and pilot irrigation scheme are at design stage while the RAP is under preparation as well.

#### **1.4.5 RAP 3**

RAP 3 will cover all the remaining roads; E2 (15.8km), D (2.5km), the proposed

permanent diversions (3km + 1.5km) which will all be greenfield roads and roads B (5.4km) and E1 (4.2km) which are existing roads.

The development of the greenfield roads will involve acquiring additional land and will be needed and constructed in preparation for impoundment of the main dam and lower check dam reservoirs while the existing roads will be upgraded.

## **2 PROJECT DESCRIPTION**

### **2.1 Project Location**

The proposed Mwache Multipurpose Dam Project is located along the Mwache River, Kinango sub County, Kwale County, in the coastal region of Kenya. The proposed dam falls within the drainage system of Mwache and Mnyenzi rivers and their tributaries. The main dam wall will be constructed across the Mwache River at the Fulugani village, Kasemeni Ward, about 22km north-west of Mombasa City. Upon completion, the Dam Project will supply 80% of the water to Mombasa City for its various uses and 20% of the water used for a proposed 100Ha pilot irrigation component in Kwale County.

### **2.2 RAP 1 Project Components and Impacts**

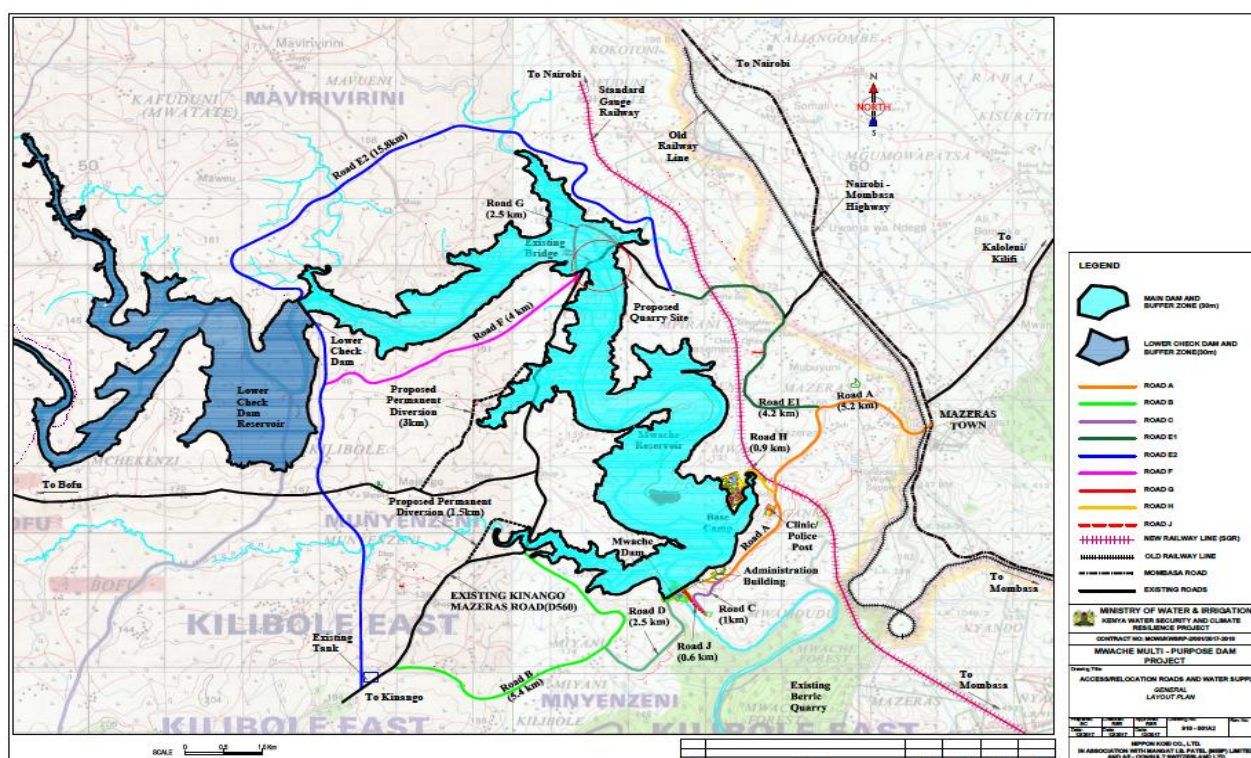
The construction of Mwache dam and related components will occur in privately owned land and will hence cause physical and economic displacement of the Project Affected Households (PAHs). 2,460 PAHs with a total of 7,541 PAPs are currently settled and deriving some livelihoods from these areas where land will be acquired for dam construction. In addition, 8 public/community institutions will be affected. This RAP study covers the following Project Components that will trigger displacement and resettlement of PAPs;

- Main Dam Area
- Lower Check Dam
- Access Roads

The economic and physical displacement as a result of land acquisition for dam construction activities will lead to loss of the following assets namely:

- Land
- Structures (residential and commercial)
- Crops and trees
- Community infrastructure (schools and health centre)
- Graves
- Shrines

**Figure 2: Site Layout showing the dam components**



*Source: Detailed Design Report*

## 2.2.1 Main Dam

The main dam is located at Fulugani village, Kasemeni Ward, Kinango Sub-County of Kwale County, about 22 km northwest of Mombasa City. The proposed dam falls within the drainage system of Mwache and Mnyenzi rivers and their tributaries.

The proposed dam is a concrete gravity dam with a height of about 84m and with a reservoir capacity of about 118 million m<sup>3</sup>. The dam with its reservoir will supply domestic water of about 186,000m<sup>3</sup>/day to Mombasa city. The main dam has the following components.

**Table 2: Main Dam Project Features**

Hydrology		
	River Basin	Mwache
	Catchment area	3,600 km <sup>3</sup>
	Mean annual basin rainfall	635 mm
	Mean annual inflow	4.96 m <sup>3</sup> /s
	Sediment yield	451 m <sup>3</sup> /km <sup>2</sup> /year
	10,000-year flood (Spillway Design Flood)	3,954 m <sup>3</sup> /s
	PMF	6,895 m <sup>3</sup> /s
Reservoir		
	Full reservoir level	El. 93.5 m



	Low Water Level	47 m
	Maximum water level	98.1 m
	Gross storage capacity	136 million m <sup>3</sup>
	Dead storage capacity	9 million m <sup>3</sup>
	Effective storage capacity	127 million m <sup>3</sup>
	Surface area at full reservoir level	6.5 km <sup>2</sup>
<b>Main Dam</b>		
	Type of dam	RCC type
	Dam top level	El. 100 m
	Dam foundation level	El. 16m
	Dam height	84 m
	Crest length	526.1 m
	Crest width	8 m
	Upstream slope	1:0.05 above El. 40 m, 1:0.20 below El. 40 m
	Downstream slope	1:0.7
	Seismic design	SEE: PGA=0.094g Sa <sub>h</sub> =0.047g, Sa <sub>v</sub> =0.033g OBE: PGA=0.014g Sa <sub>h</sub> =0.007g, Sa <sub>v</sub> =0.004g
<b>Spillway</b>		
	Design discharge	3,954 m <sup>3</sup> /s
	Type of spillway	Non-gated overflow with steps in chute
	Spillway crest level	El. 93.5 m
	Spillway crest length	187.5 m including piers
	Apron level of stilling basin	21 m
	Width of stilling basin	100 m
	Length of stilling basin	61 m
	Height of training wall	14m
<b>Intake</b>		
	Location	Immediately upstream of dam on left bank
	Type	Concrete tower with 4 selective off takes
	Design discharge	3.65 m <sup>3</sup> /s (Domestic water: 2.27 m <sup>3</sup> /s (Irrigation water + Environmental flow: 1.38 m <sup>3</sup> /s
<b>Raw Water Pipeline</b>		
	Type	Buried steel pipe
	Diameter	1.6 m
	Length	500 m
<b>Bottom Outlet</b>		
	Design discharge	25.4 m <sup>3</sup> /s (v = 10 m/s)
	Inlet	Bottom offtake of the Intake
	Outlet	1.6 m x 1.6 m sluice gate accommodated in the valve house beside the stilling basin left wall
<b>River Outlet for</b>		

<b>Environmental Flow</b>		
	Design discharge	0.31 m <sup>3</sup> /s
	Outlet	0.4 m x 0.4 m sluice gate accommodated in the valve house

*Source: Detailed Design Report*

The following are the sub components of the main dam and will be located in the area defined as main dam operational area.

- **Raw Water Transmission Pipeline**

This will be a gravity fed 500m long pipeline from the dam intake to the proposed water treatment plant. The pipeline will evacuate raw water from the dam to the water treatment plant. The land required for the laying of this pipeline is part of the land being acquired within the main dam operation area.

- **Raw Water Treatment Plant**

Agence Française de Développement (AFD) is considering funding the raw water treatment plant and has commenced detailed design studies. The location of the water treatment plant is within the main dam operational area and even though it is considered an associated facility, its land requirements are covered under this RAP.

- **Office, Police Post and Health Clinic**

The project will construct office facilities, police post and a health facility (clinic) within the main dam operation area. The office will initially be used by the supervising engineer then handed over to the operator upon commissioning of the project. The police post will accommodate security personnel to protect the dam and associated infrastructure while the health facility will provide medical services. The land required for the office, police post and clinic is within the dam operation area.

- **Material Site (Quarry Area)**

A high potential quarry site has been identified approximately 10km upstream of the main dam operational area. It is in close proximity to the existing Mwache Bridge along Mazeras - Kinango Road. The quarry site is part of the main dam reservoir area. The construction team will have sourced all the required construction materials from the quarry site before impounding the reservoir.

- **Base Camp for provision of accommodation facilities for dam operators**

A base camp will be designed and constructed for provision of accommodation and recreational facilities for the operator. It will be located on the west bank of Mwache River about 2 km north of the main dam operational area. The base camp will be built on an area of approximately 10ha and will comprise of 30 residential houses and community facilities. The base camp will be separated and different from the construction workers' accommodation camp, whose actual ground location will be determined and camp constructed by the contractor within the land acquired under this RAP. The base camp will serve as the dam operational and administrative center after the construction works are completed and the dam is operational.

### 2.2.2 Lower Check Dam

The proposed lower check dam is located approximately 8.1 km upstream of the existing Mwache Bridge and approximately 17.9 km from the main dam operational area. The lower check dam will be of concrete gravity with 29 m high.

The lower check dam is designed to act as a silt trap for holding sediments originating from the degraded catchment with the objective of reducing siltation into the main dam. If the sediments were not to be trapped into the check dam, they would compromise the water holding capacity of the main dam. The silt will be removed periodically from the lower check dam and stock piled on the 130ha area identified next to the lower check dam before being utilized by the local communities or disposed of. Depending on the physical and chemical characteristics of the silt, it will either be collected by the local communities from the silt pile area for nutrient enrichments of their farm lands or it will be sold within the county for use as construction material. The stocked silt material will benefit members of the PAP and Host communities who will form committee(s) to manage the silt distribution.

**Table 3: Lower Check Dam Project Features**

<b>Lower Check Dam</b>	
Location	15.5 km upstream of main Dam
Catchment area	3,469 km <sup>2</sup> with upper check dam of 2,538 km <sup>2</sup>
Type of dam	Convention concrete gravity
Dam top level	El. 110 m
Dam foundation level	El. 80.5 m
Dam height	29.5 m
Crest length	414 m
Crest width	8 m (to be used as public road)
Upstream slope	1:0.2
Downstream slope	1:0.57
Spillway design discharge	2,514 m <sup>3</sup> /s
Type of spillway	Non-gated overflow with steps in chute
Spillway crest level	El. 103 m
Spillway crest length	101 m including piers
Apron level of stilling basin	El. 83.5 m/El. 87.5 m
Width of stilling basin	101 m
Length of stilling basin	41 m
Height of training wall	15 m/8.5 m
Sediment retention capacity below spillway crest level	8.6 MCM
Silt Pile Area	130ha

*Source: Detailed Design Report*

### 2.2.3 Access Roads

Three (3) existing roads within the main dam and lower check dam areas will be expanded and rehabilitated and three (3) new ones will be constructed to ease access to the different project construction sites. The existing roads are A, F & H and are owned by Kwale County and Kenya Rural Roads Authority (KeRRA) while the new roads are C, G

and J are routed within the main dam operation area.

The expansion and rehabilitation activities will occur within the existing Right of Way (ROW) hence no additional land will be acquired. However, the ROW is encroached with human settlements.

The affected households will be compensated for the developments done on the RoW and resettled elsewhere away from the road reserve. Roads are mainly for ensuring equipment movement and access to the different locations of the project components.

The project will not block any existing access road nor footpath used by the community members in particularly accessing Mwache forest where traditional medicines are found. As a safeguard for any emerging access needs after fencing off the operation area, the project will leave access path between the SGR line and the main dam's operation area in Fulugani that will lead to the Kaya forest and other areas beyond the dam for use by the neighboring community members as maybe necessary. Currently, the community members access the forest from various informal accesses near their areas of residence. Flooding of the dam will not affect any forested areas as the impoundment areas are bare without much vegetation except for the crops that are planted/ grown by the subsistence farmers during the rainy season and the coconut trees found in various places along the river valley.

**Table 4: Length of Access Roads**

<b>Road Name</b>	<b>Length in Km</b>
Road A	5.2
Road F	4
Road H	0.9
Road C	1
Road G	2.5
Road J	0.6
<b>Total</b>	<b>14.2</b>

*Source: Detailed Design Report*

### **2.3 Project Beneficiaries**

An estimated 626,200 people will directly benefit from this project. This figure represents the beneficiaries in Kwale County who includes the PAPs of whom majority are expected to resettle in Kinango Sub County. They would then be provided with improved water sources, sanitation facilities, improved hygiene and sanitation practices; benefits from the 100-ha irrigation demonstration pilot under Component 2 of the project<sup>3</sup>.

### **2.4 Construction Implementation Schedule**

Total construction period is estimated to be 34 months. However, the RAP implementation period and timelines will at least be 5 years particularly the livelihood restoration programs which will last beyond the project construction phase. Refer to **Annex 12** for the Integrated RAP implementation and Construction Schedule.

<sup>3</sup> These figures do not include the potential beneficiaries from the bulk water supply of 186,000 m<sup>3</sup>/day (67.9 MCM/year) that is expected to supply 1,395,000 people with urban water access, as this project is not financing the downstream infrastructure needed for this bulk water to supply beneficiaries in Kwale and Mombasa Counties. Potential beneficiaries will be tracked as part of monitoring at the KWSCR program-level.

### **3 RAP METHODOLOGY**

#### **3.1 Review of Legal and Policy Documents**

The review of relevant legal and policy documents is aimed at enhancing the knowledge and understanding of the legal framework under which the RAP is prepared and under which it will subsequently be implemented. The RAP preparation and implementation will be governed by Kenyan laws and World Bank OP. 4.12 and OP. 4.10. The documents that were reviewed included among others;

- Constitution of Kenya,
- Land Act,
- Land Registration Act
- Valuers Act
- National Land Commission Act,
- Land Registration Act
- Community Land Act,
- Water Act
- World Bank OP. 4.12 and OP 4.10
- KWSCRП Resettlement Policy Framework

#### **3.2 PAPs and Stakeholder Consultations**

Stakeholder consultations as part of the preparation of RAP report for Mwache Dam began in 2014 when the original RAP was prepared. Consultations were held during this time with Project Affected Households (PAHs), County Government, National Government among others through community barazas, key informant interviews (KII), and Focus Group Discussions (FGD). However, following the delay in the implementation of the project as a result of changes in design among others, an update of the RAP was necessitated.

Stakeholder engagement for the RAP was re-initiated in July 2017 as part of the RAP update. The RAP team undertook public consultations with the Project Affected Persons (PAPs) that ensured project activities and the potential impacts with respect to displacement of the local community and disturbance of their livelihoods were explained and openly discussed. Stakeholders consulted during the study included the County Commissioner's office representatives at the local levels, Kwale County Government Officials, Ward and Village Administrators among others. The objective of these consultations was to inform and increase PAPs and community awareness about the Project and the RAP process. Public consultation meetings also formed a platform to explain the nature, extent and method of affected asset inventory, valuation and compensation and the process of carrying out RAP census and socio-economic survey. The principle of the cut-off date was disclosed and communicated to the affected communities during the public meetings (barazas) and during household level data collection.

PAHs are generally fatigued by the consultation forums and somewhat hostile to the project due to the long duration it has taken before implementation. They are skeptical as to whether the project will ever be executed.

### **3.3 The Duruma and the overall approach to resettlement in this RAP**

All the people displaced by this project are belong to the Duruma tribe and qualify for special consideration under the World Bank policy OP4.10 indigenous peoples. As such, the preparation of this RAP has followed the principles outlined in both OP4.10 and OP4.12. Specifically, OP. 4.10 stipulates that Bank-financed projects include measures to (a) avoid potentially adverse effects on the Indigenous Peoples' communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects. In the case of Mwache Dam, no alternative designs were able to remove the impact on the Duruma. Though in consultation with the community, measures were taken to minimize the impact on the community (such as reducing the silt processing site from 500 to 130 hectares) significant displacement remains necessary.

OP. 4.10 further stipulates that, "in exceptional circumstances, when it is not feasible to avoid relocation, the borrower will not carry out such relocation without obtaining broad support for it from the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process. In such cases, the borrower prepares a resettlement plan in accordance with the requirements of OP 4.12, Involuntary Resettlement, that is compatible with the Indigenous Peoples' cultural preferences, and includes a land-based resettlement strategy. As part of the resettlement plan, the borrower documents the results of the consultation process. Where possible, the resettlement plan should allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist."

As such, the RAP team undertook extensive consultations (documented in this RAP) with the affected community to both establish broad support for the unavoidable resettlement and develop a resettlement strategy that is compatible with the cultural preferences of the affected Duruma community and includes a land-based resettlement strategy that allowed the community to return to the their traditional lands – as was their preference.

The project aimed at providing common resettlement sites where the affected communities and households could be resettled together and provided with the infrastructure and services required to effectively restore their livelihoods. Initial efforts to promote a standard land-based resettlement strategy for such communities (such as a resettlement village with accompanying farmland) was roundly rejected by the Duruma. Concerns over indiscriminate mixing of sub-clans, removal from traditional lands and commensurate loss of access to the sacred forest adjacent to the project area and a desire to share in the benefits of the dam were among the key reasons cited for rejecting this proposal. In addition, the community cited recent bad experiences from a number of development projects in the vicinity of the project area as a reason for wanting the autonomy afforded by cash compensation.

It was also noted by the RAP team, that efforts to develop a compensation package that accorded with the community's cultural preferences was complicated by the diverse views from within the community.



While the community as a whole meets the conditions of OP4.10, traditional livelihoods and governance structures are increasingly under pressure within the community as proximity to Mombasa, access to education and diversified employment opportunities increasingly draw ever larger portions of the community away from traditional lifestyles.

In these circumstances, insisting upon an exclusively land based resettlement strategy would disadvantage those members of the community with aspirations separate from the traditional lifestyle and prevent them from using their compensation money from supporting their new livelihood strategies.

In sum, initial field work indicated that over 99% of all project affected people covered by this RAP preferred cash as compensation for lost land and assets for the reasons stated above. However, cash compensation is known to carry considerable risks of impoverishment due to poor financial management for communities with land-based livelihoods strategies (and hence limited exposure to cash) such as the Duruma. As such, the RAP team undertook extensive additional consultations to determine a path to manage these risks which respected the cultural preferences and wishes of the Duruma.

A series of community meetings were organized and conducted in the PAP villages to sensitize the PAPS about the purpose and process of data validation process. Data clerks hired from among the community members assisted in collecting and recording the required information and grievances encountered in a structured questionnaire (found at Annex 15). After the community meetings, data collection exercise was carried out in all the villages in RAP except the Mazeras village where there is no anticipated land acquisition needs.

Community consultations indicated the community preferred two principle compensation strategies: self-managed relocation and assisted relocation. Self-managed relocation is essentially cash compensation to enable PAHs to select land of their choice and relocate and reconstruct themselves. Assisted relocation involves cash either being credited to the PAH or to the project team who then provide assistance in identifying new land and either rebuilding structures or providing new structures as per their preference. These strategies had the advantage of enabling the choice of locations for PAHs to self-organize.

However, as the overwhelming majority of PAHs are considered vulnerable under OP4.12 (as 85.7% of the community are below the poverty line) and under OP4.10 (as the traditional livelihood of many in the community makes them additionally vulnerable to adverse impacts of physical displacement) these options were deemed unacceptably high risk without additional precautions to ensure each PAHs resettlement strategy was achieved. As such, the team undertook additional scoping studies to determine whether the PAHs preferred strategy was feasible (documented in this RAP page 47; Sec 5.6) and to determine what additional support would help reduce the risks of community's preferred strategy.

Ultimately, it was determined that the best way to balance the communities wishes with project concerns about the risks associated with cash was to require additional

conditions for the release of cash which would enable the project to track the progress of each PAH and provide additional assistance as necessary.

In essence, the project would work with each household to develop a tailored livelihood restoration plan as a condition of the release of compensation under either strategy. Livelihood restoration plans would include standard livelihoods restoration activities (such as retraining and support for establishing alternative businesses, etc) but also assistance with land finding and purchasing land (such as conveyancing), assistance relocating land and structures and other reasonable assistance as necessary.

For PAHs intending to move to Mombasa, (for example) the project would follow up with each household to ensure the use of compensation is moving in the right direction.

This RAP also notes that under Duruma customs and traditions, not all PAHs can lay legal claim over the land they occupy and have traditional claims to. There are a significant number of households, typically headed by the adult sons of the formal title holders, who are still residing on land owned by their father and are yet to formally transfer title of the land that their sons occupy to their names. So, while these PAHs have a traditional claim to the lands they occupy, their legal status has not been formalized. That is, they have claim over primary residential structures, crops and trees but not the land they occupy. They remain at the mercy of the holders of the title deeds on whose land they reside via customary inheritance. PAHs in this situation and who have a legally recognizable right to the land and who acquire new land will be co-titled. If the PAHs choose cash compensation, an agreement on a joint LRP or other fair benefit sharing arrangement be part of the PAHs' LRP which is required before cash can be paid. The project team has noted that even though Duruma cultural traditions prohibit disinheritance and hence it is highly unlikely that these PAHs will be left without land, the project will ensure that they are not left landless by taking necessary remedial actions in the event they are not given a share of the proceeds of the compensated land or new resettlement land. This RAP notes that this is complicated by the NLC Act which compensates persons who produce title deeds in their names. As such, when preparing household level livelihood restoration plans, the RAP IT will make note of the land tenure circumstances of each PAH and with the assistance of the RAP Implementation Steering Committee ensure no PAHs are left landless because of this gap between traditional and formal law. In this regard, the RAP IT should consider, inter alia, arrangements whereby households in this situation would receive full compensation for their assets and interests through an agreed and documented arrangement among all members of the extended PAH, including, possibly, involving (i) co-title or split titles to portions of any substitute land; (ii) sharing of the benefits of any cash compensation for land; (iii) agreeing on one joint or several assisted PAH livelihood restoration strategy(y) (ies). If an agreement is not reached with all members of the extended PAH, the RAP IT should consider a final compensation package that ensures that each household receives the combination of compensation and assistance that: (i) covers the full replacement value of each household's affected assets; and (ii) provides complementary assistance to the extent required to ensure that each household can at least reestablish its pre-resettlement living conditions and livelihoods, including access to land for a homestead and subsistence.

Temporary resettlement will be avoided in principle and if not avoidable, the project will provide suitable temporary housing units to the PAHs. These will either be rented within the neighboring shopping centres or semi-permanent residential houses constructed by the project on suitable project acquired land selected in consultation with PAPs. The temporary housing units will be of equivalent functional spatial use to those affected and located within defined radius/areas. These units will be provided until the construction of the PAHs permanent houses is completed. The provision of these housing units will be in addition to their rightful compensation for all affected assets under the RAP. For the rented units, MOWS will pay monthly rent and utility bills for the period of occupation while water, electricity and sanitation facilities will be provided at the project constructed temporary areas. The constructed resettlement areas will be fenced off to ensure the security of the PAPS. MoWS and PAHS who will be provided with temporary housing units will enter into signed agreements: (i) For MOWS constructed housing: indicating where the PAH's final resettlement site/ land is located and establishing a maximum time required for MOWS to deliver their permanent housing unit/site and make it available for their occupation and providing for all necessary temporary support and subsidies; (ii) For PAHs constructing their own housing, MOWS will try to negotiate a mutually acceptable date for definitive resettlement and where necessary offer construction support to meet the agreed deadline; in the exceptional cases where temporary relocation cannot be avoided, the PAH will be entitled to the same support as those waiting for MOWS constructed housing until the date agreed for the final move. All subsidies will be paid until the agreed date even if the PAHs move out ahead of schedule. Should the definitive move be delayed, rental and utilities subsidies will continue but any other subsidies will be continued only if delays are not attributable to the PAPs.

### **3.4 Asset Inventory, Census, Socio-Economic Surveys**

During the census, asset inventory and valuation of assets, PAHs were further consulted individually at their household and business level through administration of questionnaires, which collected personal and livelihood information including their perceptions, hopes, fears and concerns about the proposed project.

#### **3.4.1 Asset Inventory**

Asset Inventory exercise entailed identification of all PAHs assets that would potentially be affected by the project which included

- Full asset inventory of all affected land, structures, crops and trees, businesses
- A 100% census of all PAHs identified and:
- A Socio-Economic Survey to obtain a socio-economic profile of the PAHs in the project area and to further evaluate project potential project impacts.

Formulation of Survey Instruments was as follows

- Two different asset inventory forms; one for structures and another for land, crops and trees, were designed to obtain a detailed analysis of the potential loss of assets for individual PAHs and businesses. The asset inventory for structures detailed the type of structures being affected, GPS position and size, construction materials, use, features and condition and ownership;

- The asset inventory for land, crops and trees including detailed GPS position and size of the affected land; the cropped area in hectares, the farming stage, and the type of crops; and the quantity and type of fruit and indigenous trees on the land.
- Given the level of detail required, the asset inventory forms were designed to form the basis of computation of monetary values for compensation of affected assets.

The approach of the Asset Inventory was as follows:

- A literature review was conducted and formed the first step in appropriate data/evidence for the assessment. The documents reviewed included, legal documents and safeguard policies as well as, the National Guidelines on Valuation Assessment.
- Once at the site, field data captured by the valuation team targeted the rightful land owners and their respective land users. Their affected properties; building/structure, crops, trees and cultural heritage sites/graves were measured and recorded.
- For each land owner, the teams completed a Property Assessment Form and Land Survey Form.
- Market research was carried out for land and structures to assist in computation of the replacement cost. This exercise was primarily aimed at attaining relevant and reliable information about market transactions within and near the project area.
- For crop valuation, local rates from the State Department of Agriculture and markets were adopted taking into account acreage of each particular crop. The emphasis was to ensure full replacement cost of trees likely to be affected and therefore the valuation adopted the local KFS (Kenya Forestry Services) rates, considering the age factor for trees.

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

The field work was carried out by a team of social scientists under the direction of the Team Leader. The survey team employed the following methods as part of the census and socio-economic survey:

- Quantitative household Census
- Focus Group Discussions and Key Informant Interviews

Applying this suite of methods assured that several distinct perspectives were offered on the socio-economic conditions in the Mwache Dam Project area and that a mix of both qualitative and quantitative results is produced. All the villages in the project site were included in the baseline survey.

The census covered the following topics among others:

- Economic activities and household income;
- Household composition (gender, age, education, residential status and employment status for each household member), with added characteristics of the PAP including tribal affiliation and religion;
- Economic activities and household income;
- Homestead details (description of structures, length of stay at residential site, water and energy sources, and sanitation facilities);
- Ownership, usage and cultivation of agricultural fields;
- Ownership of trees;
- Ownership of livestock and grazing areas; and

- Perceptions of the Project.

The socio-economic household survey was a more detailed version of the census and included 100% of the PAH population, comprising additional information on:

- Family and relationship structures;
- Livelihood and farming practices;
- Access to and level of education;
- Access to and use of community services and facilities;
- Access to health facilities and health status;
- Access to services;
- Cultural practices

The census and socio-economic survey tools they were pre-tested as part of the training of the enumerators and field teams as detailed below. Refer to **Annex 5** for census tool used. They were supported by the local leaders, the NPM, the PIU, Kwale County Government Officials and the World Bank. The PAP Committee members who comprise of PAPs and opinion leaders selected by the PAPs to represent them were tasked with establishing whether the PAHs have alternative parcels of land or have identified other parcels of land that they can buy and resettle on once displaced by the project related activities. The information was collected using structured questionnaires.

### **3.5 Training of Asset Surveyors and Field Enumerators**

The training was conducted by the Sociologist and Resettlement Specialist and covered the following topics:

- Background of the Project;
- Principles of quantitative and qualitative research;
- Interviewing ethics and techniques, including exercises and role-playing;
- Questionnaire content;
- Practical use of equipment – GPS and camera; and
- Fieldwork logistics.

### **3.6 Delineation of Study Area and Identification of PAHs**

The field surveys study covered the area of project impacts; this is the area of land affected by project components. The surveyors used the design co-ordinates to delineate the boundaries within which to identify the area of project's impacts and thus the affected assets and related PAPs. This was done in the presence of the PAPs themselves and local leadership. The process that was followed in identifying the affected land, developments and associated PAHs was as follows:

- The Resettlement Specialist informed all County Government (ward administrators), national government (county commissioner, chiefs and assistant chiefs, village head) in the areas well in advance of the study; Working with County Government members, the Resettlement Specialist went ahead of the survey team to inform the community members in a targeted area that they would be coming to that area within a few days and requested that a village head be nominated to help in the identification of land and the landholders of land;
- Using the design coordinates, GIS Specialist/ surveyors prescribed the Project Area of Impact using GPS instruments and identified land that would be affected within those boundaries;

- The landholders and structure holders for each affected land identified were then interviewed, firstly for the asset inventory by the valuer, followed by the enumerators with a Census form and a Socio-Economic questionnaire; and
- If a landholder had more than one piece of affected land, each of this was surveyed and valued. However, only one Census/ Socio-Economic survey was completed for such a PAH.

### **3.7 Cadastral Land and Asset Valuation Surveys**

Land adjudication was undertaken in the project areas recently; 2013/2014 for Mazeras section, 2016/2017 for Chigato section and 2018 for Mnyenzi and Bofu sections as a necessary step for compensation by the National Land Commission (NLC) which requires proof of land ownership via a title deed in the name of the PAH as a pre-requisite for compensation. Kwale County Government and Ministry of Water and Sanitation provided the needed support during this adjudication and registration exercise.

#### **3.7.1 Cadastral land survey**

The cadastral land surveys included the following activities:

- Acquiring of maps (PIDs and RIMs) from Survey of Kenya
- Geo-referencing of the acquired maps to UTM Arc 1960
- Overlaying of the dam design on the geo-referenced maps
- Extracting data (areas + co-ordinates) of affected parcels
- Verification of above using GPS
- Final calculation of areas of affected parcels
- Confirmation of the ownership of affected parcels at the Land Registry

#### **3.7.2 Asset Valuation Surveys**

Asset Valuation Surveys included the following activities:

- Identification and registering of all the affected people and affected parcels of land with an identification number; recording all land owners and boundaries;
- Creating strip maps of the affected areas, showing the extents of the sites, the affected people in the area and their respective land sizes, the affected farmlands, structures, graves and cultural heritage sites;
- Market research of land transactions, market prices, construction materials, and labour costs.
- For crop valuation, local rates from the State Department of Agriculture and markets were adopted taking into account acreage of each particular crop. The emphasis was to ensure full replacement cost of trees likely to be affected and therefore the valuation adopted the local KFS (Kenya Forestry Services) rates, considering the age factor for trees.
- Recording the location of all assets with a GPS machine and taking photographs of affected assets.

### **3.8 Data Collection, Entry and Analysis**

The information obtained from the above surveys was entered into an Ms Access database by database entry clerks. The final master database will be kept by the Client, as a useful tool for resettlement planning in subsequent Project phases, and for



monitoring the standards of living of PAPs over the long term.

### **3.9 Preparation of RAP**

This RAP has been prepared in accordance with guidelines of the World Bank resettlement related policies, land and valuation laws and among others that are currently in force in Kenya as highlighted in 3.1 above and in detail in chapter 4 below. The RAP report has been compiled to capture demographic and socio-economic baseline status of the PAHs while incorporating PAPs and stakeholders' views that arose during the RAP field study. The aim of the RAP is to assess the magnitude of potential social and resettlement impacts (positive and negative) of the proposed Mwache Dam. It also highlights the socio-economic issues related to land acquisition, loss of economic activities and livelihoods, resettlement and displacement of households and community assets.

Overall, the RAP informs the step-by-step plan of how the Ministry of Water and Sanitation will carry out the resettlement activities as anticipated and documented in the RAP document. It also documents the extent to which the PAHs, communities and other project-affected entities have participated in the entire process of resettlement planning so that they can identify with the project and offer their support.

### **3.10 RAP Team**

The RAP preparation team of experts consisted of the following:

1. Sociologist and Resettlement Action Plan –Team Leader
2. Sociologist and Resettlement Action Plan-Assistant Team Leader
3. Land Surveyor
4. Valuation Expert
5. GIS Specialist
6. Research Assistants

## **4 LEGAL AND POLICY FRAMEWORK**

Key to the process of land acquisition, resettlement implementation and management, is the appropriate legal, policy and institutional framework to cater for land acquisition, compensation, relocation, income restoration and livelihoods restoration programs. This chapter therefore describes the policy, legal, institutional and administrative frameworks for land acquisition in Kenya and discussing how they are relevant for the Project.

The chapter includes an analysis of national legislation and World Bank's Policy on Involuntary Resettlement (OP. 4.12) as well as Indigenous Peoples Policy (OP. 4.10). OP. 4.12 is triggered because the Mwache Dam Project will lead to economic and physical displacement while OP. 4.10 is triggered because the affected Duruma community that dominate the project area meet the criteria for OP. 4.10. These have been subjected to a gap analysis to establish where OP. 4.12 differed from national legislation. The gap analysis then formed the basis of this legal and administrative framework for resettlement.

### **4.1 Legal Framework**

#### **4.1.1 The Constitution of Kenya**

The Constitution of Kenya categorizes land as follows:

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

The Constitution also provides that the National Land Commission shall recommend a National Land Policy to the National Government while Parliament shall revise and enact legislation to ensure implementation of the issues outlined in it.

Section 40 of the Constitution of Kenya recognizes and protects the right to private property including land. However, Section 40(3) (b) provides that the State may take possession of private land if this is necessary for public purpose or in public interests.

The Constitution also requires that compulsory acquisition be preceded by prompt payment in full, of just compensation to the affected person. It also allows any person who has an interest in or right over, that property a right of access to a court of law.

#### **4.1.2 The National Land Commission Act**

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

- Compulsory Acquisition in Kenya is also to be handled by the National Lands Commission.
- Other mandates of the Commission include management of public land on behalf of the national and county governments.

- The Act also mandates the Commission to ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations.
- Thirdly, the Act empowers the Commission to administer all unregistered trust land and unregistered community land on behalf of the county government.

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

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

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

- On behalf of, and with the consent of the national and county governments, alienate public land;
- Monitor the registration of all rights and interests in land;
- Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;
- Develop and maintain an effective land information management system at national and county levels;
- Manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and
- Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.
- Implement Settlement Programmes on behalf of national and county governments as outlined in section 134 of the Land Act.
- Administer the Land Settlement Fund in accordance with section 135 of Land Act 2012
- Manage the Land Compensation Fund
- Identify ecologically sensitive areas that are within public land and demarcate and take any other justified action on those areas and act to prevent environmental degradation and climate change in accordance with the Land Act.
- Reserve public land for the establishment of approved settlement Programmes, and where public land is not available, purchase private land subject to the Public Procurement and Disposal Act, 2005 or any other law as provided for in section 134 (5) of the Land Act.

- Set aside land for investment purposes in accordance with section 12(3) of the Land Act.
- Approve compulsory acquisitions, way leaves, easements and analogous rights.
- Ensure that the investments, in land benefit local communities and their economies.
- Make regulations prescribing the criteria for allocation of public land, such regulations to prescribe forms of ownership and access to land under all tenure systems.

The procedure and manner of setting aside land for investment should respect mechanisms of benefit sharing with local communities.

### **Relevance**

The NLC will be a key institution in the implementation of this RAP and will take the lead as provided for by NLC Act in overseeing the compulsory acquisition of all affected land by this project including compensation of all identified PAHs. The KWSCRPP will engage NLC in the process from the very beginning to the end. The land ownership in the project area is mainly private with PAHs in 17 out of the 20 affected villages having title deeds hence having formal land ownership. Most of the adjudication and registration of the land has recently been concluded mainly in preparation for anticipated land acquisition for Mwache Dam project. There are 3 villages who share a single title deed as a result of the land they occupy being registered as a group ranch (Mwavumbo Group Ranch).

#### **4.1.3 The Land Act**

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

#### **Relevant Sections**

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

### **PART V — COMPULSORY ACQUISITION OF INTERESTS IN LAND**

#### **22. Application for compulsory acquisition**

- (1) Pursuant to section 107(2), an acquiring body shall apply, in writing, to the Commission for compulsory acquisition of land.
- (2) The Commission shall require the acquiring body to confirm, in writing, that it has sufficient funds for the intended acquisition.
- (3) The Commission shall further satisfy itself that the geo-referencing of the land to be acquired has been done.

### **23. Notification of the proposed acquisition**

- (1) Upon receipt of an application for compulsory acquisition, the Commission shall publish at least a thirty days' notice of intention to acquire the land in Form LA 33 set out in the Third Schedule in the Gazette, in at least two daily newspapers with nationwide circulation, one local newspaper and affix notices at the County, Sub County and ward offices.
- (2) The Commission shall, in accordance with section 131 of the Act, serve the notice of intention to compulsory acquire land to the affected persons and Registrar.
- (3) The Commission shall, in consultation with the affected persons, inspect and collect data on—
  - (a) the location;
  - (b) the area to be acquired;
  - (c) the proposed land use in the national, regional or county spatial plans;
  - (d) existing use of the land;
  - (e) improvements on the land being acquired;
  - (f) the impacts of the acquisition; and
  - (g) any other information relevant for the acquisition.

### **24. Entry of the proposed acquisition in the register**

The Registrar shall upon receipt of a notice under regulation 23(1), make an entry of the intended acquisition in the register.

### **25. Notice of inquiry to be issued by Commission**

- (1) The Commission shall issue a notice of inquiry in Form LA 34 set out in the Third Schedule to every person whose interest appears in the register and who claims to be interested in the land.
- (2) The Commission shall also publish a notice of inquiry in the Gazette, in at least two dailies with nationwide circulation, and county Gazette and at the respective county, sub county and ward offices at least fifteen days before the date of the inquiry.
- (3) At the expiry of the fifteen days, the Commission shall conduct an inquiry to hear and determine issues of propriety and claims for compensation by persons interested in the land as stipulated under section 112 of the Act.

### **26. Valuation of claims and interests**

- (1) The Commission shall carry out valuation of interests or claims determined at the inquiry for purposes of determining the full and just compensation to be payable to the persons whose interest or claims have been determined and inform the acquiring body of the costs.
- (2) The determination and assessment of just compensation shall be in accordance with the set out in the Second Schedule.

### **27. Preparation and service of award**

- (1) The Commission shall prepare an award which shall include the size of the land to be acquired, the value of the land and the amount of compensation payable to the persons with interest in the land.
- (2) This shall be served on each person with a determined interest in Form LA 35 set out in the Third Schedule notifying the respective persons of the award and offer for compensation.

- (3) The bona fide persons shall be required to communicate their acceptance or rejection of the award in Form LA 37 set out in the Third Schedule.
- (4) Where the award is accepted, the bona fide person(s) shall forward their bank details, PIN number and identification documents to the Commission.
- (5) A bona fide person who is aggrieved by an award shall refer the matter to the Court in accordance to section 128 of the Act.

**28. Acquisition of part of the land and survey**

Where only a portion of the land comprised has been acquired, the Commission shall within six months cause a final survey of the acquired land to be carried out and cadastral map and plan prepared before payment of compensation.

**29. Payment of compensation**

- (1) The acquiring body shall deposit with the Commission the compensation funds in addition to survey fees, registration fees and any other incidental costs.
- (2) The Commission shall pay the compensation in accordance with the award to the persons entitled within ninety days from the date of receipt of funds from the acquiring body.
- (3) Upon payment of compensation, the land owner shall—
  - (a) where the whole land comprised has been acquired, deliver the original title to the Commission who shall prepare surrender documents to be signed by the proprietor and forwarded to the Registrar provided that delivery of the original title shall be done not later than fifteen days from the date of payment of compensation; and
  - (b) where only a portion of the land comprised has been acquired, deliver the original title to the Commission who shall prepare surrender documents of the acquired portion to be signed by the proprietor and forwarded to the Registrar provided that delivery of the original title shall be done not later than fifteen days from the date of payment of compensation.
- (4) The Registrar shall register the acquired parcel in favour of the acquiring authority and register the remaining parcel in the name of the proprietor, where applicable.
- (5) Where the parcel is deemed unfit for the purpose for which the acquisition was intended, the Commission shall notify the Registrar to remove the notice of intention to acquire on the register within seven days from the date of the notice.
- (6) The Commission shall take possession of the land on a specified date upon service of the notice in Form LA 38 to all persons interested in the land.

**Principles and values to guide Land management and administration**

Parts 1 and 2 of section 4 of the Act outline the main guiding principles in land management and administration, binding to all land actors including state officers.

These principles are to be applied when enacting, applying or interpreting any provisions of this Act; and when making or implementing public policy decisions. In discharging their functions and exercising of their powers under this Act, the Commission and any State officer or Public officer shall be guided by the following values and principles:



### **Values and Principles**

- Equitable access to land;
- Security of land rights;
- Sustainable and productive management of land resources;
- Transparent and cost-effective administration of land;
- Conservation and protection of ecologically sensitive areas;
- Elimination of gender discrimination in law, customs and practices related to land and property in land;
- Encouragement of communities to settle land disputes through recognized local community initiatives;
- Participation, accountability and democratic decision making within communities, the public and the Government;
- Technical and financial sustainability;
- Affording equal opportunities to members of all ethnic groups;
- Non-discrimination and protection of the marginalized;
- Democracy, inclusiveness and participation of the people and
- Alternative dispute resolution mechanisms in land dispute handling and management.
- 

### **Acquisition of private land for public use**

Section 110 (1) of the Land Act 2012 states that land may be acquired compulsorily under this Part if the Commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for fulfillment of the stated public purpose. Under such an acquisition, section 111(1) provides that if land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined. The procedure for land acquisition is laid out in Part VIII of the Act.

### **Highlights of requirements under this process are:**

- The Act requires that the owners, residents and their spouses should also be notified; as opposed to just the owners;
- The inspector would also have to get the consent of the occupier and give them not less than seven days' notice to enter the premises;
- The Commission shall have the power of a court to summon and examine witnesses and compel the production and delivery to the Commission of documents of title to the land;
- Separate award of compensation to every person. An award is final and conclusive evidence of the size of the land, the value in the opinion of the Commission and the amount of compensation payable, whether or not the person attends the inquiry;
- Regulations and rules pertaining to this process are yet to be gazetted;
- Section 128 of the Land Act states that any dispute arising out of any matter provided for under this Act may be referred to the Land and Environment Court for determination.

### **Land transfers**

Section 43 defines "transfer" as a conveyance, an assignment, a transfer of land, a transfer of lease or other instrument used in the disposition of an interest in land by way of transfer.

It further provides that a proprietor may transfer land, a lease or a charge to any person (including himself or herself), with or without consideration, by an instrument in the prescribed form and that the transfer shall be completed by the registration of the transferee as proprietor of the land, lease or charge. From this provision, the transferee of a charge may require the charger to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.

### **Relevance**

This RAP has been prepared in line with the Land Act 2012 and during its implementation, the relevant sections applying to the category of PAHs will be applied. This will be in regard to all the private land that will be acquired for the project.

It is important to note however, that while all this land in the project area has certainty around land titling as noted above, land immediately surrounding the project area, is in various stages of adjudication with much of the land currently unregistered community land pending individual adjudication and titling. This is important as it means PAHs seeking to buy land in the immediate surrounds under the ‘self-managed relocation’ or ‘assisted relocation’ resettlement strategies will be losing formally titled land while acquiring informal control over new land. The Conveyancing Lawyer hired by the project will ensure that the replacement land bought by the displaced PAPs (whether in an adjudicated/ registered section or otherwise) is secured with the required and available legal instruments

Below is a summary of the traditional land tenure system used by the Duruma in the project area.

#### **4.1.4 Duruma Traditional Land Tenure System.**

The Duruma are one of the nine (9) sub-tribes of the Mijikenda community. Together with the Digo they are mostly found in Kwale County. The other seven (7) namely Giriama, Chonyi, Rabai, Kauma, Jibana, Kambe and Ribe are found in Kilifi County.

The Duruma are divided into two (2) major subsets of clans; namely; Arima and Amwezi.

No	Amwezi.	Arima.
1	Mwakai	Achanda
2	Mwayawa	Mwanyota
3	Mwamundu	Mwabeja
4	Mwadzine	Mwalukuta
5	Mwatsangari	Mlaire
6	Mphande	Mwamkala
7	Mwachingodza	Mwachenda.

Any member of the Amwezi clans, for example; was allowed to live and farm in any land owned by the clan outside family/clan land without paying anything. One only had to obtain consent from the elders to cultivate.

He was free to plant both annual (Maize, cassava, yams, green grams, and cowpeas), and permanent crops (Mango, Coconut, Cashewnut, Citrus etc). A female member through marriage, was allowed to farm.

A member from either Amwezi or Arima clans interested in farming in the other subset, had to pay a token fee known as “Kadzama” to the Elders to be given a piece of land to build a house and cultivate. He, however, was allowed to grow only annual crops. This is because he had no absolute rights to the land.

If a member of a family were to lose structure(s), it was the responsibility of the family to assist the affected person to settle. Contributions in materials, cash and labour was always made towards assisting the family member. For the person who was a living “guest” of the clan/family, he too was assisted. If he moved out of the family land, he was still considered the rightful owner of the permanent crops he farmed during his stay. He had control over them.

For the living “guest” from the other subset of clans, assistance was not automatic. Factors such as, character, behaviour etc were scrutinized. One was sometimes assisted on humanitarian grounds.

Since the adoption of the 2010 Constitution, changes made to land laws, and payments of the SGR compensation, the Duruma people have become more enlighten and aware of their land rights to the extent that they do not want to observe/follow traditional land tenure practices to the full. They demand compensation for any loss of land/livelihood. This is why members of Group Ranches are calling for their dissolution and land parcels to be sub divided to be known by individual members.

In addition, it is inevitable that the recently completed land adjudication process in the project area and the further adjudication processes currently underway in adjacent areas will erode the traditional land tenure system outlined above. During consultations, community elders indicated that as some members of the community now have formal title and will receive individual compensation for the acquisition of that title, it is unlikely that the remainder of the community will be comfortable sharing the remainder of the land without commensurate consideration/ payments as per Duruma custom. As such, the process of adjudication has likely altered this tradition inexorably.

#### **a) Community Land**

In the project affected area, there are PAHs who own land under communal land ownership and these are specifically those PAHs in the Mwavumbo Group Ranch. In addition, much of the land immediately surrounding the project area into which displaced people intend to buy are unregistered community land though the process of adjudication of all such lands except the Mwavumbo group ranch has begun. Community land refers to land lawfully held, managed and used by a specific community. It is a right of commons that exists within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture. This creates a powerful system of land allocation regimes and a tenure system designed to preserve the asset base for current and future generations. Communities traditionally see land and kinship in a genealogical map through which access to land is attained.

Families and individuals are allocated rights to use the land in perpetuity, subject only to effective utilization. The ultimate ownership (radical title) vests in the community.

### **Relevance**

The members of the Mwavumbo Group Ranch have resolved to dissolve and sub-divide the ranch into individual land parcels. However, since this process will be ongoing or may not have completed when NLC carry out due diligence processes prior to compensation, a process similar to that done during the Standard Gauge Railway (SGR) project which recently crossed over the Group ranch and affected many community members will apply and compensation made directly to the PAPs. The identification of the affected assets especially land will involve the group ranch management committee because the law recognizes them as the managers of the ranch land. They are better placed to identify the land the PAPs own within ranch and also assist in case of any disputes.

### **b) Public Land**

This is land owned by the Government for own purpose and which includes unutilized or delineated government land reserved for future use by the Government itself or may be available to the general public for various uses. The land is administered under The Land Registration Act, 2012. In the project affected area, specifically in Mazeras Village, the land identified for road expansion is located in road reserve i.e. public land. There are PAHs who have structures (business) on the existing Right of Way (ROW).

### **Relevance:**

The PAHs who are on the public land (existing ROW) are entitled to compensation for loss of structures and livelihood restoration in accordance with OP. 4.12 based on their categorization as encroachers. Educational facilities affected in the project area are also on public land and will be compensated in kind (construction of a similar facility).

### **c) Private Land**

Private land refers to land held by an individual or other entity under freehold or leasehold tenure. It is the assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. Private land can be held under freehold or leasehold tenure.

### **a) Freehold Tenure**

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. The Land Registration Act, 2012 of the Laws of Kenya governs freehold land. Freehold connotes the largest quantum of land rights, which the sovereign can grant to an individual. The absolute proprietorship was introduced with the intention of extinguishing customary tenure and replacing it with rights that would be individually and exclusively held.

Other than the PAHs in Mwavumbo Group Ranch who own land under communal land tenure, the remaining PAHs own the land they occupy under private land tenure (free hold). The PAHs have held the land privately under customary law which allows for transfer of land via inheritance.

**Relevance:**

The PAHs who have private customary rights to land in the project affected area are entitled to compensation for the loss of land at replacement cost as provided for by the laws of Kenya as appertains to land as well as OP. 4.12 and OP. 4.10 respectively.

In order to facilitate compensation of PAHs with private customary land rights, land adjudication leading to obtaining of individual title deeds (formal land rights) has been undertaken in the project area with PAHs in the 17 out of the 20 project affected villages having formal title deeds to enable compensation by NLC.

However, this RAP notes that not all PAHs can lay legal claim over the land they occupy and these PAHs are mainly (adult sons) who are still residing on land owned by their father (homestead) who are yet to formally transfer the land that they occupy in their names. This category of household therefore have claim over primary residential structures, crops and trees but remain constrained in claiming the land they occupy unless and until the father commits to transferring the land formally to them. They remain at the mercy of the holders of the title deeds on whose land they reside (via customary inheritance) who even though highly unlikely to disinherit, (Duruma cultural traditions prohibit disinheritance) may fail to move with their son (s) and families to the new relocation sites or refuse to share land compensation funds with them and enable them purchase land on their own. This RAP notes that this is complicated by the NLC Act which compensates persons who produce title deeds in their names. These cases will be handled as indicated in Section 3.3 above and 9.3 below

**4.1.5 Land Related Legal Issues**

Broadly, interests in land can be grouped into two.

- The rights that are held through traditional African systems and
- Rights that derive from the English system introduced and maintained through laws enacted first by colonialists and later by the Independent Kenya governments.

The former is loosely known as customary tenure bound through traditional rules (customary law). The latter body of law is referred to as statutory tenure, secured and expressed through national law, in various Acts of Parliament.

**Other Interests include:**

- Reservations of other government or trust land to government ministries, departments or Parastatals for their use.
- Non-formalised defacto tenure by which people, individually or in groups invade and occupy other people's government land particularly in the major urban centres.
- Minor interest such as easements, way-leaves and temporary occupation licences.

**Relevance**

This RAP has been prepared in line with the Land Act 2012 and during its implementation, the relevant sections applying to the category of PAHs will be applied. This will be in regard to all the private land that will be acquired for the project.

#### **4.1.6 The Land Registration Act 2012**

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

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

Further, section 9 (1) provides that the Registrar shall maintain the register and any document required to be kept under this Act in a secure, accessible and reliable format. These documents include:

- Publications, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that may be used for the purpose of recording that matter;
- Electronic files; and
- An integrated land resource register.

The register, as provided for in part 2 of section 9, shall contain the following particulars;

- Name, personal identification number, national identity card number, and address of the proprietor;
- In the case of a body corporate, name, postal and physical address, certified copy of certificate of incorporation, personal identification numbers and passport size photographs of persons authorized and where necessary attesting the affixing of the common seal;
- Names and addresses of the previous proprietors;
- Size, location, user and reference number of the parcel; and
- Any other particulars as the Registrar may, from time to time, determine.

#### **Relevance**

These provisions are essential throughout the RAP process including the verification of land ownership and update of land ownership documentation arising from acquisition of the land.

#### **4.1.7 The Land Laws (Amendment) Act, 2016**

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

Section 8 of the Land Act is amended to include a new provision requiring NLC to keep a register of all private and community land converted into public land through compulsory acquisition. For private land, it also requires that the NLC keep a record of the names and addresses of all persons whose land was compulsorily acquired.

Section 77 also revises the procedures through which NLC can acquire land on behalf of the national and county government to cover all land not just public land. It also includes additional clauses for applications that would be rejected by substituting with the following:

(4) In the event that the Commission has not undertaken the acquisition in accordance with subsection (3) for the reasons stated in subsection (3) within thirty days, it shall give to the acquiring authority the reasons for the decline and the conditions that must be met.

#### **Relevance**

This RAP has been prepared in line with the Land Act (amendment) 2016 and during its implementation, the relevant sections applying to the category of PAHs will be applied. This will be in regard to all the private land that will be acquired for the project.

#### **4.1.8 The Land and Environment Court Act 2011**

This is an Act of Parliament 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.

The principal objective of this Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this Act.

Section 13 (2) (b) of the Act outlines that 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:

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



Section 24 (2) also states that the Chief Justice shall make rules to regulate the practice and procedure, in tribunals and subordinate courts, for matters relating to land and environment.

#### **Relevance**

This RAP document provides PAHs the opportunity to express their grievances and lodge them with Land and Environment Court at any time if they feel aggrieved.

#### **4.1.9 The Valuers Act**

The Act establishes a board (Valuers Registration Board-VRB) with the responsibility of registering the valuers and regulating their activities according to the provision of the Act.

In this project, the Act is triggered since a registered valuer is required to carry out valuation estimates for the project according to the regulations in the Act. The Valuer who is carrying out the valuation of the affected assets on behalf of the proponent is registered in accordance to the Act. Such Valuers must be full members of the Institute of Surveyors of Kenya (ISK) and in executing their mandate also observe other statutes that govern valuation such as the Land Registration Act, 2012 that regulates the valuation for land and the Rating Act Cap 267 that governs valuation for rating.

#### **Relevance**

This RAP has been developed by a registered land valuation expert and hence fulfilling the requirement of the Valuers Act which requires use of such experts only.

#### **4.1.10 The Matrimonial Property Act 2013**

The Matrimonial Property Act 2013 sets out the law and procedures for creation and division of a marital estate. It also stipulates how and by whom matrimonial property should be managed as well as how it should be divided at the end of a marriage.

Under section 6 of the Act, Matrimonial Property is described as the matrimonial home, household goods and effects in the matrimonial home, immovable property owned by either spouse, which provides basic sustenance for the family and any other property acquired during the subsistence of the marriage which the spouses expressly or impliedly agree to be matrimonial property.

Under section 3 (2) of the act, the parties to a marriage have equal rights and obligations at the time of the marriage and at the dissolution of it. Matrimonial property shall be deemed to vest in the spouses in equal shares regardless of the contribution of either of them towards the acquisition thereof.

Section 12(1) provides that no estate or interest in any matrimonial property shall be alienated in any manner without the prior consent of both spouses and that neither spouse shall be liable to be evicted from' the matrimonial homes except in accordance with a court order.

### **Relevance**

The provisions of this Act are relevant to the recognition of the role of both spouses in the decisions connected to matrimonial property to be affected by the project, and especially compensation payment on the same. In this RAP, this statute will be applied to all PAHs in a marriage and compensation for loss of assets and other properties will be in line with this Act.

#### **4.1.11 Laws of Succession Chapter 160**

The law of succession also referred to as the law of inheritance basically deals with the transmission of property rights from the dead to the living. This area of law deals with transmission from the dead to the living and consequently inheritance is common in all human societies and is therefore a concept of universal application.

There are several cases of land succession among the PAHs where existing title deeds are in the names of deceased persons. This situation is likely to complicate RAP implementation by delaying compensation for affected land by the National Land Commission (NLC) as is the case in other projects in Kenya.

### **Relevance**

According to NLC Act 2012 compensation funds are only given to the person whose is proved to be the legally registered title deed holder after an official land search is conducted at the Land Registrar's office. The RAP exercise identified PAHs who own land that has succession related issues. PAHs with succession issues are those who have not formally had the land they occupy formally transferred/registered and transmitted from the deceased owner to the living PAH/inheritance.

KWSCRIP has engaged the services of a legal consulting firm to identify and resolve all the succession related cases to enable compensation by NLC. The Terms of Reference for the legal consulting firm is included in **Annex 8**.

## **4.2 Policy Framework**

The proposed project by the virtue of source of funding from World Bank becomes subject to the Bank's safeguard requirements. Therefore, this RAP Report has been formulated to address and cater for both Kenyan and World Bank policy requirements for land acquisition, involuntary resettlement and indigenous people.

### **4.2.1 Kenya Land Policy**

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

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

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

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

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

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

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

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

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

- Develop mechanisms for identifying, monitoring and assessing the vulnerable groups;
- Put in place mechanisms for redistribution of land and resettlement;
- Facilitate their participation in decision making over land and land-based resources;
- Protect their land rights from unjust and illegal expropriation.
- To protect the rights of women, the Government shall:
  - Put in place appropriate legislation to ensure effective protection of women's rights to land and related resources;
  - Repeal existing laws and outlaw regulations, customs and practices that discriminate against women in relation to land;
  - Enforce existing laws and establish a clear legislative framework to protect the rights of women in issues of inheritance to land and land-based resources;
  - Make provision for joint spousal registration and documentation of land rights, and for joint spousal consent to land disposals, applicable for all forms of tenure;
  - Secure inheritance rights of unmarried daughters in line with the practices of the respective communities;
  - Facilitate public awareness campaigns on the need to write wills to protect dependants in the event of death;
  - Carry out public education campaigns to encourage the abandonment of cultural practices that bar women from inheriting family land; and
  - Ensure proportionate representation of women in institutions dealing with land at all levels.

- To secure the rights of spouses to matrimonial property, the Government shall:
- Review succession, matrimonial property and other related laws to ensure that they conform to the principle of equality between women and men;
- Enact specific legislation governing division of matrimonial property to replace the Married Women's Property Act of 1882 of England;
- Protect the rights of widows, widowers and divorcees through the enactment of a law on co-ownership of matrimonial property;
- Put in place appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources during marriage, upon dissolution of marriage and after the death of the spouse; and
- Put in place mechanisms to curb selling and mortgaging of family land without the involvement of the spouses.

#### **4.2.2 KWSCRП Resettlement Policy Framework (RPF)**

The resettlement goals and principles of this RAP are guided by the Resettlement Policy Framework (RPF) prepared for Kenya Water Security and Climate Resilience project (KWSCRП) in 2012 and stemming from the World Bank OP. 4.12. The RPF for KWSCRП is aimed to ensure compliance with best practice and provides a set of resettlement and compensation principles, organizational arrangements and design criteria to guide and govern sub projects under KWSCRП requiring land acquisition and resettlement. The principles are as follows:

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

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

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

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

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

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

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

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

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

**Principle V: Replacement Cost Based Compensation**

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

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

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

The Project will provide opportunities for all displaced persons to derive appropriate development benefits from the Project (e.g. skills training to improve access to jobs etc.) **PAPs will be assisted in their efforts to ideally improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or levels prevailing prior to the beginning of the project implementation, whichever is higher.** Improve or, at a minimum, restore the livelihoods, income earning capacity and standards of living of displaced persons, including those who have no legally recognizable rights or claims to the land (who were present in the project affected area at the time of the cut-off date), to pre-project levels and support them during the transition period.

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

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

**Principle VIII: Compensation Disclosure**

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

**Principle IX: Stakeholder Consultation**

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

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

**Principle X: Vulnerable and Marginalized Groups**

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

They will also be provided prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project investments. Particular attention will be paid to the needs of vulnerable groups among those displaced; especially those below the poverty line, the landless, the elderly, women and children, orphans, marginalized groups and the ethnic minorities or other displaced persons who may not be protected through the Kenyan law. The objective is to provide whatever additional assistance may be necessary to restore pre-project living standards. Make special provisions for assisting disadvantaged or vulnerable individuals or groups (who were present in the project affected area at the time of the cut-off date) that may be more adversely affected by displacement than others and who may be limited in their ability to take advantage of livelihood assistance and related development benefits.

**Principle XI: Full Documentation**

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

**Principle XII: Cultural Appropriateness**

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

**Principle XIII: Informal Rights**

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

**Principle XIV: Grievance Redress**

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

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

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

**4.2.3 World Bank Operational Policy**

World Bank projects and activities are governed by Operational Policies which ensures environmental and social impacts are evaluated in decision making, help reduce and manage the risks associated with a project or program and provide a mechanism for disclosure of information and consultation.

**4.2.3.1 World Bank Operational Policy on Involuntary Resettlement**

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

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

The World Bank OP 4.12 includes safeguards to address and mitigate impoverishment risks arising from involuntary resettlement. For the purposes of this policy, "involuntary" means actions that may be taken without the displaced person's informed consent or power of choice.

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

- Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs;
- Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs;
- Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
- During the RAP study, the policy guides the following:
  - Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs;
  - Borrower needs to inform potentially displaced persons at an early stage about the resettlement aspects of the project and take their views into account in project design;
  - Displaced persons and their communities, and any host communities receiving them, should be provided with timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement.

#### **Relevance**

This RAP report has been prepared in accordance with World Bank's OP. 4.12 in view of the fact that there exist certain gaps between the OP. 4.12 and related Kenya laws on land compulsory land acquisition. These gaps are highlighted in detail in Table 5 and include actions for addressing these gaps, which primarily include using OP. 4.12 policies in cases where the Kenyan statutes are inadequate.

#### **4.2.3.2 World Bank Indigenous Peoples Policy OP. 4.10**

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

The Bank provides project financing only where free, prior, and informed consultation results in broad community support to the project by the affected Indigenous Peoples. Such Bank-financed projects include measures to (a) avoid potentially adverse effects on the Indigenous Peoples' communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects.

Bank-financed projects are also designed to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and intergenerationally inclusive. The Bank recognizes that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. These distinct circumstances expose Indigenous Peoples to different types of risks and levels of impacts from development



projects, including loss of identity, culture, and customary livelihoods, as well as exposure to disease. Gender and intergenerational issues among Indigenous Peoples also are complex.

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

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

### **Relevance**

Members of the Duruma community who dominate the Mwache dam Project area are considered a vulnerable and marginalized group under the World Bank Indigenous Peoples Policy OP.4.10. A VMGP (Vulnerable and Marginalized Group Plan) has been prepared for this project and has been used in the development of this RAP including use of culturally appropriate consultation methods while giving special attention to the concerns of the women as required in the VMGP and OP. 4.10.

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

### **4.2.3.3 World Bank Policy on Gender and Development**

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

### **Relevance**

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

## **4.3 Formal Processes Involved with Compulsory Acquisition**

### **4.3.1 The Need to Acquire Land for the Project**

KWSCRIP-PMU through the Ministry of Water and Sanitation (MOWS) intends to provide water for domestic use in Mombasa County as well as irrigation water to farmers in Kwale County by construction of a multipurpose dam. The proposed activities require acquisition of land from the owners hence resettlement. Majority of the land parcels (99.9%) that can be used to develop the dam infrastructure belongs to private individuals and a group ranch (communal). The rest of the 0.1% or belong to Community (nursery school), government (primary and secondary school) and considered public land.

#### **4.3.2 Process Involved with Land Acquisition**

The Constitution of Kenya 2010 under Article 67 and the Land Act 2012 under Article 107, the National Land Commission is given the sole authority to carry out Compulsory Acquisition of Land on behalf the National and County Governments. The process of land acquisition is explicitly outlined in the Land Act, 2012 and the National Land Commission Act 2012 as described below.

#### **4.3.3 Land Acquisition Stepwise Process**

**Step 1:** Acquiring Agency to evaluate and consider that it is necessary to acquire land for public purpose.

**Step 2:** Formal request will be made by Acquiring Agency, in this case MOWS to the National Land Commission indicating the purpose of the land to be acquired. The request will seek to prove that the land is needed for public purpose in this case Mwache Dam Project.

**Step 3:** The Commission will consider the request in view of the guidelines. If the Commission is convinced that the land is required for public purpose, the Commission will write to the Acquiring Agency (MOWI) to that effect, and direct them to acquire the land.

**Step 4:** The Commission will then give “Notice of Intention” to acquire the land through the “Kenya or County Gazette”. The public announcements will be made widely in standard mass communication avenues such as newspapers and on the radio. The “Notice of Intention” must mention the public body (MOWS) and the public purpose (Irrigation) for which the land is to be acquired. The “Notice of Inquiry” must mention places and fixed dates when persons interested in the subject land (PAHs) are to submit their claims to the NLC.

After 30 days of release of notice of inquiry, NLC will release a Notice of Inquiry for a consultative public meeting. The notice will mention the date and the venue of the meeting. During the meeting the land owners will be explained to the intention to acquire land by MOWS / and purposes of acquisition of such land. They will also be informed of the compensation award.

The compensation award is determined considering the following:

- Market value of the land taken;
- Any damage sustained or likely to be sustained by reason of severing such land from his other land;
- Any damage from loss of profits over the land; and,
- Additional 15 per cent of market value of land for disturbance.

Generally, the principle on which compensation is based is that the value to the owner of land taken would be greater than its market value. There are questions of severance, injurious affection, and disturbance.

The only reasonable compensation to a dispossessed owner would be to put him into a position to reinstate himself somewhere else so as to be able to carry on his activities substantially unaltered and undiminished.

**Step 5:** MOWS will present the actual entitlement or agreed compensation award as in the RAP for compensation purposes by NLC. NLC will make the award on behalf of Government of Kenya.

**Step 6:** The award will be issued in the prescribed form indicating the amount of compensation awarded by NLC while the statement form gives the landowners option of acceptance or rejection of the award. If the landowner accepts the award, the NLC will issue a cheque in settlement together with a formal letter.

**Step 7:** Once NLC has made payment of full amount, it will issue a “Notice of Taking Possession and Vesting” to the Landowner. The notice instructs the landowner to take his/her title for amendment or cancellation. It is copied to the Government Land Registrar to make necessary changes to the affected deed. On the other hand, if the owner rejects the award, NLC deposits the money in special account pending the former’s appeal. Compensation is based on „just and fair compensation“.

Section 117 of the Land Act 2012 allows for in-kind compensation as follows:- Notwithstanding anything contained in the Lands Act, where the land is acquired for the Government, NLC may agree with the person whom it has determined to be the proprietor of the land that person, instead of receiving an award, shall receive a grant of land, not exceeding in value the amount of compensation which it considers would have been awarded, and upon the conclusion of the agreement that person shall, be deemed conclusively to have been awarded and to have received all the compensation to which he is entitled in respect of his interest. An agreement under subsection (1) shall be recorded in the award. Such a grant can be another land or anything equivalent to the value of the land.

**NLC will not among others do the following: -**

The National Land Commission does not undertake the following activities which are a pre-requisite for compensation for loss of land namely:

- Undertake adjudication of unadjudicated affected land which entails survey work to determine boundaries and issuance of title number as per the owners
- Address/resolve land with succession related issues
- Undertake sub-division (mutation) of affected land
- Resolve disputes over land ownership, boundary claims etc
- Obtaining/issuance of title deeds
- Undertake payment for opening of bank accounts for PAHs
- Support PAH in obtaining national identification card

KWSCRIP intends to engage a RAP Implementation Team and Legal Conveyance Consultant to facilitate the above activities among others in order to ensure quick payment of compensation of PAHs.

#### 4.4 Comparison of GOK Constitution/Legal Framework and World Bank OP 4.12 and OP. 4.10

As shown in the description of the Kenyan Constitution and in the legislation and laws, generally, there has been a focus on the provision of privately defined land titles. In Kenya, only 15 percent of the national lands are titled. There are many other forms of landownership, lease, or use. The consistency of provisions in the draft Guidelines on Resettlement and Evictions (May 2010) with those of the World Bank's Operational Policy 4.12 on Involuntary Resettlement (OP4.12) and Operational Policy 4.10 on Indigenous Peoples shows that land and assets are defined in Kenya differently in terms of occupancy rights, anti-eviction rights, adverse possession, unregistered leases and rentals.

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

In Kenya, conventional land registration (or titling) systems tend to be highly centralized and rely heavily on professionals, who are mostly based in the country's capital city. Poorer and illegal occupants of lands do not have access to these professionals and are often left without title. The differences in approach vary largely in the application of the land tax and land registration (cadastral). Since majority of land occupants are non-titled within a county or municipality, the land tax system does not work in terms of tax parcels, tax records, and tax procedures which often make the census-taking of project affected households (PAHs) as defined in the Bank's OP4.12 more orderly. This becomes problematic in squatter settlements or in protected forests where some evictions of vulnerable (indigenous) groups have allegedly taken place.

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

**Table 5: Comparative Analysis of World Bank OP 4.12 and OP. 4.10 and GoK requirements including measures to address gaps**

OP 4.12 and OP. 4.10	Kenyan Legislation	Comparison	Ga Ad
<b>PROCESS REQUIREMENTS</b>			
<b>Consultation:</b> Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement	The Land Act outlines procedures for consultation with affected population by the NLC and grievance management procedures.	Same as World Bank	Imp pro bot Wo

OP 4.12 and OP. 4.10	Kenyan Legislation	Comparison	Gap Filling Measures Adopted
<p>programs.</p> <p>Obtain broad support from the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process.</p>			
<p><b>Grievance:</b> For physical resettlement, appropriate and accessible grievance mechanism will be established.</p>	<p>Land Act 2012 clearly outline the steps and process for grievance redress that includes alternative dispute resolution, re-negotiation with NLC and is backed by the judicial system through Environmental and Land Court</p>	<p>Kenyan legislation meets OP4.12 and OP. 4.10 requirements.</p>	<p>Project to establish appropriate grievances redress mechanisms</p>
<p><b>Eligibility Criteria</b> Defined as:</p> <p>(a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);</p> <p>(b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan</p> <p>(c) those who have no recognizable legal right or claim to the land they are occupying</p> <p>To determine eligibility: Carry out resettlement census. Cut off date for eligibility is the day when the census begins.</p>	<p>The Land Act 2012 provides that written and unwritten official or customary land rights are recognized as valid land right. The Law provides that people eligible for compensation are those holding land tenure rights</p> <p>Land Act also recognizes those who have interest or some claim in the land such pastoralist or who use the land for their livelihood.</p> <p>The constitution recognizes 'occupants of land even if they do not have titles' and payment made in good faith to those occupants of land. However, this does not include those who illegally acquired land</p> <p>Land Act 2012 provides for census through NLC inspection and valuation process</p>	<p>Kenya's Land Law defines eligibility as both formal (legal) and informal (customary) owners of expropriated land.</p> <p>However, it does not specifically recognize all users of the land to be compensated.</p> <p>The constitution of Kenya on the other hand recognizes 'occupants of land' who do not have title and who the state has an obligation to pay in good faith when compulsory acquisition is made.</p>	<p>Ensure ALL users (including illegal squatters/informal occupants, laborers, rights of access) of affected lands are included in the census survey or are paid</p> <p>Implement cut-off procedures as outlined in the RPF and Kenyan Law</p>

OP 4.12 and OP. 4.10	Kenyan Legislation	Comparison	Gap Filling Measures Adopted
<p>(b) active markets for lost assets exist and there is sufficient supply of land and housing; or (c) livelihoods are not land-based.</p> <p>World Bank OP4.12 and OP. 4.10 requires that displaced persons are provided with prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project. If physical relocation is an impact, displaced persons must be provided with assistance during relocation and residential housing, housing sites and/or agricultural sites to at least equivalent standards as the previous site. Replacement cost does not take depreciation into account. In terms of valuing assets, if the residual of the asset being taken is not economically viable, compensation and assistance must be provided as if the entire asset had been taken.</p> <p>Compensation and other assistance required for relocation should be determined prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required.</p> <p>Additionally, OP4.10 requires that where indigenous communities are being displaced: the “borrower prepares a resettlement plan in accordance with the requirements of OP 4.12, Involuntary Resettlement, that is compatible with the Indigenous Peoples’</p>	<p>Land Act talks of prompt, just compensation before the acquisition of land. However, interpretation of just compensation is yet to be clearly outlined through a specific schedule defining just compensation have not been put in place.</p> <p>Attorney’s fees, cost of obtaining advice or cost incurred in preparing and making written claim not in the Land Act other than ‘just compensation’</p> <p>The Act is does not out rightly stipulate assistance for relocation but we can interpret that relocation cost will be included in just compensation.</p> <p>The Act contains no special provisions for the resettlement of marginalized communities.</p>	<p>compensation to the affected population by Government of Kenya</p> <p>‘Just compensation’ as stipulated in the Land Act not yet specifically defined.</p> <p>OP 4.12 and OP. 4.10 provides related land transaction fees.</p> <p>Land Act not clear on this.</p> <p>OP4.12 and OP. 4.10 requires that displacement must not occur before all necessary measures for resettlement are in place, i.e., measures over and above simple compensation</p> <p>OP4.10 has additional provisions for the displacement of indigenous communities.</p>	<p>measures to ensure that the displaced persons are</p> <p>(i) provided assistance (such as moving allowances) during relocation; and</p> <p>(ii) provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the old site.</p> <p>(c) Ensure that displaced persons are</p> <p>(i) offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and</p> <p>(ii) provided with development assistance in addition to compensation measures</p> <p>(iii) such as land preparation, credit facilities, training, or job opportunities.</p> <p>Implement prompt and effective compensation at full replacement cost for the losses of the assets.</p> <p>Ensure that ALL resettlement options are agreed on with PAHs and put in place BEFORE displacement of affected persons.</p>

OP 4.12 and OP. 4.10	Kenyan Legislation	Comparison	Gap Filling Measures Adopted
customarily used or occupied, if the reasons for their relocation cease to exist.”			
<p><b>Valuation:</b> With regard to land and structures, “replacement cost” is defined as follows:</p> <p>For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes.</p> <p>For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors’ fees, plus the cost of any registration and transfer taxes.</p>	<p>Valuation is covered by the Land Act 2012 and stipulates, as already mentioned, that the affected person receive just compensation from NLC, as determined by National Land Commission. Valuers Act stipulates that a residual amount of 0.5% of the total valuation of an asset is expected to pay the valuer.</p> <p>Land Act 2012 talks of just compensation for the lost assets but it is not specific of the exact amount or procedures on the same.</p> <p>The Land Act 2012 stipulates just compensation.</p>	<p>Though one could argue that there is some form of consistency between the Kenyan Law and World Bank OP.4.12, and OP. 4.10 interpretation of ‘just compensation’ has not been defined.</p> <p>Interpretation of just compensation not clear</p> <p>Interpretation of just compensation not clear.</p>	<p>Apply the World Bank OP4.12 valuation measures, as outlined in Section 6, in order to fully value all affected assets in a consistent manner.</p> <p>Apply World Bank OP4.12 on valuation and compensation measures.</p> <p>Apply World Bank OP4.12 and OP. 4.10 on valuation and compensation procedures.</p>
<p><b>Monitor</b></p> <p>Adequate monitoring and evaluation of activities to be undertaken.</p>	<p>According to Land Act can be undertaken County Land Boards.</p>	<p>Both Kenyan Law and World Bank policy advocates for Monitoring and Evaluation</p>	<p>Implement as prescribed in the World Bank OP4.12, OP. 4.10 and Kenyan Law.</p>



## **5 PUBLIC CONSULTATION AND DISCLOSURE**

### **5.1 Introduction**

This chapter provides an outline of the main engagement activities carried out during the RAP preparation and planning process and gives a summary of key issues identified during the public and stakeholder consultation and participation processes. The main stakeholder groups have been identified during the development of the RAP and include: (i) the people directly and indirectly impacted by the Project; (ii) government officials at the county and sub county and national levels; (iii) the broader interested national community; (iv) the Civil Society present in project area.

The aim of engagement within the resettlement planning and implementation processes has been to ensure that all interested and affected parties are informed and involved throughout the project phases. During this engagement, the parties are provided with the necessary information to help them actively participate in the resettlement planning decision-making process.

The KWSCRП recognizes that meaningful public consultation is a process that (i) begins early in the project preparation stage and is carried out on an on-going basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making such as mitigation measures, resettlement activities, livelihood restoration, compensation, the sharing of development benefits and opportunities, and implementation issues. The intensive public consultation and disclosure process has been undertaken for the Mwache Multipurpose Dam project in this spirit and will continue through the implementation stage to ensure a more informed and participatory implementation of the RAP.

### **5.2 Principles for Consultation**

Consultation and participation require that accurate and reliable information is made available in a timely and comprehensible manner and can be easily accessed by all relevant stakeholders in accordance with the requirements of OP. 4.12 and more specifically OP. 4.10 in view of the vulnerable and marginalized groups present in the project area. For a project of this nature with various activities across stages, a specific Communication and Stakeholder Engagement Strategy and Action Plan is essential and will be prepared by the RAP implementation consultant currently being hired by the KWSCRП. It shall draw upon resources from various departments, including external agencies. It shall require uniform understanding and awareness regarding activities amongst all stakeholder institutions to enable a unified and thereby effective approach. The degree of participation of PAHs required will be directly proportional to the scale and magnitude of impacts and the proposed mitigation measures.

Therefore, the principles for information dissemination to ensure effective consultation and participation are as follows:

- **Continuous process:** Information dissemination on project developments and Consultations with affected persons and communities will be a continuous feature throughout resettlement planning and implementation.
- **Essentially inclusive:** As PAHs include vulnerable groups who are under-privileged and are potentially at a greater disadvantage due to the adverse impacts, the entire participative and consultative process will be inclusive of such disadvantaged and vulnerable groups and will require special and intentional efforts to elicit their participation; and
- **Forums for decision-making:** Meetings/interactions/consultation forums will aim at informed decision making.
- **Broad Community support:** Obtain broad support from the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process as per requirements of OP. 4.10.
- **Consultation Methods:** as per OP. 4.10 use of consultation methods that are appropriate to the social and cultural values of the affected Indigenous Peoples' communities and their local conditions and, in designing these methods, gives special attention to the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits;
- **Informed Consultation:** - as per OP. 4.10 provide the affected Indigenous Peoples' communities with all relevant information about the project (including an assessment of potential adverse effects of the project on the affected Indigenous Peoples' communities) in a culturally appropriate manner at each stage of project preparation and implementation.

The **core objectives** for stakeholder engagement that were held during the RAP preparation process for the Project are:

- To identify and map all relevant stakeholders, their context, interests and concerns;
- To establish a two-way dialogue to understand concerns, management options and external perspectives for incorporation into resettlement design and decision making;
- To proactively inform all potential affected and interested stakeholders about the resettlement process (including the schedule, grievance mechanism, rights and responsibilities), process status and feedback and opportunities to provide input;
- To promote and secure participation of PAPs by building their capacity for informed participation with special attention given to vulnerable PAPs in key decision making;
- To manage stakeholders' expectations, especially those related to resettlement compensation;
- To support consistent project level engagement in relation to resettlement through collaboration and communication with project related teams who interact with PAPs;
- To facilitate the collection of quality primary and secondary information relevant to the resettlement and livelihood restoration processes including monitoring;
- To document information disclosed and public consultation efforts; and,
- To comply with regulations and requirements on disclosure and consultation.

### 5.3 Public Consultation and Disclosure Approach

Public consultation and disclosure will continue throughout the RAP development and implementation process. Consultation and participation at the County and Sub County levels was sought to provide a forum for the exchange of information and idea between stakeholders.

### 5.4 Consultation and Participation Activities

Activities and techniques for public consultation have been designed to suit the needs of each target audience as well as meet the requirements of the diverse and numerous stakeholders involved in this project. In the next steps of RAP implementation, the existing techniques will be enhanced and new ones adopted to include the following methods:

- Use of visual presentations including pictures, diagrams and posters, especially at the local levels.
- Face-to-face and practical communication; intensified in places where levels of literacy are recognized as being low. This includes the use of seminars, workshops, village meetings, semi-structured interviews, small group meetings, participatory rural appraisal techniques, and site visits.
- Verbal translation into Duruma language during village consultation meetings
- Use of local project information centres/barazas in project area. These centres enable the distribution of information about the project, collection of feedback from stakeholders, the ability to deal with inquiries and requests for additional information, and to form a place to conduct periodic meetings with village representatives.

Table below shows the dates public consultations were held with the PAHs and stakeholders affected by the project, venue and number of participants.

**Table 6: Consultations done by the RAP Consultant during RAP Preparation**

#	Dates	Venue	No. of Participants	Male	Female	Target Group (Villages)
1.	10 July 2017	Kasemeni DO's Office	117	71	46	Fulugani, Mwachipa, Bokole, Mwache, Mpirani
2.	11 July 2017	Mnyenzeni Primary School	315	183	132	Chigato, Hanje, Madewani, Chigomeni, Nunguni
3.	25 Aug 2017	Bonje Beach Management Unit	39	31	8	Fishermen and women
4.	13 July 2018	Fulugani Village-Dam Site	148	101	47	Fulugani village
5.	3 Aug 2018	Methodist Church, Mazeras	170	129	41	Mazeras – Access Road 'A'
6.	3 Aug 2018	Chigato Dispensary	246	153	93	Silt Stock pile area – Hanje & Chigato villages
7.	26 Sept 2018	Chigato	54	35	19	Silt Stock Pile area

#	Dates	Venue	No. of Participants	Male	Female	Target Group (Villages)
		Dispensary				(Reduced)
8.	24 Sept 2018	Mazeras Methodist Church	8	7	1	Access Road 'A' - Reduced
9.	14 Sept 2018	Coast PMU Offices	4	4	0	Elected Leaders from Kinango Sub-County
	<b>Total</b>		<b>1,101</b>	<b>714</b>	<b>346</b>	

**Additional Consultations done by MWS/WB in November 2018, March & April 2019**

#	Dates	Venue	No. of Participants	Male	Female	Target Group (Villages)
1.	9 Nov 2018	Shalmar Dreams Hotel	49	37	12	National and County Leaders from Kwale County
2.	14 Nov 2018	Dam View Hotel Mariakani	84	70	14	Village Elders from All the Affected Villages
3.	16 Nov 2018	Shalimar Dreams Hotel Mariakani	77	65	12	RAP Opinion Leaders Form All Affected Villages
4.	23 Nov 2018	Dam View Hotel Mariakani	86	81	5	Dam Committee
5.	11 Dec 2018	Mpirani Primary School.	30	25	5	Stakeholders Concern Road Network and Community Members
6.	21 Dec 2018	Silt Pile Area/ Chigato Dispensary	39	39	0	PAPS Committee Members and Community Members
7.	22 Mar 2018	Mwache ECD	23	13	10	School Board of Management
8.	23 Mar 2018	Fulugani Primary School	27	15	12	School Board of Management
9.	23 Mar 2018	Nunguni Primary School	29	18	11	School Board of Management
10.	8 April 2019	ACC Kasemeni Office Compounds	260	195	65	PAPs and local leaders
11.	9 April 2019	AIC Majengo Primary School	164	118	46	PAPs and local leaders
12.	10 April 2019	Ziwani ECD Mnyenzi	52	36	16	PAPs and local leaders
13.	11 April 2019	Nunguni Primary School	81	56	25	PAPs and local leaders
14.	12 April 2019	Mwashanga ECD Grounds	134	100	34	PAPs and local leaders
15.	13 April 2019	PEFA Church Pemba Village	169	126	43	PAPs and local leaders
	<b>Total</b>		<b>1,304</b>	<b>994</b>	<b>310</b>	

Table below gives the list of consultation fs held with government, relevant agencies and other interested stakeholders.

**Table 7: Consultations with Key Government Institutions**

#	Dates	Venue	No. of Participants
1.	14 June 2017	CDA Offices-CDA team	13
2.	17 July 2017	Kasemeni DO's Office-Kaya Elders	12
3.	12 July 2017	Kinango-Lands Office	4
4.	22 July 2017	Beach Management Unit	10
5.	4 Aug 2017	CDA Debrief meeting	9
6.	4 Oct 2017	Dam Committee at project sites	15
7.	9 July 2018	KWSCRIP Offices – Coast – Additional Works	7
8.	10 July 2018	Kasemeni ACC's office – Additional Works	12
9.	10 July 2018	Mwavumbo Ward Administrator's office	6
10.	24 Sept 2018	Kwale County Headquarters	9
11.	16 Jan 2019	Coast PMU Offices with Kasemeni Ward, MCA Hon. Anthony N. Yama	2
12.	22 Jan 2019.	Various Project Sites with Officers from Security Agencies in Kinango Sub County	5
13.	24 Jan 2019	Mgandini Primary School with Ministry of Education Officials	6
14.	28 Jan 2019	Kwale County Offices, with County Government of Kwale County Secretary and Other Technical Staff	4
	<b>Total</b>		<b>114</b>

## 5.5 Summary of Consultations

**Table** below, highlights some of the key concerns of the PAHs emanating from the consultations. Further information including issues and responses arising during the consultations are outlined in Annex 1

**Table 8: Summary of Concerns raised by the Project affected Persons**

#	Issue/Comments	Responses
1.	How will the consultants know exactly the real PAHs?	There is a project design and related map that have been developed. The Consultants could therefore use these design maps to identify the affected area and hence the PAHs. Further, the census will generate a full and completed list of those affected by categories of impacts.
2.	What is the process of census, asset inventory and valuation as well as socio-economic survey?	The RAP consultants have prepared census questionnaires that will be used to enumerate the PAHs, undertake census and conduct valuation of assets. There is another questionnaire, which will be used to undertake socio-economic survey through a sample of the population in the project area.
3.	How will you handle land disputes? Because in the area there are a lot of cases in regard to land disputes.	The Consultant scope of work is not to resolve land disputes but to inventory all land to be affected by project and record any related disputes when encountered. The PAPs are advised to strive to resolve land disputes using local/ existing dispute resolution mechanism before the census and asset inventory

#	Issue/Comments	Responses
		<p>exercise</p> <p>Further, the RAP requires the establishment of a functional Grievance Redress and Resettlement Committee (GRRC) to resolve grievances in an amicable manner and as part of the Consultant scope, is to propose the establishment of GRRC at different levels to resolve land and related disputes among others before and during RAP implementation.</p> <p>Also, Kenya has a legal framework which provides channels for resolution of disputes over land through legal justice system. This is the Environment and Land Court which is an expensive last resort if all other local GRM were to fail.</p>
4.	How will the compensation be undertaken because in previous projects, locals have been complaining over low compensation	<p>The Consultant team has valuation experts who are registered by the Valuation Board to undertake valuation of every affected asset including land, structures, trees and crops, cultural and communal/public assets for the purpose of the RAP. The compensation will be at full replacement cost.</p> <p>The NLC; which is the legally mandated body will conduct another asset inventory and do their own valuation of the all the affected assets as provided for by the NLC Act.</p>
5.	What makes this process unique from the 2014 one? How sure can we be that implementation will be done this time round?	<p>The government Kenya and the World Bank are committed to ensuring that the project is implemented as part of the set developmental goals. Funds have already been secured and once the RAP study is complete and the report approved, compensation will follow and dam construction will commence.</p>
6.	There are sacred places like the shrines where the community perform traditional rites and these will be affected by the project. Will we be compensated?	<p>The dam design has taken cognizance of this and has tried to avoid impacting on such cultural shrines. However, where they will be impacted, the community will be compensated in line with traditions and culture of the community through the Kaya elders.</p>
7.	How will the local community benefit from the project especially those not directly affected hence will not get any direct compensation nor other assistance?	<p>Job opportunities will be created during the construction and operational phases of the project for the local community to be competitively considered for employment.</p> <p>Local access roads will be improved and other livelihood restoration initiative such as planned water supply will benefit the local PAP and host communities</p>
8.	What will happen where disputes will arise on how to share compensation proceeds among family members or if a PAP is not satisfied with the compensation money provided?	<p>The project will establish grievance redress committees at the various project levels, which will handle all disputes related to compensation and resettlement. PAHs will be informed of the actual dates and venues where the committees will be elected and formed by the PAPs themselves under the supervision of the local administration and the project team.</p> <p>The formation of these GRCs will be accompanied by</p>

#	Issue/Comments	Responses
		<p>sensitization meetings to sensitize the PAPs on the purpose and usefulness of the GRCs. The PAPs will be encouraged to channel their grievances to the said committees. In case they would not be satisfied, they will be free to use other legal channels available.</p> <p>The GRCs will be facilitated by the project to ensure they remain active, motivated and functional.</p> <p>The grievance redress and resettlement committees will be established before land acquisition and compensation of PAHs begins.</p>
9.	When will the project implementation commence?	The project is expected to commence in mid-2019 subject to approval of the RAP and compensation to PAHs.
10.	Will the project compensate for affected graves as well?	The consultant team will record all affected assets including graves during the census and asset inventory and then compensation will be done in line with the traditional/religious norms/rites of the people affected and the NLC Act.
11.	The additional land requirement especially for silt pile at the lower check dam area is leading to acquisition too much land than that which the community had previously anticipated. This will lead to loss of valuable farmland including part of Mwache Primary School.	<p>This concern was noted and the client reviewed the detailed design to determine the optimum amount of land that will be required for the silt pile area and reduced to minimize impact.</p> <p>The area was reduced from 500ha to 130ha</p>

## 5.6 Additional consultations to understand the risks and establish the viability of self-managed relocation and assisted relocation resettlement in the project area

To better understand the risks associated with and the viability of the self-managed relocation and assisted relocation options preferred by the community, additional field validation activities became necessary. The activities were aimed at determining the PAHs who have alternative parcels of land hence able to self-relocate vis-a-vis PAHs without alternative land and therefore needing additional assistance in identifying alternative land. This validation exercise was undertaken through a participatory process which involved 913 affected land owners out of a total of 1,359. 446 affected land owners did not participate in the validation exercise for various reasons. The exercise targeted only land owners, so impacted households without formal title in the project area were not consulted in this process.

This activity took place between 26 and 30 November 2018 in all the affected villages through administration of questionnaires to the PAHs. It was aimed at verifying the following.

- Number of PAHs who attest to currently owning another parcel of land of their own in a different location. These PAHs indicated their ability to self-relocate and did not require project assistance in identifying relocation land.
- Number of PAHs who currently have no alternative land of their own to resettle but have identified resettlement land on their own and only need to be compensated by NLC for loss of affected land in cash and offered additional support during relocation and resettlement. These PAHs indicated their ability to self-relocate and did not require project assistance in identifying relocation land.
- Number of PAHs who currently have no alternative land of their own to resettle on and are unable to/have not identified alternative ideal resettlement land on their own and hence needed project support in identifying resettlement land and offered additional support during relocation and resettlement.
- Number of PAHs with no alternative land but want cash compensation and do not want project assistance. These intend to move away from the community and resettle elsewhere.

Table below shows the results of the land validation process by village and that out of the 913 respondent households, the total number of PAHs with other parcels of land that are not affected by the project were 319; PAHs with no alternative land of their own but who have already identified alternative land where they intend to relocate were 185 and PAHs without other parcels of land and have not identified alternative resettlement land were 409. 446 PAPs did not respond.

**Table 9: PAHs with or without other parcels of land and their resettlement alternatives**

	Village	Land owners on the Asset Register	PAHs with other parcels of land that are not affected by the project	PAHs without other parcels of land but have identified alternative resettlement land	PAHs without other parcels of land and have not identified alternative resettlement land	PAPs who did not respond to Land Question compared to PAPs on the Asset Register
1	Fulugani	<b>203</b>	94	106	37	-34
2	Chinguluni	<b>70</b>	20	13	9	28
3	Mwache	<b>127</b>	38	4	29	56
4	Mtulu	<b>11</b>	11	0	8	-8
5	Ziwani	<b>26</b>	0	1	1	24
6	Chigato	<b>95</b>	11	0	37	47
7	Hanje	<b>94</b>	5	1	88	0
8	Mpirani	<b>63</b>	3	4	10	46
9	Mwachipa	<b>78</b>	17	12	5	44
10	Chigomeni	<b>41</b>	7	3	29	2
11	Bokole	<b>62</b>	7	3	12	40
12	Madiwani	<b>13</b>	32	0	0	-19



	Village	Land owners on the Asset Register	PAHs with other parcels of land that are not affected by the project	PAHs without other parcels of land but have identified alternative resettlement land	PAHs without other parcels of land and have not identified alternative resettlement land	PAPs who did not respond to Land Question compared to PAPs on the Asset Register
13	Vikinduni	6	1	0	0	5
14	Majengo	28	0	0	0	28
15	Mazeras <sup>4</sup>	0	0	0	0	0
16	Chigojoni	7	3	0	1	3
17	Nunguni	244	58	25	37	124
18 19 20 21 22	Luweni, Changa, Mwashanga Mwatate Maweu	191	12	13	106	60
<b>Total</b>		<b>1,359</b>	<b>319</b>	<b>185</b>	<b>409</b>	<b>446</b>

In some villages such as Fulugani, Mtulu and Madiwani there were more PAPs who responded to the land question that was asked than those who the census and asset inventory had identified as owning land. These were PAPs who were enumerated as owning structures only as they were not registered land owners of the land on which the structures are built and hence were not listed as land PAPs on the asset register. However, they hold an entitlement to the affected land through customary land rights as earlier explained and hence responded to the land question on the survey questionnaire. These PAPs were not countered here as they are not land owners.

#### PAHs with or without other parcels of land

	Category of PAHs	Count	%
1.	PAHs with other parcels of land that are not affected by the project	319	35
2.	PAHs without other parcels of land but have identified alternative resettlement land	185	20
3.	PAHs without other parcels of land and have not identified alternative resettlement land	409	45
	<b>Total</b>	<b>913</b>	<b>100%</b>

From the results of the validation exercise as presented above, out of the total 913 PAHs interviewed, 55% of the respondents have a clear and documented plan for relocation; of this, 35% have their own residual land while 20% have identified land parcel for relocation and will pay for the land parcel once they received compensation from NLC. All affected households in these two categories requested support during the relocation process such as transport or conveyancing. Experience drawn from other resettlement projects in Kenya shows that as and when dam construction is about to commence, the PAPs will seek

<sup>4</sup> PAHs in Mazeras are traders on existing Right of Way (ROW) and hence not land owners but encroachers.

additional support for their resettlement plan. This support will be available through the RAP IT.

Another 45% of the respondents do not have other parcels of land and have not identified potential resettlement land. This category of PAPs will require additional assistance in the identification of resettlement land. They will require transport and personnel to help them in moving around the host communities' areas and identify suitable land and negotiate with the potential land sellers. This particular group of PAHs will require additional project intervention during the resettlement process.

It is worthy of note that the largest single category of this exercise were those that declined to respond to the questions. As the dam project has been in the offing for a long time with studies after studies conducted on the project, the PAPs have over time become fatigued with consultations and skeptical about the project and do not want to commit more time and resources on project related activities such as above requests to authenticate their resettlement plans.

As noted above, due to cultural considerations and a lack of trust in government, the community overwhelmingly expressed a desire for cash compensation to facilitate self-managed relocation. To manage the risks self-managed relocation entails, the project is putting in place systems to safeguard against the irresponsible use of cash and the resultant destitution. The system will operate on the principle that no cash compensation will be paid until the project team has established the intentions of an individual PAH and the strategy for relocation is deemed viable. Support will be provided to this process through the RAP Implementation Team (RAP IT). (Refer to Annex 9 for draft TOR of RAP IT). Where PAHs decline to avail themselves of the RAP IT assistance, compensation will only be released once the RAP Implementation Steering Committee (Refer to Annex 14 for TOR) has determined that the PAHs livelihood strategy is viable in the longer term and determined what form of tailored assistance and/or monitoring must be provided. Where a vulnerable PAP declines to avail himself for resettlement assistance and a finding of vulnerability is confirmed but engagement with the PAP fails, a social worker will monitor the PAP by visiting every three months until the PAH is restored or an LRP is agreed. Where regular monitoring becomes impractical or a period of 24 months lapses without the PAPs being fully restored, necessary remedial measures determined by the RAP Implementation Steering Committee and favorable to the PAP will be taken. Under any scenario, compensation for assets and land lost will be paid to PAPs before displacement.

## **5.7 Identified way forward to manage these risks**

As per the different groups of land owners identified above:

35% of PAHs who claimed to have alternative land and 20% who claimed to have already identified alternative and suitable relocation land on their own and are only waiting for compensation to purchase the land. During the RAP validation exercise, efforts were made to ascertain and confirm the true position of PAHs who made the above claims by conducting visits to the claimed parcels of land and inspecting ownership documents. This move was not supported by the PAHs and their leaders who indicated that this due diligence was time intensive and required ample travel time to all the areas where the alternative parcels of land were located.

Secondly, prior arrangement was necessary in organizing meetings with identified land sellers and such efforts would be more productive and worth the effort when the PAP affected assets and land values have been determined and the quantum of compensation owed to each PAP was understood. That is, households had different plans in mind depending on the amount of compensation they received and they wanted to keep their options open.

In addition to the livelihood resettlement activities noted earlier, the RAP implementation Team under the guidance of the RAP Implementation Steering Committee will guide NLC on the appropriate time to release the money to each PAH. Money will only be released to PAPs after due diligence by the RAP IT confirms that the PAPs have concrete plans of replacing affected land through completed and witnessed negotiations by the land settler and a commitment to transfer the money to the sellers as soon as money is credited into their account.

The due diligence will be undertaken through site visits by RAP IT and the PAHs to identified parcels of land to confirm they exist; confirm ownership of land through review of title deeds (or other proof of ownership i.e. customary); and confirm if the sellers agree to the sale arrangements with PAH. After above confirmation, (and when the PAH have agreed to a tailored livelihood restoration package with the RAP IT) this category of PAHs, will be entitled to receive cash compensation from NLC to facilitate the self-managed relocation strategy. Note any PAH with either no verifiable plans to acquire land, or without an approved LRP (or both) will be considered at very high risk due to the project and the RAP Implementation Steering Committee will consider their case individually.

Livelihood Restoration Plans (LRPs) activities are additional to the cash compensation from GOK for the affected assets and the community perceive them as such. They will be used to motivate the PAPS to join the MoWS in managing the risk associated with cash compensation by preparing the individual Household LRPs.

This has already drawn wide PAP population support. They are eager to put their plans in writing. During the recent series of consultation on the need to prepare these individual LRPs, many PAPs reconfirmed that they have these plans in mind and will concretely put them on paper when MoWS is ready (At RAP Implementation). Refer Annex 13

Community LRP activities planning and development of the individual LRP will be among first activities of RAP implementation phase. The PAPs have been sensitized on the need and purpose of these LRP activities and the need to further document their HH level LRP. They have accepted to prepare them early in the RAP Implementation with the provision of revising them upon the receipts of compensation awards from NLC later. NLC will require a set of documents and a bank account for each PAH.

The local banks have been requested and have agreed to train the PAPs on the financial management skills to all PAPS as they open the banks accounts for those without. This will happen at the project level where the banks will pitch tents in the project area and build the PAPs capacity in money management.

Job opportunities that will arise during RAP implementation phase (data clerks, enumerators and social workers etc) and construction works (artisans, mechanics, drivers etc) will be offered to the community members on merit and hence they understand that cooperation with and support of the project risk management strategies will be an added advantage in being positively considered for available employment opportunities.

In the event that the process of due diligence presents a different outcome from what is purported by the PAHs (claiming to have other parcels of land or have identified alternative land on their own hence able to self-relocate), the project will assist them in identifying suitable resettlement land and plan for their resettlement through the RAP IT in a similar fashion as described below for the third category of PAHs. PAHs will not be eligible for compensation for loss of land until due diligence has ascertained that PAHs have viable livelihood strategies for the compensation in train.

For PAHs who neither have other parcels of land nor have identified potential resettlement land, the RAP IT will support the PAHs to identify suitable resettlement land and to conclude the sale agreements with sellers, transfer of cash to the sellers and successfully transfer of land ownership to the PAPs – assisted relocation. (See attached in **Annex 8** the TOR for the conveyancing lawyers to support land transfers to facilitate this process and **Annex 9** for the draft ToRs of the RAP Implementation Consultant currently being hired).

## **5.8 RAP Disclosure**

The RAP report will be disclosed in English on MOWS, CDA and Kwale County Government websites as well at the World Bank website. The public disclosure will be exclusive of the valuation/asset roll which will only be disclosed to individual PAHs.

National Land Commission (NLC) will further disclose part of the RAP by publishing on the Kenya Gazette Notice of its intention to acquire land on behalf of the Ministry. The gazette will contain the list of PAHs owning land as obtained from the RAP report. The gazette notice will be for a period of thirty days. NLC will further disclose individual compensation awards to the PAHs through one-on-one engagement with individual heads of affected households or accompanied by his/her family members as the PAH may deem appropriate. A booklet with key elements of the RAP will be prepared during the implementation and made available to all affected households/units.

## **6 BASELINE AND SOCIO-ECONOMIC PROFILE OF PAHs**

The socio-economic baseline presented in this section is representative of the conditions in the project area before the project is commissioned. A socio-economic survey was carried to collect quantitative and qualitative socio-economic data on affected households including (1) household demographics, (2) education and skills, (3) livelihoods, (4) health and nutrition, (5) basic services and community facilities, as well as (6) culture and heritage. The data forms the basis of a better understanding of the structure and make-up of affected households, their livelihoods practices adopted to secure household food needs and income; as well as providing a baseline for evaluating the success of livelihood restoration support.

### **6.1 General Background**

The Mwache multipurpose dam project is in Fulugani and Miyani areas of Kasemeni Division of Kinango Sub County. The northern areas of Mwache river stream falls in Mazeras sub-location and Kasemeni location while the southern side is in Rombo location and Kinguluni location while the upstream zones are in Mwatate location of the same division. The catchments, however, extends far to the west, northwest and southwest. The location coincides with 3° 59' 12" S and 39° 31' 07" N on a straight stretch of the river before discharging into the ocean via Mwache Forest. The location is off Mazeras about 22km from the City of Mombasa bordering the Indian Ocean to the east at approximately 10km from the main Mombasa – Nairobi highway.

The dam site is characterized with deep cliffs standing out to about 14m above sea level (~ 14m above riverbed). The area is mainly rural residential comprising mainly of villages or family homesteads. Despite the deep cliffs, there is notable number of residents undertaking limited farming along the river flood plains or grazing along the riverbanks while both banks of the river are characterized with limited farming. The land required for the dam will cover the buffer zones on both sides of the banks. The allowed buffer zones cover a minimum of 30m according to the Water Rules but will effectively vary with topography and the surrounding land use practices. While the dam has been designed to a water crest level of 86 m, the total area acquired will be 102 m to allow for adequate buffer area that will be planted with trees. This will also be an extension of Mwache forest system.

### **6.2 Position and Size**

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

### **6.3 Administrative and Political Units**

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

## 6.4 Demographics

The population of the Division of Kasemeni is predominantly rural in character and the main economic activity of the area is subsistence farming. According to the 2009 Population Census (KNBS) Kasemeni Division had a population of 78,859 comprising of 12,902 households. Kasemeni Division is an administrative unit within Kinango Sub County and the proposed Dam Project falls within the areas of Mazeras, Chigato and Mnyenzi sub-locations. The administrative setting of the division and the population (2009) distribution is shown below.

**Table 10: Administrative setting and population distribution**

Sub-location	Population (2009)	Area (Sq. Km)	Density/pp (sq. km)	No. of Households
Mazeras	8705	15.5	560	1680
Chigato	4022	17.8	226	668
Mnyenzi	8292	29.0	286	1363
Mwatate	10,791	41.1	262	1601

The county covers an area of 8270.2 Km<sup>2</sup>, of which 62 Km<sup>2</sup> is under water. The area excludes the 200-miles coastal strip known as the Exclusive Economic Zones (EEZ). The position of the county puts it in a strategic location for accelerated economic growth in the Kenyan Coast.

## 6.5 Population Size and Composition

The constituency is sparsely populated with a population density of 63 people per Km<sup>2</sup> which is expected to grow to 67 people per Km<sup>2</sup> by 2017. The area is classified as rangeland and is less productive agriculturally but has potential for ranching and general livestock or wildlife husbandry. According to the most recent census, it has a total population of 209,560 people and projected to be 252,550 in 2017, rising to 268,758 by 2020 with a poverty index of 84.5%. Most of Kinango land mass is semi-arid.. Of this population 47% are male with the rest being female. Life expectancy is 51.2 years with fertility rate around 5.7 live births per woman. The population is generally youthful putting pressure on the available educational, health and other social facilities.

## 6.6 Demographics in Project Affected Household Heads

The total number of Project Affected Household heads in the project areas where economic and physical displacement is expected has been established during this socio-economic and census study at **2,452** Project Affected Households (PAHs).

### 6.6.1 Age Distribution of PAHs

23% of the household heads were below the age of twenty, 14% were thirty and below and 31% above the age of fifty years. The average age of the PAHs is 37 years.

### 6.6.2 Language

The area is largely rural, the language most commonly spoken in the households is Duruma (99%) the remaining 1% speak Kiswahili in their homes.

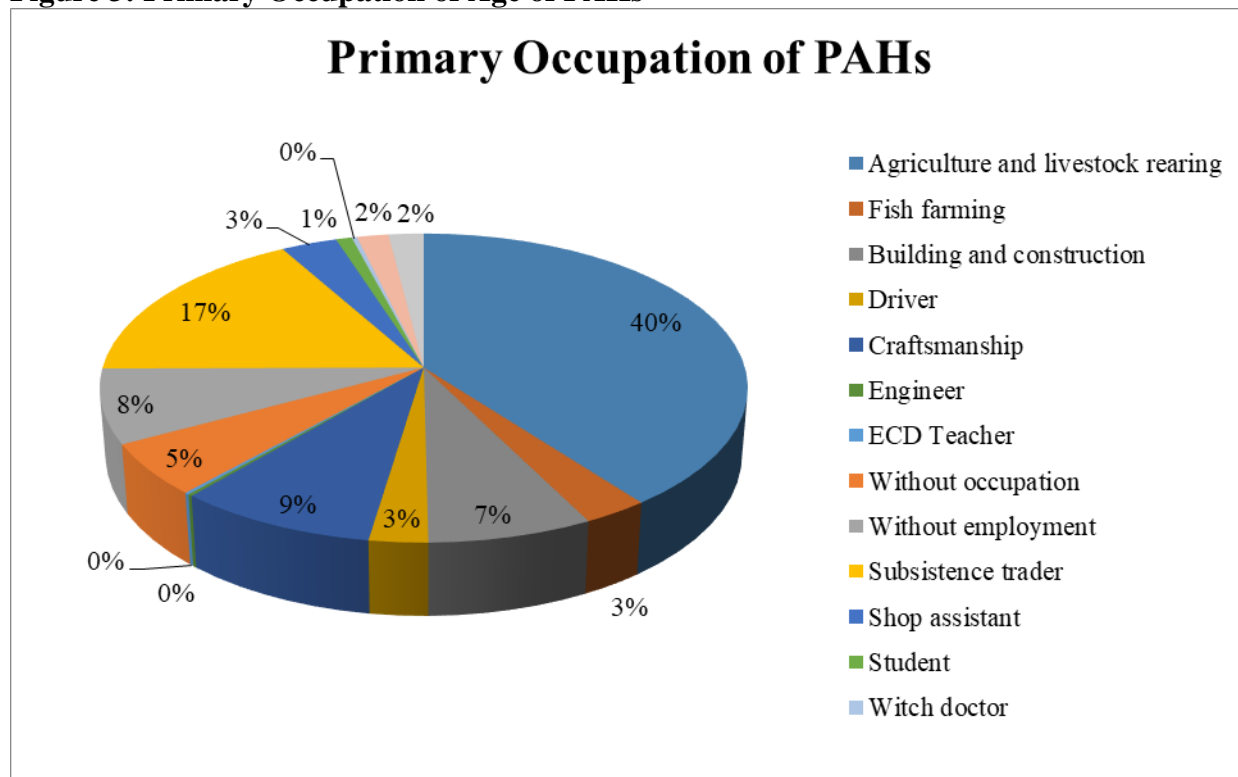




### 6.6.3 Livelihoods

The chart below presents an overview on livelihoods in the Project area, the area is rural with high dependence on rain fed agriculture. 31% of the PAHs engage in subsistence farming (crops and livestock keeping). Trading (14%) is the other major occupation. 7% of those interviewed were without occupation or employment. Other occupations include craftsmanship, manual labourers and drivers.

**Figure 3: Primary Occupation of Age of PAHs**



*Source: Field Survey*

Most of the livelihood activities to provide additional income rely on land resources, such as:

- Subsistence Trading (43%)
- Farming and livestock production (23%)
- Fishing in Mwache River (0.4%)
- Other including sand harvesting, stone quarrying (17%)

### 6.7 Land Tenure and Use

The Government has now embarked on a process of adjudicating land and issuing title deeds in the project area and all the 20 villages affected by the project have been adjudicated with PAHs having title deeds or waiting to receive their titles. The land is used for small scale farming and quarrying as well as settlements. Land as a resource is evidently under-utilized in Kwale County. According to 2005/06 Kenya Integrated Household Budget Survey (KIHBS) the median holding size is 4.4 acres.

## **6.8 Poverty, Income and Expenditures**

### **6.8.1 Poverty**

According to the Commission of Revenue Allocation (CRA), Kwale County faces various challenges, which exacerbate poverty including;

- Land tenure
- Security
- Poor infrastructure development e.g. roads, electricity, water etc.
- Low agricultural production due to land tenure problems.
- Poor and undeveloped agricultural marketing.
- Poor agro-industry base.
- Yearly droughts due to rainfall inadequacy particularly in Kinango and Samburu divisions.
- Vagaries of nature of droughts and flood e.g. the El-nino phenomena.
- High population dependency ratio.

### **6.8.2 Poverty Situation**

The Mwache Multipurpose Dam is in Kinango Sub County, which is one of the poorest in Kenya with a poverty index of 84.5%. Poverty is defined as the inability to afford daily basic needs to support life. This comprises food and non-food items (e.g. clothing, shelter and food), inability to access basic services (e.g. education, health, water and sanitation) and inability to access and control productive resources (e.g. land, capital, information, life skills, employment etc.). The poor see themselves as lacking opportunity to sustain life and being deprived of any voice, right and value in society. They associate their state of poverty with hopelessness, powerlessness, insecurity and lack of integrity.

Although smallholder farming is indisputably the primary occupation and source of income and subsistence for most of the population in the project area, non-farm livelihood and income generating activities play a role in the local economy and in the livelihoods of households in the project area. These include activities such as small-scale trade and the collection and sale of firewood, daily wage labor, etc.

In general incomes are very low and poverty is widespread and deep in many parts of the project area. The housing structures depicts that 98% of the houses are traditional, an indicator of the poverty levels in the area. This is due to a combination of factors and causes such as;

- Low and dwindling resource base (land productivity, water resources, livestock, etc.);
- Backward technology,
- Low productivity and the subsistence nature of production;
- Limited access to public services and amenities; and
- Exposure to shocks and vulnerability (drought, human and livestock disease)

Agriculture (crop) and livestock keeping (livestock) are the base livelihood activity.

Both heads of the households and other household members engage in wide ranging non-farm economic activities to provide for their families. Small-scale trade, fishing, sand harvesting, water vending and casual labour are amongst the most widely practiced non-farm livelihood activities in the households.

### Coping Strategies

In addition to on-farm work, the poor part of the population goes for work in nearby towns especially in Mombasa. Also, poorer households opt to produce food crops selling a portion of their harvest to finance essential non-food items or preferred food items. Poorer households also do not source all their food from their own production alone. They also receive beans, cassava and maize as in-kind payment for working on better-off household's farms.

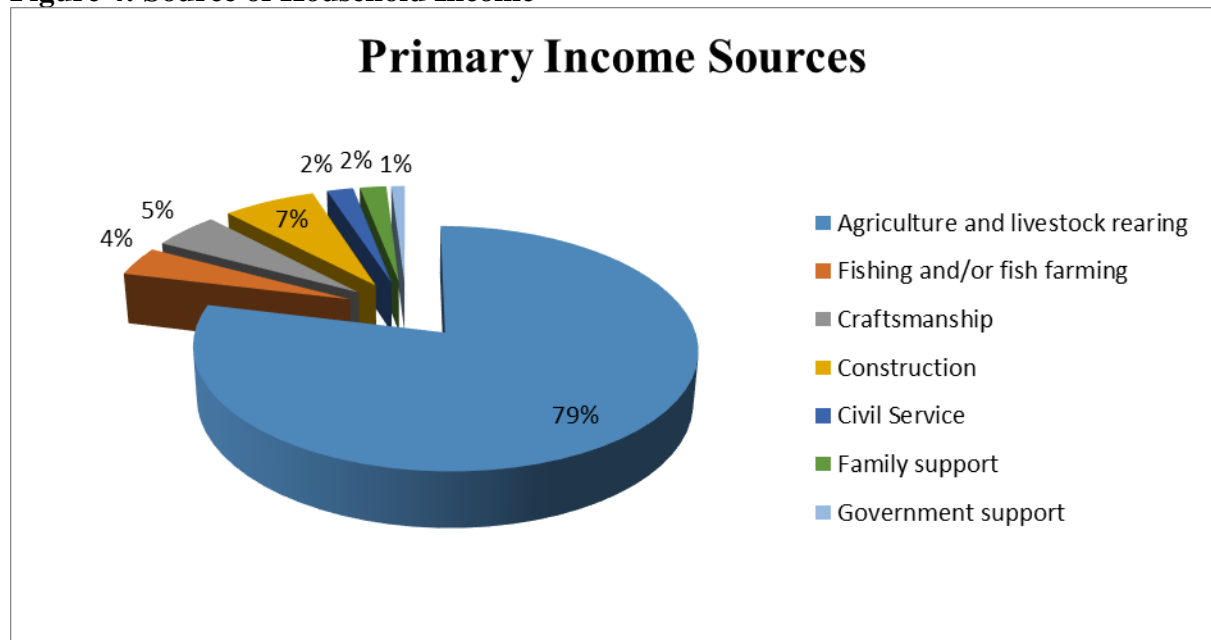
#### 6.8.3 Monetary Income

According to interviews with PAHs and key informants, about three quarters of land users sell their products on the market. Obtaining data for income and expenditures for a society essentially based on subsistence and barter is very difficult.

The main income source is agricultural related activities (79%) while fishing and fish farming which accounts for 4% as an income source. Economic support from Government is 1%. Support from other family members is at 2%.

Generally, the average monthly income of the PAHs in the project area is Ksh. 19,219.60 (approximately 192.2 USD). This average considers income from the head of the household, spouse income, adult child income and other income. The income from the households are distributed as shown in the chart below:

**Figure 4: Source of Household Income**

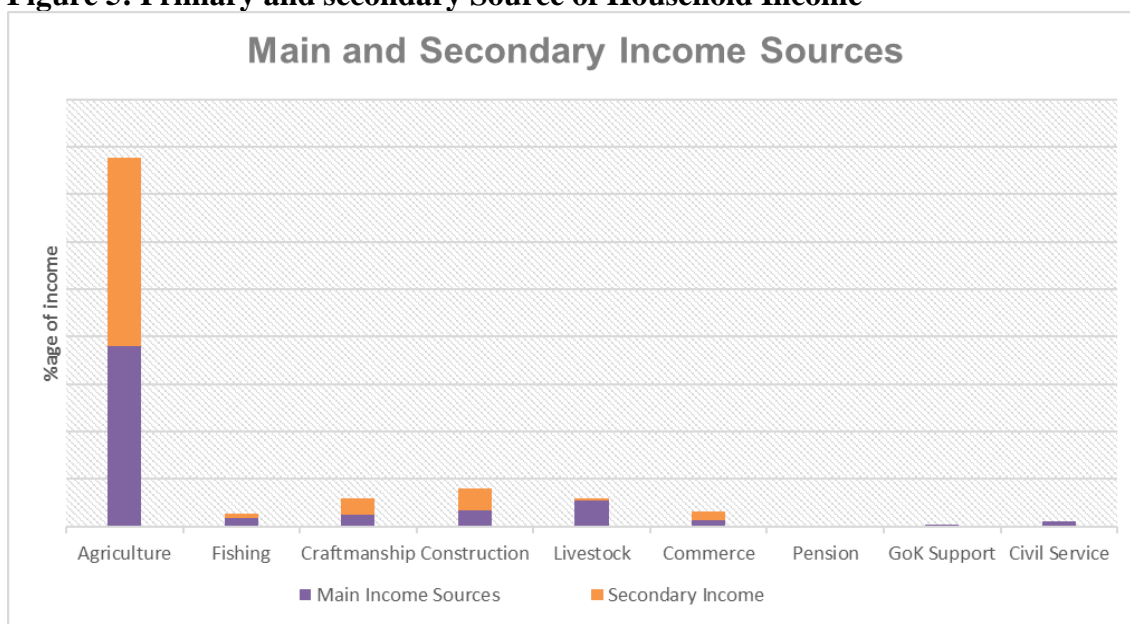


***Source:***

***Field***

***Survey***

**Figure 5: Primary and secondary Source of Household Income**

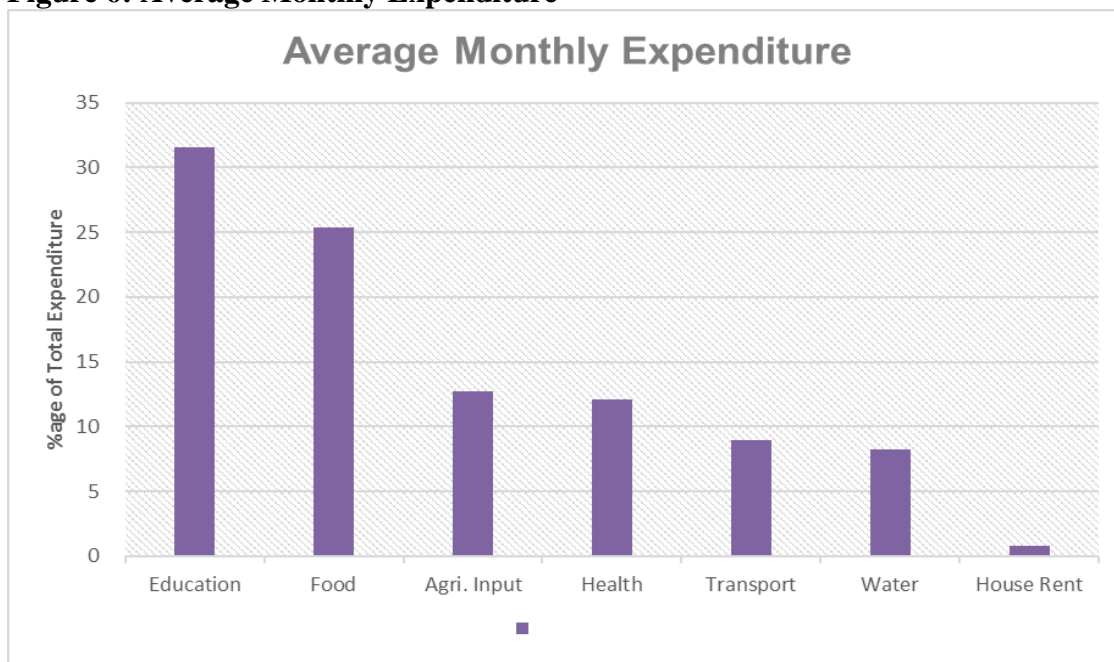


*Source: Field Survey*

#### 6.8.4 Expenditure

The main expenditure is on education which accounts for 32% of the total expenditure. Food is also a key expenditure at 25% of the total expenditure, others are agricultural input (13%) health (12%), transport (9%) and water (8%). Monthly house rental accounted for 1% of the total expenditure.

**Figure 6: Average Monthly Expenditure**



***Source:***

***Field***

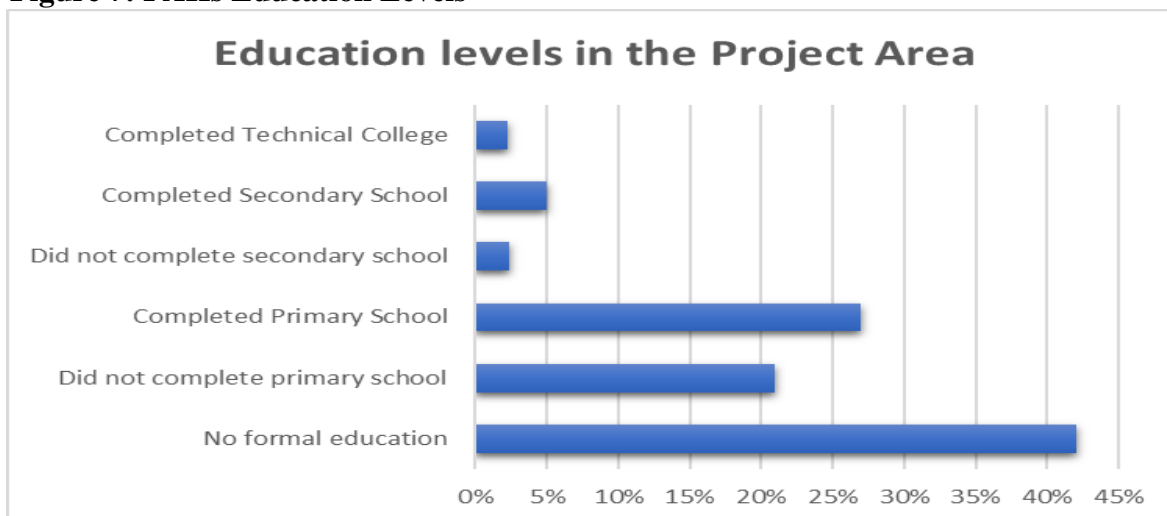
***Survey***

## 6.9 Education

The project area is characterised by insufficient teaching premises and personnel and above normal student-per-teacher ratios. Secondary and vocational education is very weak. Kasemeni Division has 11 primary schools and 3 secondary schools. There are no institutions offering technical education and those interested in artisan and skills development must enrol in facilities either in the adjacent Kaloleni area or in the City of Mombasa. The sub-locations of Mazeras, Chigato and Mnyenzi that are affected by the proposed dam have 6 Primary schools near the dam but the schools will not be displaced by the dam activities. All the secondary schools in Kasemeni are at safe distance from the proposed dam development. The male/female student composition is well balanced.

School enrolment levels appeared to be generally low and were attributed to acute unemployment and lack of household financial capacity while primary school's enrolments rose to over 50%, secondary schools and tertiary colleges is quite low (down to 3 -5%). 64% of the Household Heads can read and write; inclusive of the other household members, 71% can read and write. This contributes to very high illiteracy levels in the area. They said that children didn't want to learn due to lack of role models, poor influence and parental irresponsibility. It was pointed out that children from poor families were likely to repeat a grade, be expelled or suspended from school or drop out of high school due to financial problems. Marriage at young age and premature pregnancies are also indicators of poor school enrolment levels. The gap in education among the male and female is at the primary and secondary school level and is exacerbated at the higher levels of learning. There is a high level of school drop-out rate among the girls than boys at the higher classes in primary and secondary schools. This is a cultural issue as there is high incidence of early marriages among girls to raise resources to support the families. As shown in figure 9 below, literacy levels are quite low around the project area, 42% of the respondents were without formal education. 20% had dropped out of primary school. Only 27% completed primary school, and of those who joined secondary school, 5% completed. 2% completed some form of technical training school. 71% of the respondents can read and write.

**Figure 7: PAHs Education Levels**



***Source:***

***Field***

***Survey***

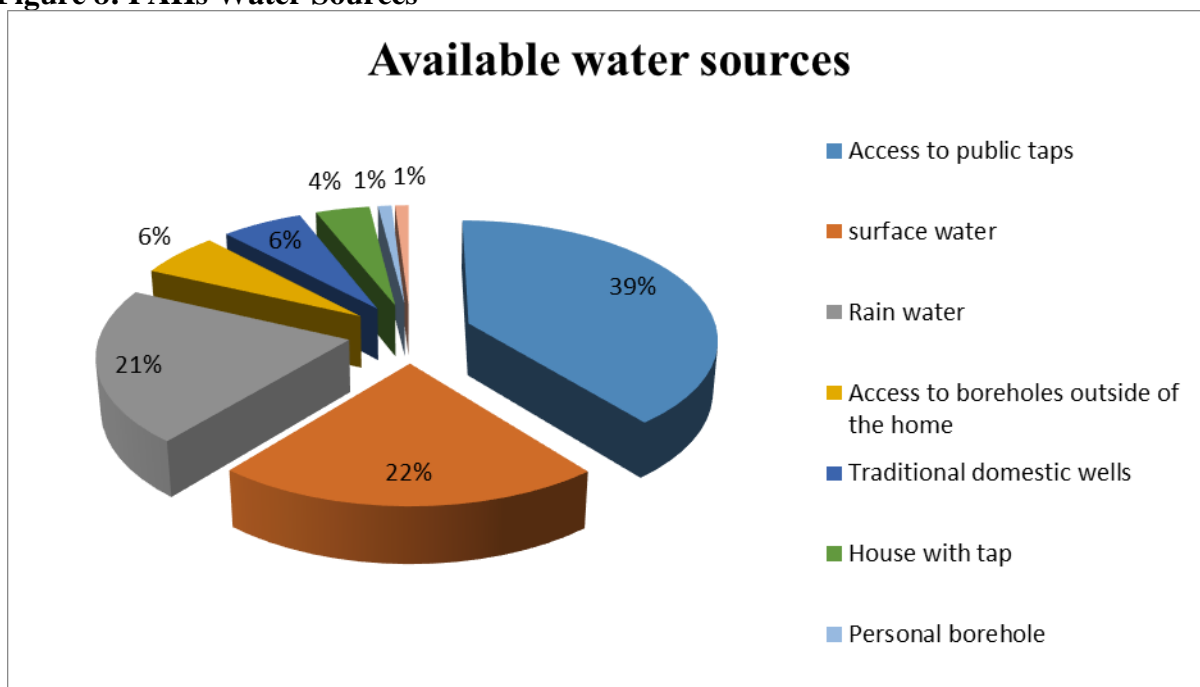


## 6.10 Water and Sanitation

The project area is semi-arid and there are no permanent rivers flowing in any of the valleys. The local community depends on the water pools that are evident at the riverbeds of Mwache and Mnyenzi for both domestic needs and watering their livestock. However, there is a water pipeline that runs along the main Mazeras-Kinango road and a branch line to Bofu from Majengo junction. The other water branch line from Mazeras goes to Fulugani near the dam site. The area investigated in the household survey and the assets inventory is within easy reach of the two rivers that provide water for domestic and livestock needs. However, within the command area, the local community depends on shallow wells where piped water has not been supplied.

The women in the study area are responsible for collecting water for domestic use besides other domestic chores and for their livestock. In view of this, the women groups have organized themselves and are responsible for running the community water standpipes that serve as a source of income for the households. The area being predominantly rural with very scanty population distribution has limited prospects for trunk sewerage. Household water in the project site and in the affected villages is taken from various sources including access to public taps (39%), surface water (21.6%), Rain water (20.8%), Access to boreholes outside of the home (6%), traditional domestic wells (6%), House with tap (4%), personal borehole (1%) and at the nearby Mwache River (1%).

**Figure 8: PAHs Water Sources**



*Source: Field Survey*

## 6.11 Drought Coping Strategies

In view of the fact that the project area is categorized as arid and semi-arid, drought coping strategies which were classified into two by the RAP team based on the socio-economic survey and census were ;(i) Ex-ante coping strategies including, building up of livestock herds, construction of soil and water conservation structures for crop production, diversification of assets and income, growing of drought resistant crops, looking for employment, merry go round (social networks) and construction of high capacity water reservoirs. (ii) Ex-post coping strategies including enhanced sale of livestock, credits from friends and relatives, reduction of consumption levels, migration, diversification of income, engaging in waged labour, skipping meals, charcoal burning, and consumption of wild fruits, remittances and withdrawal of children from school.

The sanitation of the project area is poor, as most of the households have no organized disposal system for the human excreta or other domestic waste. of households enumerated during the survey, 53% of did not have latrines in their compounds hence used the nearby bushes or public toilets. 23% had dug a latrine without a septic tank, while 3% use latrines with a septic tank. 20% use public toilets outside the house and 1% have a flush toilet in the house.

**Figure 9: PAHs Sanitation Facilities**



*Source: Field Survey*

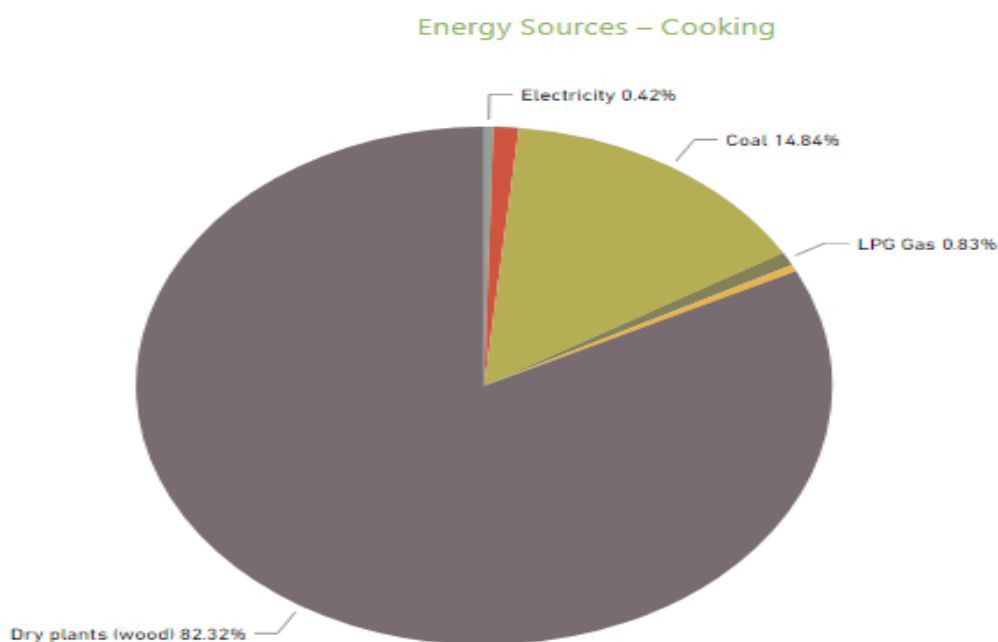
## 6.12 Energy

The project area is covered under the rural electrification project of the Ministry of Energy whose main priority is accelerate connection of power for domestic needs with special priority to schools and health facilities. The high voltage line supplying power on the national grid to Kinango and Kwale traverses the project area and some of the pylons will be subject to relocation because of impounding of the dam. None of the homesteads that were covered in the household survey were connected to power mains.

Majority of the local population rely on firewood and charcoal as source of energy for cooking and heating at home. Some families supplement their source of lighting and cooking with kerosene. The denudation of the tree cover evident in the project area is attributed to the pressure to provide for domestic needs for fuel amidst the ecological conditions are not conducive to the trees replenishing themselves.

Challenges to access energy include long distances to the sources for firewood and the escalating cost for kerosene and charcoal whose prices are beyond the income levels of most of the inhabitants. The project will be instrumental in developing technologies that are adaptable and affordable by the residents who are low incomes earners for their energy needs. These may include introduction of economic jikos, biogas digesters when the livestock farming gets established, use of solar technology and planting of trees in the homesteads to harvest for wood fuel and timber to name a few. The major source of fuel for cooking for the PAHs are dry woody plants (82%) and charcoal (15%). Electricity and LPG gas is used in under 1% of the households for cooking.

**Figure 10: Energy Sources**



***Source:***

***Field***

***Survey***

### **6.13 Housing and Other Assets**

Most houses observed in the affected area are made from local material, including locally extracted earth or clay for walls without cement or plastering and local timber for the structure. Almost all roofing materials for affected households are covered with grass (makuti).

The quality of housing in the study area as an indicator of the quality of life was found deficient, as most of the housing was traditional, devoid of any sanitary services. The houses are built of mud and mangrove posts for walling with makuti roof and conspicuously lacking ventilation and matching doors. The floors are mostly earthen and dusty as there is little extra water to temper the floor dust.

None of the residential structures has modern features such as an inside bathroom or toilet, or running water. Concrete floors are absent compared with clay floors, which are found in 99% of the surveyed households. More than half the population use non-potable water from water the river. A small proportion of the population has access to public water taps.

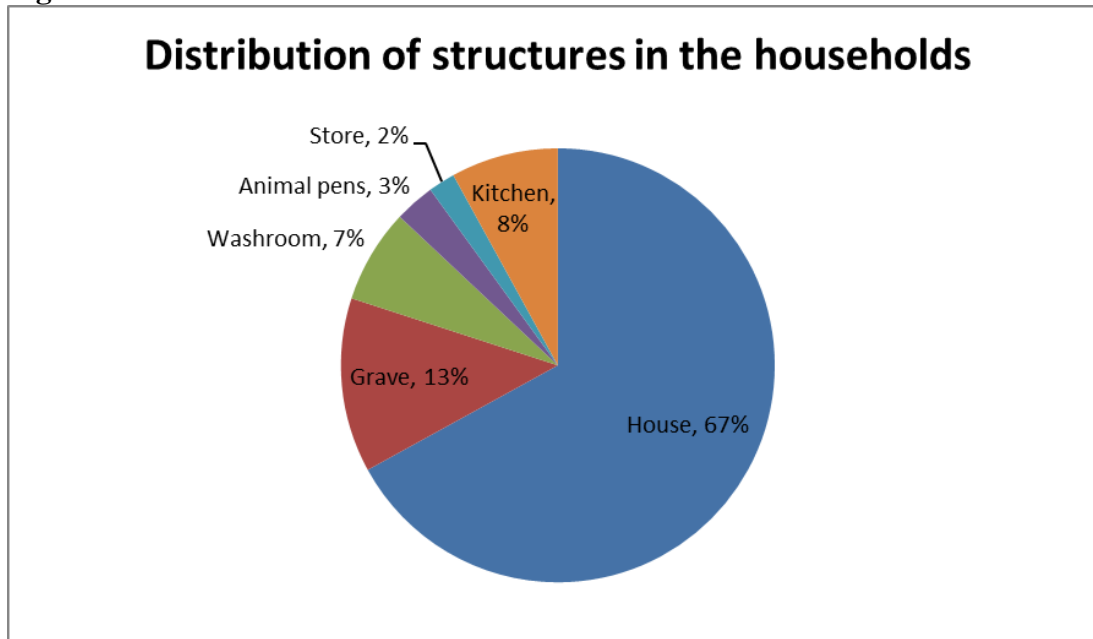
Those households who own a radio are almost a quarter of the total number of households in the Project Affected Area. Cellular phone is common with one head of households out of three owns at least a mobile phone.

Most of the households have no latrines within their homesteads. This human defecation habits on the farms and uncultivated pieces of land were evident, which is a health hazard in case the community members. It is therefore important to emphasize good sanitation habits as well as the dangers associated with improper habits during sensitization meetings.

Ancillary structures include:

- Pit latrines
- Kitchens (when they exist, which is not common, they consist of a few second-hand iron sheets intended to protect the fire from the wind),
- Racks and sheds of various sizes

**Figure 11: Structure distribution in households**



*Source: Field Survey*

#### **6.14 Health**

Kwale County has some of the worst socioeconomic and health indicators in Kenya with Kinango and Samburu as the most affected divisions in the county. Child malnutrition is a serious public health problem in the county. Stunting prevalence in Samburu and Kinango Divisions has been estimated to be 44.7%. There are 2 District Hospitals, (64) dispensaries (6) Health Centres (17) and Medical Clinics.

- Doctor to Population Ratio: 1:82,690
- Infant Mortality Rates: 70/1000
- Prevalent Diseases: Malaria, Skin Disease, Diseases of the Tract System and HIV/AIDS.

Health services in the project area and the environs are poor. The main district hospital is in Kinango, 80kms away on a poor road that is impassable during the rainy season. The nearest dispensary is at Mazeras along Mombasa road within the project area but its level of service is deficient and poorly staffed. The local community is therefore dependent on medical facilities in the City of Mombasa or at Mariakani. The former is 30km while the latter is 20km from the study area respectively. The road network is poor and impassable during the rainy season that impedes emergency cases. The health centre at Mazeras is understaffed in terms of qualified personnel and its workload is enhanced as it also handles emergency cases because of road accidents on Mombasa and Kaloleni roads. There was no evidence of private health clinics in the project area that were identified during the visits made for the household survey and the assets inventory. The most common diseases are malaria, respiratory infections, diarrhoea diseases, HIV/AIDS and diseases caused by malnutrition and nutrition deficiency.

The Duruma people who are the residents of the project area have a deep cultural knowledge on home-based treatment with use of herbs for treating most of the diseases endemic in the area in lieu of conventional medicine. The different trees species found in the area have high medicinal value and processing of the herbs is an old tradition passed from generation to generation. This alternative medicine is important in their sustenance due to their low economic levels that excludes them from affording treatment in conventional medicine at hospitals and clinics.

### **6.15 Transport and Infrastructure**

The project area is traversed Mazeras-Kinango road that will be affected by the dam submergence. An alternative road has been conceptualised and is under design and will be constructed by year 2022 to ensure road transport and connection is not hindered. The road network within the study area comprises of footpaths with a few of the footpaths being motorable. The geology of the area being mainly sandy soils makes movement easy since the main mode of transport other than the long distances to Kinango are the motorcycles that ply for hire. The roads of access are not well defined as the property boundaries are still in the process of demarcation as part of the process of land registration.

During the rainy seasons, transport along the main road to Kinango is interrupted when the Mwache River crossing is flooded. Other storms drain crossings are made of drifts that get flooded and blocks vehicular river crossings. Crossings at other points on Rivers Mwache and Mnyenzi are disrupted during the rainy season and make it difficult for the people to access education, health and other services including their shopping needs. The alternative is to travel longer distances to safe crossings or await the subsidence of the flooding rivers.

With the advent of mobile telephony and reducing costs for the sets, the project area enjoys good connectivity. Coupled with power distribution on most of the trading centres supplemented by solar technology, some of the services that would otherwise be alien in the area such as charging of the cell phone batteries and photocopying facilities are readily available in the project area. All the major telephone service providers are well represented in the area.

### **6.16 Markets**

Domestic markets for crops are generally underdeveloped. Marketing chains are informal and often fragmented, with produce changing hands several times as it moves from farm gate to the final consumer. Farmers sell produce to rural assemblers at the farm gate or to rural traders located in local markets, who then transport it to urban wholesalers. In turn the latter supply urban retailers, who break loads down into small lots for resale in market stalls or small neighbourhood shops. Access to markets for affected communities, is hindered by: -

- Distance to markets and lack of means of transport
- Overall bad maintenance and quality of rural roads
- Lack of storage facilities
- Overall lack of capacity to get organized for group-based marketing of products

## 6.17 Vulnerable Groups

People who by gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by the project/ by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Vulnerability is considered regarding the Project context.

### 6.17.1 Identification of Vulnerable Groups in the Project Area

Vulnerable groups were identified based on

- Consultations by the consultants aiming at the identification of vulnerable people
- Interviews with officials in village and county officials
- Economic disadvantage

### 6.17.2 Orphans

Households headed by orphans (under the age of 18 years) are considered as vulnerable. They usually have no access to education due to family obligations. Hence, their capacity to benefit from training measures is limited as is their capacity to develop alternative livelihoods. According to the results of the enumeration in the project-affected area, **82** of the documented households had orphans. There are **4** households headed by orphans. During RAP implementation, special attention will be given to the identification of orphan headed, households headed by terminally sick persons, women headed and elderly headed households.

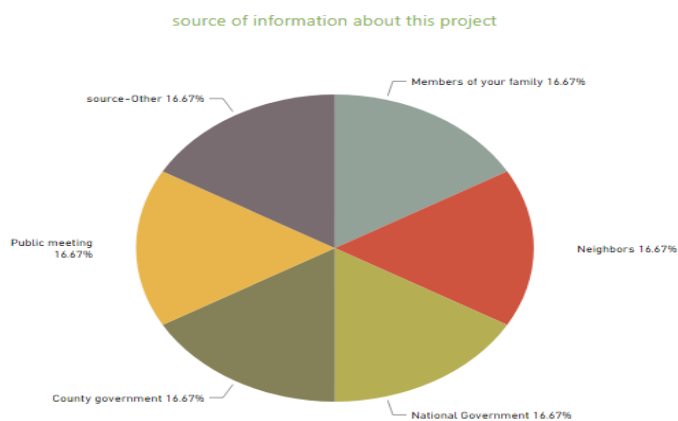
### 6.17.3 Women Headed Household

According to the census there were 42 female headed households (widows) who are considered vulnerable.

### 6.17.4 Elderly, Disabled or Infirm persons

Elderly, infirm or ill people might have limited access to project related information, unless they are considered with specific measures. The total number of elderly persons was 93. There are 26 physically challenged PAPs and 31 PAPs with chronic illness. The distribution is summarized in the below. Figure 14 below shows the different percentages showing the sources of project information.

**Figure 12: Source of Project information**





**Source:** *Field Survey*

## **6.18 Gender and Resettlement**

Displacement disproportionately affects vulnerable groups who bear a much more significant risk of severe impoverishment and are less likely to adapt and rehabilitate without support measures that takes cognizance of their vulnerabilities. Further, as people's skills, aptitudes, resources and preferences vary, their responses to displacement problems and resettlement opportunities too vary.

Women constitute a vulnerable group because they may be excluded from participation at planning and implementation stages and as a consequence are often exposed to greater risk of impoverishment. The chapter presents a gender analysis, followed by responses by women PAHs to the preference survey and a list of measures aimed to provide them requisite support.

### **6.18.1 Gender Analysis**

Gender issues were identified by deploying various techniques – meetings with County Executive Committee Member (Gender), Kwale County, FGDs with women's groups, socio-economic and surveys. Gender analysis was conducted to identify positive and adverse impacts on the project affected women and the existing situation is presented below:

### **6.18.2 Women in the Project Area**

The life of women in the project area is characterized by subsistence mixed farming, traditional and cultural values. Illiteracy, limited or no exposure to the outside village due to remote location of the villages are dominant characteristics. The remote location of the villages particularly due to the difficult terrain of hinder women from having adequate contact with world outside their villages.

- **Role of Women in the project area:** Women actively participate in all aspects of agriculture such as weeding, harvesting, land preparation, sowing and threshing including ploughing. They also have a major role in livestock production. In the household too, they prepare food, clean and manage the house, fetch water, collect firewood and take care of children, elders and other members of the family.
- **Gender Inequality and Discrimination:** Different reasons have hindered women in enjoying their rights; benefit from available development opportunities and in decision-making. These include the gender division of labor, patriarchal systems working against women, limited membership in local institutions, gender biases of, and lack of access, to other critical resources and services. Harmful Traditional Practices (HTPs) such as early marriage worsen their situation. Landlessness, lack of financial capital, skills and capacity are major economic problems faced by rural women. Limited control over Property and economic opportunity: Women have less control over property and other resources despite their active role in earning income.

In the project area, majority of the women are farmers and even though land is a major asset in agriculture, women's access and control over land is limited.

Due to the adverse impacts induced by the project, female PAP (including female headed households) would suffer: as their sole economic asset is taken away either in full or in part; physical displacement would lead to loss of family and community networks;

**Positive Impacts:** Project will bring the following positive economic and social changes

- Training in modern farming for those with balance landholdings outside of the reservoir affected area;
- Reservoir fishery would be a potential occupation for those interested; and
- Opportunities' to sell different products due to improved infrastructural facilities and new population during the dam operation, would be enhanced.

In terms of preferences for income restoration females preferred crop production on their balance land holdings. Livestock keeping, poultry production, were also high amongst preferred trades.

### 6.18.3 Gender Strategy and Action Plan

Gender strategy aims at involvement of women at all stages of project and seek to provide them with adequate support measures in their rehabilitation efforts by utilizing services of professional agencies. It would require to: i) incorporate gender considerations at planning and implementation stages; ii) involve agencies with proven skills in handling women's issues such as office of youth and gender (Kwale County) and other grassroots organizations/associations that are operational in the area; and iii) ensure they have a voice by providing adequate representation in mandatory committees and implementing institutions such as agencies to be contracted for External Evaluation.

### 6.18.4 Specific mitigation measures

- **Payment of compensation and allowances:** The compensation would be payable to both women and men equally rather than only to the male. PAHs in this category will be required to open joint accounts with both spouses being signatories. This is also a requirement of NLC Act 2012.
- **Usage of Training budget:** In cases where the PAH is a male with any disability, attempt would be made to counsel the PAP to let the female in the family utilize the training budget and provide her with a suitable training program.
- **Capacity building:** Provision of training – financial literacy, other useful skills such as tailoring, embroidery, etc. shall help augment women's capacity to undertake non-farm activities.
- **Income restoration:** Safeguards PIU's Livelihood expert and RAP implementation consultant team will hold separate meetings; assess their skill levels, interest, aptitude and risk-taking ability and plan suitable income restoration measures (farm or non-farm based as preferred). Emphasis would be laid on explaining well to the females the potential pitfalls of pursuing Petty Trade as too many pursuing the same trade would cut into each other potential earning.

- **Include gender aspects clauses in Contracts:** Project authorities would include relevant clauses in the scope of work during the post-construction/O&M stages of the Mwache Dam to give preference to women. These could include works such as housekeeping, maintenance of staff quarters, canteen, gardening, etc.
- **HIV/AIDS and STD awareness campaigns about the possible spread and transmission of HIV/STDs** will be conducted by the female extension workers in the project area for the entire community.
- **Labor Influx Management Plan** to mitigate the impact of labor influx on the local population including the risks of sexual exploitation and abuse of women and girls by workers on the project.
- **Participations during consultations would be ensured.** Administrations and other implementing institutions at all levels would particularly as they would make presence of women PAHs in consultations as mandatory, and hold separate meetings. Participation of representative(s) of the Kwale County Gender and Youth office would be ensured in such meetings;

#### 6.18.5 Role of Women in Monitoring and Evaluation

All aspects of RAP implementation-compensation, resettlement and rehabilitation, would be monitored and evaluated by using gender sensitive indicators below. RAP implementation consultant will refine these indicators further and prior to commencement of construction. Table 11 presents a set of indicators.

**Table 11: Gender Sensitive Monitoring Indicators**

Gender Sensitive Monitoring Indicators	
Parameters	Indicators
Physical	Total number of female PAHs affected by village
	Number of female PAHs that have become landless i.e. lost all 100% of their landholding by village
	Total number of female PAHs with balance landholdings
Financial (compensation/ establishment)	Number of female PAHs paid compensation (disaggregated by gender and quarter)
	Number of female PAHs not paid/received compensation (disaggregated by gender and quarter) by type of reason – unwilling to open bank account as amount is too small; are not living in the area, etc.
Resettlement and rehabilitation	Number of female PAHs who shifted to other unaffected parcels
	Number of female PAHs who continue to reside in the same areas as before i.e. same village
	Number of female PAHs provided with transportation arrangements to shift their belongings by village
	Number of female PAHs who continue same ‘primary’ occupation as before (farming, petty trading)
	Number of female PAHs who have preferred to change occupation from land based to non-land-based activities
	Number of female vulnerable PAHs by skill type

<b>Gender Sensitive Monitoring Indicators</b>	
<b>Parameters</b>	<b>Indicators</b>
	Number and type of income generation options accepted by female PAHs (landless)
	Number of female PAHs enrolled into ongoing government programs (by type)
	Number of female PAHs and other vulnerable PAHs who have invested compensation amount into any productive economic asset e.g. ox, tool/machine implement for economic activity
Social Health	Number of counseling sessions attended to by female PAHs (by category) on HIV/AIDS
	Number of female PAHs and non-PAHs (females) provided with LLINs
	Number of meetings specifically held with respect to Malaria and HIV/Aids
	Number of female Health Extension Workers working in each village and sub county
Processes	Number of female PAHs counseled on judicious usage of compensation amount
	Number of FGDs held with communities by category and by village and sub county
	Type of issues raised, discussion points of each FGD
	Number of FGDs held with female PAHs by village and sub county
	Number of trainings provided by implementing agencies to female PAHs by type of training
Institutional	Number of visits by female PAHs for redressal of grievances
	Number of female PAHs who have approached courts
	Number of female officials (Gender and Youth office, Health office)
	Number of female members in each Committee (Relocation, Compensation Grievance Committee) by village, sub county
	Number of female members in each Committee by village and sub county
	Number of members of each grievance committee disaggregated by gender
	Number of females in the Income Restoration Agencies by position

**Table 12: Parameters for accessing quality of life**

<b>Parameters for assessing quality of life</b>			
<b>Parameters</b>	<b>Pre-project baseline</b>	<b>Parameters</b>	<b>Pre-project baseline</b>
Annual income evaluation		Parameters	Pre-project baseline
Occupation		Parameters	Pre-project baseline
Landholding		Parameters	Pre-project baseline
Material assets		Parameters	Pre-project baseline
Access to basic services		Parameters	Pre-project baseline
House type		Parameters	Pre-project baseline

### **Representation in Committees and Institutions**

Details of representation of women in Committees and implementing institutions are presented below:

#### **Representation in Committees**

Women PAHs from the respective villages would have proportional representation in the Grievance Redress and Resettlement Committee. Their specific role would be: provide inputs and also be required to supervise the readiness/preparation of the respective resettlement; and convey back to their communities on the status. Likewise, women will be part of the different level Grievance Redressal Committees constituted for compensation related case.

### **6.19 Opinions and Concerns Expressed by PAHs**

The socio-economic surveys included several questions and elements directed at assessing public opinions and expectations for the Mwache Dam Project. Additional, significant input was also received through the public consultation exercise conducted as part of ESIA and Social Assessment conducted in 2017.

Feedback from these sources was incorporated into a detailed Issues and Response report used during the ESIA scoping phase, and was included in a public consultation report that was submitted as part of ESIA. In summary however, it can be stated that individual expectations of the project relate with employment to an overwhelming degree. PAHs also expected that they would be provided with free connection to domestic waterlines once the dam is constructed. Approximately 90% of the population answered directly that they did not fear anything about the project. However, majority of the population expressed concerns about loss of income from sand harvesting and fishing activities because of the proposed project. Compensation: One of the major concerns of the households was whether there would be compensation for loss of income by the project. All the PAHs who had structures, fields for agriculture in the proposed project site (including irrigation area) preferred cash compensation. The PAHs preferred mode of compensation was cash. 99.92% of the PAHs indicated this as their preferred mode during the census and socio-economic survey.

#### **6.19.1 Awareness of Mwache Multipurpose Dam Project**

All the PAHs have been aware of the proposed project for a very long time and mentioned the following as sources where they derived information about the project namely; -

- Local Administration
- County Government
- Coast Development Authority
- National Government
- Neighbours
- Family Members

## **6.20 Summary of the Socio-economic Situation in the Project Area**

### **6.20.1 Housing Types**

The statistics on dwelling structures in Kinango indicate poor housing conditions with no water or sanitation facilities. Majority of the household structures are thatched using coconut tree leaves (makuti) as roofing materials at 49.8 per cent, while corrugated iron sheet account for 37.1 per cent. The main materials used for the construction of walls include mud and wood, stones, and mud and cement walls which account for 56.9 per cent, 15.2 per cent and 9.8 per cent of households respectively. Most houses do not have piped water or water closets.

### **6.20.2 Energy Access**

The most common source of energy in Kinango is wood fuel used by 80.2 per cent of households for cooking, and 0.5 per cent for lighting. Paraffin is used by 5.7 per cent and 95.5 per cent for cooking and lighting respectively, whereas 11.5 per cent of household use charcoal for cooking with 10.6 per cent using electricity for lighting. Petroleum is used mainly in transport and households e.g. water pumps and generators. Kerosene is the main source of lighting in rural areas. It is also used for cooking in both urban and rural areas. The county has potential for solar, wind (Samburu and Kinango) and biogas (along the coastal strip) which has not been exploited.

### **6.20.3 Land Tenure and Use**

Along the coastal strip and the coastal uplands, land is mainly owned by absentee landlords, leading to the squatter settlement problem. The trust and government land within these areas have since been adjudicated and government settlement schemes established. In the drier areas of the Nyika Plateau in Kinango, Kasemeni, Samburu Ndavaya and some parts of Lunga Lunga Divisions land is held in trust and under group ranches.

Land is viewed as communal asset where every member of the community has the right to use it. In most areas adjudication has not been done. Most of the group ranches currently are non-functional and this has resulted in unplanned human settlements in the land. The land is also used for small scale farming, mining and quarrying as well as settlements. According to 2005/06 Kenya Integrated Household Budget Survey (KIHBS) the main holding size is 4.4 acres.

The Government of Kenya has however in the recent past made aggressive efforts to adjudicate land in the coast region and issue title deeds. The land ownership in the project area is private with PAHs in 17 out of the 20 affected villages having individually registered land hence formally owning the land they occupy. The remaining 3 villages share a single title deed with many other members of the Mwavumbo Group Ranch. However, during RAP preparation period, affected assets in affected section of the Ranch were identified and inventoried, valued and have been include in the Asset Register and compensation will be paid directly to the affected ranch members who area PAPs.

#### **6.20.4 Labour Force**

The labour force in Kinango is (15-64) years, dominated by females and youth. A large proportion of the labour force is either unskilled or semi-skilled limiting the productivity of the labour.

#### **6.20.5 Unemployment Levels**

Around 30 per cent of the total labour force aged between (15-64 years) is either unemployed or underemployed. This constitutes 105,774 people. The youths are the most adversely affected. To address youth unemployment, the government initiated various labour intensive projects such as Kazi Kwa Vijana (KKV) and Economic Stimulus Project (ESP).

#### **6.20.6 Water and Sanitation**

##### **6.20.6.1 *Water Resources and Quality***

The main water resources in Kinango comprise of rivers, shallow wells, springs, water pans, dams, rock catchments and boreholes. However, most of the rivers are seasonal thus cannot be relied upon to supply the much-needed water for both agriculture and household uses.

##### **6.20.6.2 *Water Supply Schemes***

Kwale Water and Sewerage Company (KAWASCO) is mandated by the Coast Water Services Board (CWSB) to supply/distribute, control and manage all the water supply schemes within the county. Private water service providers in liaison with the Coast Water Services Board have been supplying water to the community to ensure water is available for all. Other water supply schemes include community owned and managed boreholes, dams and even water pans. Local community participation in the projects has been poor, thus creating problems of operation and maintenance.

##### **6.20.6.3 *Water Sources***

The main sources of water are boreholes, springs, dams, water pans and rock catchments. The average distance to the nearest water point in the County is 2 Kilometres. This is well above the internationally required five (5) meters distance to the nearest water source. More stakeholders are called upon to contribute towards the provision of this important resource to improve the lives of majority of the population in the county through access to safe and clean water.

##### **6.20.6.4 *Sanitation***

Latrine coverage is a key component as far as household sanitation is concerned. The main type of toilet facility in Kinango is the pit latrine accounting for 34.7 per cent of the total population in the Constituency followed by uncovered pit latrine at 33.5 per cent. Generally, the latrine coverage in the Constituency is at 41.4 per cent, which is below the national target of 90%.

## **6.20.7 Health Access and Nutrition**

### **6.20.7.1 Access to Healthcare**

The County has a total of three (3) government hospitals, eight health centres and sixty-four (64) dispensaries located in Msambweni, Kwale and Kinango constituencies. The doctor and nurse population ratio stands at 1: 76,741 and 1: 3,133 respectively. In addition, the county has two (2) private hospitals both located in Diani town. The average distance to the nearest health facility within the County is seven (7) kilometres as compared to the required maximum of three (3) kilometers.

### **6.20.7.2 Morbidity**

The five most common diseases as recorded in the health facilities within the county are Malaria, Diarrhea, Flu, Respiratory diseases and Stomach- ache with a prevalence rate of 37.7, 4.6, 16.4, 5, and 3.1 per cent respectively. These diseases highly contribute to the morbidity in the county which stands at 22.5 per cent. This calls for tailor – made interventions to address this health challenge in the community.

### **6.20.7.3 Nutritional Status**

Nutritional status in Kinango is very low especially in the arid and semi-arid areas. The predominant form of manifestation of malnutrition in Kinango is stunting, underweight and acute malnutrition accounting for the percentages 35, 21 and 6 respectively.

## **6.20.8 Education and Literacy**

### **6.20.8.1 Pre-School Education**

The ECD has been mainly supported by private sector and has improved in the recent past. Kinango has a total of 220 Early Childhood Development (ECD) centres spread evenly in the county with total enrolment of 43,874 pupils comprising of 22,042 boys and 21,832 girls. This translates to a gross enrolment of 57.95 and 58 per cent for boys and girls respectively.

The teacher pupil/ ratio is at 1:32 and the average ECD attendance age is 4.5years. The ECD enrolment of 58 per cent is very low, this may account for the poor performance at national examinations such as KCPE due to weak educational foundation by the pupils as some of them join primary school without having attended ECD education.

### **6.20.8.2 Primary Education**

Kwale County has total of 415 primary schools comprising of 363 and 52 public and private primary schools respectively with a total enrolment of 167,318 pupils which constitute a gross enrolment rate of 99.7 per cent. The primary school teacher population is 3,192 which translate to a teacher/pupil ratio of 1:52.



However, of concern is the performance in national examinations which is very poor. The main challenges include poor and inadequate school infrastructure such as classrooms, toilets and desks and dilapidated infrastructure as well as inadequate number of teachers.

#### **6.20.8.3      *Literacy***

The literacy levels in the county have been recording an increasing trend over the last few years. With the introduction of the free primary education for all and adult classes in the County, the literacy levels have reached an average of 57 per cent. However, the female literacy levels stands at 47.4 per cent against 66.6 per cent for the male. There are a total of 143 adult education learning centres in the county with a total enrolment of 5,870 learners.

#### **6.20.8.4      *Secondary Education***

The county has a total of 54 secondary schools with a total enrolment of 19,194 students comprising of 10,037 and 9,157 boys and girls respectively. This constitutes a gross enrolment rate of 29.75 per cent. The secondary school teacher population is 572 this translates to a teacher student ratio of 1:37 though the teacher distribution is uneven with hinterland schools experiencing high teacher shortage.

#### **6.20.8.5      *Tertiary Education***

The tertiary institutions in the county include a Kenya School of Government (KSG), Kenya Medical Training College and 4 registered youth polytechnics. The county has no National University to offer training at this level to the local population despite the growing demand for higher education. There are a few commercial colleges mostly at Ukunda/Diani that offer courses related to hospitality, salon and beauty, computer and IT training, among others.

## 7 PROJECT IMPACTS AND MITIGATION MEASURES

The purpose of this chapter is to outline the project impacts, the efforts that have been taken to minimize displacement and resettlement impacts. It further gives mechanisms and actions that will be undertaken during RAP implementation to minimize the potential negative impacts and enhance positive project impacts. The information in this chapter is based on a document review, RAP Census, field surveys carried out and consultation meetings held as part of the resettlement preparation process. It should be noted that it only focuses on direct impacts in relation to physical and economic displacement and resettlement and does not consider wider impacts that have been subjected to Environmental and Social Impact Assessment.

The construction of the dam and associated ancillary structures will lead to the economic and physical displacement of PAHs in order to pave way for the project. This chapter describes in brief the beneficial impacts of the project as well as in detail, the impacts associated with displacement including significance and magnitude.

The entire project area consists of a single ethnic group, the Duruma, which is part of the larger Mijikenda tribe. The Durumas are categorized as marginalized and vulnerable as a result of screening that was conducted accordance with OP. 4.10. The constitution of Kenya (COK 2010), has also categorized Kwale County as a vulnerable and marginalized County.

The project will physically and economically affect 2,452 households and 8 community/public institutions. The 2,452 households are all categorized as vulnerable and marginalized due to the fact that they meet the criteria of World Bank's Indigenous Peoples Policy (OP4.10). 1,510 households will be fully displaced as a result of losing more than 20% of their agricultural land and residential structures. Of these 526 are informal occupants who will lose residential structures. They will depend on the current goodwill and family relationships with the legal owners of the land they occupy to share the replacement land with them so that they can build new residential structures on this land and resettle.

### 7.1 Summary Project Impacts

**Table 13: Risk Profile of Impacts**

Type of loss	No.
PAHs losing more than 20% of Land and residential structures	984
PAHs losing Primary Residential structures on another people's land	526
<b>Total Fully affected</b>	<b>1,510</b>
Less than 20% of land	142
PAHs losing trees and crops only	375
PAHs Losing Business Structure & loss of Business	39
PAHs Losing Business Only	1
PAHs owning Non-residential structures e.g. graves, shrines, (without claim to land)	385
<b>Total partially affected.</b>	<b>942</b>
<b>Total impact on HH</b>	<b>2,452</b>
<b>Public infrastructure fully demolished</b>	

<b>Type of loss</b>	<b>No.</b>
Public Primary and Nursery Schools on their own land	3
JPA Mwache Church built on road reserve but used by community members	1
Nunguni Mosque built on private land but used by community members	1
<b>Public infrastructure partially impacted</b>	
Exterior walls on road reserves	3
<b>Total Community Institutions to be affected</b>	<b>8</b>
<b>Total Number of PAHs and Institutions affected</b>	<b>2,460</b>

## 7.2 Project Components and Impacts

This RAP 1 includes the following components which all trigger economic and physical displacements and described in detail below.

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

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

RAP 1a will cover all of Priority 1 works areas i.e. the lower check dam site and quarry site areas (part of which are in Mwavumbo Group Ranch) and main dam site and some operational areas, all of Priority 2 areas i.e. part of main dam operational and reservoir areas and PART of Priority 3 areas (part of main dam operational and impoundment areas and part of the lower check dam reservoir areas , silt pile) and Access roads A, F,& H, C, G and J.

RAP 1b will cover part of Priority 3 i.e. the rest of the main dam and lower check dam reservoir areas all of which are within Mwavumbo Group Ranch.  
(Refer Annex 4)

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

1. Land
2. Crops and trees
3. Graves
4. Structures (residential and commercial)
5. Community infrastructure (schools and bridges)
6. Shrines (1 communal and 5 personal)

### 7.3 Physical Displacement Impacts

As shown on the Table 14 below, 1,510 households (984 will lose more than 20% of their agricultural land and residential structures while 526 are informal occupants owning residential structures only) will be physically displaced. This will require increased project support and monitoring to mitigate against likely resettlement related risks and impoverishment of already vulnerable households.

**Table 14: Physical Displacement Impacts**

#	Village	Number of owner households affected (PAHS) ( <i>&gt;20% of land with no residential structures + &gt;20% land and structures</i> )	Number of informal households (PAHS) ( <i>Owning structure only- Main Residential House</i> )	PAHs physically Displaced
1	Fulugani	177	247	424
2	Mwachipa	86	33	119
3	Mpirani	67	13	80
4	Bokole	65	4	69
5	Mwache	109	21	130
6	Hanje	79	17	96
7	Vikinduni	5	35	40
8	Ziwani	30	1	31
9	Majengo	17	1	18
10	Madewani	9	2	11
11	Chigato	92	19	111
12	Chinguluni	55	30	85
13	Chigomeni	29	16	45
14	Nunguni	103	11	114
15	Mtulu	11	17	28
16	Mazeras	0	56	56
17	Chigojoni	14	1	15
18	Mwatate(1A)	13	0	13
19	Luweni(1A)	12	0	12
20	Changa(1A)	11	2	13
	<b>Total</b>	<b>984</b>	<b>526</b>	<b>1,510</b>

## 7.4 Land Acquisition Impacts

The project will result to land acquisition amounting to approximately 1,360Ha that belong to 1,394 households. Of these, 1,126 households are the currently registered land owners and have legal claim to the land they occupy while 268 households have an unregistered claim to the affected land. Of the households with legally registered claim to land, 984 households will lose over 20% of the land they own. Hence, they will be fully and physically displaced from the project sites and will be required to buy economically viable land elsewhere. However, 142 households will lose less than 20% of the land hence will have sufficient land remaining to enable them continue with their livelihood support activities in the neighbourhood the dam.

**Table 15: Land Acquisition Impacts**

	<b>Village</b>	<b>PAHs losing &gt;20% land</b>	<b>PAH losing &lt;20% land</b>	<b>PAHs with Title Deed</b>	<b>PAHs without Title Deed</b>	<b>Land PAHs</b>	<b>Acreage (Ha)</b>
1	Fulugani	177	14	191	73	264	231.81
2	Mwachipa	86	2	88	14	102	120.46
3	Mpirani	67	6	73	10	83	79.04
4	Bokole	65	5	70	11	81	114.61
5	Mwache	109	8	117	24	141	146.2
6	Hanje	79	8	87	7	94	63.34
7	Vikinduni	5	1	6	0	6	12.13
8	Ziwani	30	4	34	0	34	37.41
9	Majengo	17	6	23	6	29	15.81
10	Madewani	9	1	10	4	14	14.46
11	Chigato	92	14	106	9	115	115.24
12	Chinguluni	55	4	59	11	70	79.37
13	Chigomeni	29	3	32	8	40	52.31
14	Nunguni	103	66	169	90	259	194.68
15	Mtulu	11	0	11	0	11	18.67
16	Mazeras	0	0	0	0	0	0
17	Chigojoni	14	0	14	1	15	25.38
18	Mwatate(1A)	13	0	13	0	13	10.31
19	Luweni(1A)	12	0	12	0	12	12.77
20	Changa(1A)	11	0	11	0	11	15.54
	<b>Total</b>	<b>984</b>	<b>142</b>	<b>1,126</b>	<b>268</b>	<b>1,394</b>	<b>1,359.54</b>

## 7.5 Non-land Economic Displacement

415 households will be economically displaced as a result of losing business income (40 PAHs) and loss of crops and trees (375 PAHs) which they depend on to support their land-based livelihoods.

**Table 16: Non-land Economic Displacement**

	<b>Village</b>	<b>PAHs Losing Business Structure &amp; loss of Business income</b>	<b>PAHs Losing Business Only</b>	<b>PAHs Losing Crop &amp; Trees Only</b>	<b>Non-land Economic Displaced PAHs</b>
1	Fulugani	5	1	111	117
2	Mwachipa	0	0	24	24
3	Mpirani	0	0	12	12
4	Bokole	0	0	17	17
5	Mwache	1	0	19	20
6	Hanje	0	0	31	31
7	Vikinduni	0	0	0	0
8	Ziwani	0	0	1	1
9	Majengo	0	0	5	5
10	Madewani	0	0	13	13
11	Chigato	4	0	22	26
12	Chinguluni	0	0	22	22
13	Chigomeni	0	0	38	38
14	Nunguni	0	0	42	42
15	Mtulu	0	0	2	2
16	Mazeras	29	0	10	39
17	Chigojoni	0	0	6	6
18	Mwatate(1A)	0	0	0	0
19	Luweni(1A)	0	0	0	0
20	Changa(1A)	0	0	0	0
	<b>Total</b>	<b>39</b>	<b>1</b>	<b>375</b>	<b>415</b>

## 7.6 Summary of Unique PAHs (highly impacted) and others with Minimum impact

As shown on the Table 17, 1,925 households (1,510 physically displaced and 415 economically displacement households) are unique and hence will require project support and monitoring to mitigate against likely resettlement related risks. The KWSCRП will ensure that the PAHs prepare and implement livelihood restoration plans, will encourage them to have land-based plans and avail all listed entitlements. Economically displacement households are mainly found on the existing access roads that are earmarked for expansion to increase carriage space for anticipated large construction equipment and increased traffic during the project construction phase. There are neither renters (tenants) and landlords as concerns all the affected structures identified in the project area.

527 households (385 losing none-residential structures and 142 losing less than 20% of their registered land) are less likely to be impacted negatively by the project but they will be encouraged to use the compensation money to develop the remaining large portions of land.

Those losing less than 20% of their land will be among the many beneficiary of the dam project as they will be in the immediate neighborhood of the dam with their land bordering the dam buffer zone. They will be direct recipients of the newly developed schools, improved water supply and transport infrastructure system and will use the dam water to irrigate their agricultural land.

**Table 17: Summary of Unique PAHs (highly impacted) and others with Minimum impact**

	<b>Village</b>	<b>Physically Displaced PAHs</b>	<b>Non-Land Economic Displaced PAHs</b>	<b>Unique PAHs</b>	<b>PAHs owning Nonresidential structures e.g. graves, shrines, (No claim to land)</b>	<b>Number of HH losing &lt;20% of their land</b>	<b>Total PAHs</b>
1	Fulugani	424	117	541	85	14	<b>640</b>
2	Mwachipa	119	24	143	17	2	<b>162</b>
3	Mpirani	80	12	92	10	6	<b>108</b>
4	Bokole	69	17	86	22	5	<b>113</b>
5	Mwache	130	20	150	24	8	<b>182</b>
6	Hanje	96	31	127	11	8	<b>146</b>
7	Vikinduni	40	0	40	0	1	<b>41</b>
8	Ziwani	31	1	32	10	4	<b>46</b>
9	Majengo	18	5	23	7	6	<b>36</b>
10	Madewani	11	13	24	17	1	<b>42</b>
11	Chigato	111	26	137	12	14	<b>163</b>
12	Chinguluni	85	22	107	38	4	<b>149</b>
13	Chigomeni	45	38	83	25	3	<b>111</b>
14	Nunguni	114	42	156	96	66	<b>318</b>
15	Mtulu	28	2	30	1	0	<b>31</b>
16	Mazeras	56	39	95	7	0	<b>102</b>
17	Chigojoni	15	6	21	1	0	<b>22</b>
18	Mwatate(1A)	13	0	13	0	0	<b>13</b>
19	Luweni(1A)	12	0	12	2	0	<b>14</b>
20	Changa(1A)	13	0	13	0	0	<b>13</b>
	<b>Total</b>	<b>1,510</b>	<b>415</b>	<b>1,925</b>	<b>385</b>	<b>142</b>	<b>2,452</b>

## 7.7 Total Number PAHS and PAHs

The project will directly affect 2,452 PAHs and 7,541 PAPs as result of physical and economic displacement. In addition, it will affect 8 public/community institutions. These are Fulugani Primary School, Nunguni Primary School, Mwache Nursery School, JPA Mwache Church, Nunguni Mosque, Mazeras dispensary which will be permanently and fully affected.

Perimeter fences of Mazeras High School and Coast Water Services Board (CWSB) facilities will be partially affected.



The ownership of the land where Mwache Nursery school is located was contested during the RAP census and asset inventory phase. An individual was claiming ownership of the communal land where the nursery school is built. The land however belongs to the County Government of Kwale who owns and manages the Nursery School. It was construed that the individual had tried to grab public land and hence his verbal claim to it. Legal ownership of the parcel of land will be confirmed as part of pre-compensation due diligence and any dispute will be addressed through the proposed grievance redress mechanism for this RAP with title determined by the National Land Commission as per Kenyan practice. It is not anticipated that this will impact project implementation

	<b>Village</b>	<b>PAHs &amp; Public Institutions</b>	<b>PAPs</b>
1	Fulugani	640	2047
2	Mwachipa	162	547
3	Mpirani	108	295
4	Bokole	113	271
5	Mwache	182	458
6	Hanje	146	420
7	Vikinduni	41	124
8	Ziwani	46	127
9	Majengo	36	121
10	Madewani	42	105
11	Chigato	163	458
12	Chinguluni	149	488
13	Chigomeni	111	331
14	Nunguni	318	1101
15	Mtulu	31	100
16	Mazeras	102	319
17	Chigojoni	22	59
18	Mwatate(1A)	13	60
19	Luweni(1A)	14	57
20	Changa(1A)	13	53
		<b>2,452</b>	<b>7,541</b>
	Public Institutions	<b>8</b>	
		<b>2,460</b>	

### Project affected institutions

#	Village	Name of Institution	Type of Impact	Land Ownership/Rights (Formal or without Formal Rights)
1.	Mwache	Mwache Nursery School	Full displacement	Land under dispute
2.	Fulugani	Fulugani Primary and Nursery School	Full Displacement	Formal title
3.	Nunguni	Nunguni Primary and Nursery School	Full Displacement	Formal title
4.	Mazeras	Mazeras Dispensary	Full Displacement	Formal title
5.	Mwache	JPA Mwache Church	Full Displacement	Informal Occupant
6.	Nunguni	Nunguni Mosque	Full Displacement	Informal Occupant
7.	Mazeras	Mazeras High School	Partial Displacement	Fence on ROW
8.	Mazeras	Coast Water Services Board	Partial Displacement	Perimeter Fence (stone wall)

### Number of Persons in affected institutions

#	Institution	Population and Additional Information		
		Boys	Girls	Teachers
1.	Mwache Nursery School	15	15	3
2.	Nunguni Primary and Nursery School	131	109	13
3.	Fulugani Primary and Nursery School	519	444	22
4.	JPA Mwache Church	No records		
5.	Nunguni Mosque	No records		
6.	Mazeras Health Centre	Vacant/ Not in current use		
7.	Mazeras High School	No physical displacement; Only the perimeter wall will be affected during road expansion		
8.	Coast Water Services Board	No physical displacement; Only the perimeter wall will be affected during road expansion		

### Vulnerable PAHs

#	Forms of Vulnerability	Number of PAHs
1.	Widowed	41
2.	Chronically Sick	28
3.	Elderly (over 65 years old)	91
4.	Physically challenged	25
5.	Household Headed by under 18 years orphans who have entitlement of the affected property (these are orphans who are in charge of households and extremely vulnerable).	4
	<b>Total</b>	<b>189</b>

## 7.8 Loss of Crops and Trees

During the onsite surveys and interviews it was established that there are crops and trees in the project area which would be affected and include: Maize, beans, sweet potatoes, tobacco, peas, bananas, cassava, and other season crops and trees include Eucalyptus, Pine, Cyprus, Euphorbia, Avocado, Mango, Guava, “mkilifi” “mikanju” mizingi, Baobab, Citrus, “Mwarubaine” Coconut, Sisal, etc.)

The following restorative measures are agreed upon.

Cash compensation at full replacement cost which is calculated using Ministry of Agriculture rates for different types of crops plus 15%;

- Provision of opportunity to harvest fodder, fruits and timber.
- Livelihood restoration measures for PAHs

## 7.9 Impact on Graves and Shrine

During the RAP development a total of **240 graves** located within the proposed project area were identified and will be affected. Considering the comments raised during consultations on graves, the following is recommended:

The following restorative measures are agreed upon.

- Family members will be informed and give consent;
- Budgets prepared will be allow for all funeral rites;
- Graves will be exhumed;
- Courts are to give approval through court order;
- Elders will be consulted for advice on the cultural process for relocating graves and shrines;
- Compensate PAHs losing graves in accordance with the cultural rites and pay for associated costs

## 7.10 Vulnerable Groups

The World Bank defines vulnerable groups ‘as the poor, women, and indigenous peoples; those less able to care for themselves (children, the elderly, and the disabled); and other groups not protected by national land compensation law (those without land or use rights; host communities; and community members remaining in the original area after resettlement). The vulnerable persons affected by the project are **189**. Those identified included elderly, physically challenged; mentally sick those suffering from chronically illness, HIV/AIDS; orphans and widows/widowers. This category of PAHs will qualify for additional assistance as indicated in the entitlement matrix.

With respect to poverty in view of the Bank definition of vulnerability to include poverty levels, over 80% of the PAHs earn less than 1 USD per day emanating from subsistence farming which is the main livelihood in an area considered arid and semi-arid hence poor yields.

In this regard, it is concluded that 80% of the PAHs are meeting the criteria for vulnerability assistance and hence will be offered additional Livelihood Restoration Assistance (LRA) under the Livelihood Restoration Program (LRP) developed as part of this RAP and further provided for in the RAP and Vulnerable and Marginalized Group Plan (VMGP) that were cleared and disclosed in 2014.

Restorative Measures and additional assistance over and above compensation for affected properties should include but not limited to:

- Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;
- Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced.
- In addition, livelihood restoration programs, will be instituted such as follow up on orphans to make sure they identify and register in school upon relocation. The Persons with Disability (PWD) and those HIV affected access support services in areas of new settlement.
- Widows, orphans and affected vulnerable persons to be assisted through local administration and family for issuance of land registration documents;
- Relocation of the widows, orphans and vulnerable persons to be facilitated and receive adequate notice to relocate
- Assist and monitor orphans to make sure that these children get back to school in case of relocation and ensure they are compensated
- Monitor the resettlement of the vulnerable e.g. orphans to make sure they gain school transfers; the HIV affected and chronically ill have access to medication and the persons with disability are locally registered with APDK office.

### **7.11 Impacts on Lifestyles**

An influx of in-migrants is likely to lead to an increase in communicable and vector-borne diseases such as malaria, TB, HIV/AIDS and sexually transmitted diseases, exacerbated by increased pressure on health care facilities and the possible introduction of new diseases.

The following restorative measures are agreed upon.

- Preparation of HIV/AIDS and STI Management Plan
- Preparation of Code of Conduct for Workers
- Preparation of Labour and Recruitment Plan
- Provide health, psychosocial and justice support for survivors in the project area

### **7.12 Family Conflict and Breakdown**

Compensation money is likely to cause (based on experience) conflict in families and even breakdown especially in relation to sharing of the compensation money when succession matters related to land are encountered or when head of households refuse to wisely use the funds. The PAHs have several cases where land has not been transferred to the successors bringing into play succession concerns that would lead to family disputes and breakdown.

Furthermore, the Duruma community is highly patriarchal and male dominated elevating concerns of male household heads dictating over the utilisation of compensation funds.

The following restorative measures are agreed upon.

- Joint bank accounts for payment of compensation to spouses
- Conduct financial/money management training for PAHs prior to release of funds. Equity Bank at Mazeras have been approached by CPMU staff members and are willing to offer financial management training as they also hope to get business in this process by opening bank accounts for PAPs who may not have bank accounts
- Implement a robust livelihood restoration plan targeting women and other family members.

### 7.13 Labour Influx

The Project is expected to stimulate substantial in-migration. Several features of the Project could prompt in-migration.

- **Local labour requirements:** Construction of the project will employ a significant number of people. There is a perception in the project area, evident from the results of stakeholder engagement during the ESIA and RAP study, that a high level of opportunity will result from this and this is likely to stimulate significant in-migration. In practice, the level of construction employment available to local workers will be focused on skilled, unskilled and lower skilled workers. The project will require proactive requirement of the contractors and supervising engineer to engage local labor unless the needed skills are not locally available.
- **Project demand for goods and services:** The scale of the Project will generate high expectations around opportunities associated with the supply chain. Demand for goods and services in the local study area will be high during construction, and very low during operation, this is still likely to be a strong pull factor.
- **Perceptions of opportunity associated with construction camps:** the construction workforce will be largely housed in camps located around project area. These are likely to act as a focus for in-migration with people looking for work and other economic opportunities associated with the Project workforce.
- **Operation of construction sites:** In addition to the accommodation camps, construction works are also likely to act as a magnet for people and are likely to attract some in-migrants.

The following restorative measures are agreed upon.

- Preparation of Influx Management Plan by contractor
- Preparation of Labour and Recruitment Plan by contractor
- Commitment to a standard code of code for all workers on the project which will be part of the contractor's contract. This includes among other commitments that all workers will avoid and prevent Gender-Based Violence (GBV) and Violence Against Children (VAC):

#### **7.14 Measures taken to avoid and/or minimise project impacts**

During the dam detailed design phase, efforts were made to ensure that the dam will be economically, environmentally and socially viable to meet the intended use. Efforts were made to avoid and minimize possible displacement and resettlement and reduce disturbances arising from the project in line with the World Bank OP 4.12. The other steps that have been taken to reduce project impact include:

- The final design includes alternate access roads and bridges to ensure continuous access between and within communities.
- All those that shall be affected by the project will be fully compensated at full replacement cost before project construction activities commence at any place in the project area.
- PAPs who will be required to relocate will be given adequate notice (3 months) to ensure they construct new houses and effect smooth relocation
- Vulnerable PAPs will be given an option of constructing houses on their own or being constructed for as they so wish.

To further reduce the impact of displacement, the project took deliberate efforts of reducing the silt pile deposit area from the original 500Ha to 130Ha, a measure that reduced the potential number of PAHs and physical displacement of homesteads in the avoided areas. The reduction of silt pile has also led to the avoidance of displacement of Mwache Primary School which would have led to further impacts associated with displacement of an educational institution.

Secondly, the land required for Right of Way (ROW) for access Road A in from Mazeras junction to the dam operational area was reduced from a proposed width of 40 meters wide to 20 meters, thereby significantly reducing the number of PAHs (encroachers) including associated loss of assets (structures, crops and trees) and loss of income in view of the fact that the PAHs on the ROW are commercial traders.

## **8 ENTITLEMENT POLICY, ELIGIBILITY AND VALUATION**

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

### **8.1 Entitlement Policy**

The overall policy of the Mwache Multipurpose Dam Project RAP is to provide, whenever possible, in-kind compensation for impacts created by the Project instead of cash compensation. Based on the earlier consultations with the PAHs, 99% of them wanted cash compensation for the affected land instead of land for land (in kind). The project further consulted with the PAPs to find out their resettlement plans. It became apparent that 45% of land PAPs have concrete land-based resettlement plans by either having alternative parcels of land or having identified alternative land which they plan to buy upon receipt of compensation money from NLC. The standards and entitlements referred to directly result from KWSCRП/RPF, relevant Kenyan Land Laws and regulations, and World Bank's OP. 4.12 and OP. 4.10.

The impacts that will arise from the development of the above infrastructures include:

- Loss of land;
- Loss of crops;
- Loss of trees;
- Loss of residential and commercial structures;
- Impact on learning institutions;
- Impact on graves and shrines.

This report therefore proposes compensation for loss of all these assets at full replacement cost. Additional assistance has also been proposed for the tenants as outlined in the following sections.

### **8.2 Eligibility**

There are four variables to consider regarding Eligibility:

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



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

For this resettlement, PAHs are defined as any individual or group of persons (constitutes e.g. a family or clan with shared interest in an asset) whom have legal or customary rights to assets that may be lost because of the project activities, as determined by the Cadastral Land and Asset Valuation Survey. A PAH may have a right to one or more groups of assets including (1) rights to land, (2) ownership of annual and perennial crops, (3) ownership of trees, (4) homestead property, (5) homestead structures, (6) graves, (7) shrines, and (8) other privately held physical assets located within the development footprint of the Project. As indicated, a group could refer to an extended family or clan who have shared ownership of land or assets. For this RAP, all assets and land have been recorded against PAHs and each PAH has been given an ID number. Therefore, Entitlement and Eligibility is considered for each PAH with an ID. There may be multiple PAPs within a single household (as used in the socio-economic survey) which claim ownership to different households.

**Table 18: Eligibility Framework**

Description	Who	How	When
Physically displaced PAP:	Individuals, households or groups who will lose their place of residence due to Land Acquisition required for the Project Area.	Determined by the Cadastral and Asset Survey.	At the time of signing the cut-off date form during the rolling Cut-off date.
Economically displaced PAP:	Individuals, households or groups who will lose land, assets or access to assets or natural resource that leads to loss of income sources or livelihoods, but does NOT necessarily result in the direct loss of a place of residence.		This RAP has two cut off dates with the first one established on 23 July 2017 and a second cut-off date established on 28 July 2018 for the additional project components desired by the project which required additional land.
Physically and Economically displaced PAP:	Individuals, households or groups who fit into both categories above.		

#### 8.2.1 Eligibility Criteria

Affected PAPs eligible for compensation/replacement include:

- Those who have formal legal rights (Certificate of Title) to land.
- Those who do not have formal legally certified rights to occupy or use the land or other assets but have a claim to the land under the Land Act, 2012.
- Those who have a claim to assets (e.g. structures or crops) on the land to be acquired. This includes land owners/claimants with assets on their own land and also those who claim assets on land they do not own/claim.

The Asset Survey records all displaced assets, their owner details, the dimensions of the assets, the number of assets and the use and condition of the assets.

(d) Those who have no recognizable legal right or claim to the land they are occupying (i.e. informal occupants). These were recorded as part of the Cadastral & Asset survey.

PAHs covered under (a), (b) and (c) are provided compensation and resettlement assistance for lost land, and other assets. PAPs covered under (d) are provided compensation for any assets they lose, and other assistance, as necessary, to achieve the objectives set out in in this RAP and the RPF.

### **8.2.2 Cut-Off-Date**

Persons who encroach on the area after the cut-off date are not entitled to compensation or any other form of resettlement assistance. Improvements made to homes or additional structures added by existing residents after the cut-off date are also not eligible for compensation and resettlement assistance. According to OP 4.12, Cut-off date is the date the census begins. The cut-off date could also be the date the project area was delineated, prior to the census, provided that there has been an effective public dissemination of information on the area delineated to prevent further population influx and opportunistic investments/claims.

Two Cut-Off-Dates were declared for the project areas affected by RAP 1. The first cut-off date was **23 July 2017** for the initial census and asset inventory that was carried out at the beginning of the RAP process. The areas covered by this cut-off date include the main and lower check dam walls, surrounding operation areas and their related reservoir areas. The second cut-off date was **28 July 2018** which was established because of an increased RAP scope that resulted to more land requirements to sufficiently accommodate new project components. This need for additional land was identified after the initial cut-off date was established, communicated and census and asset inventory concluded. The additional project components that were added to the original RAP scope hence necessitating a second cut-off date are the silt pile area, access roads, health center and police station at the dam operation area.

PAHs whose details were missing on the asset register disclosed during the November and December 2018 validation exercise were covered by the two cut-off dates. Their affected assets had been enumerated and recorded and were in the raw RAP data but had not been transferred into the asset register. These PAHs were aware of the project impact areas and that their assets were affected; that is how they knew that their details were missing and hence lodged complaints. It was however observed during the validation exercise that some PAPs had constructed or/and were in the processing of constructing new structures on the project area. These new structures were however not included in the RAP asset register as they were outside the cut-off date but were photographed and their locations documented for further reference. The concern PAPs stated that their mud walled semi-permanent houses had aged and fallen off over time and hence needed to construct new structures to house their families. Refer to **Annex 10** for the photographs of these newly constructed houses

The cut-off dates were publicly disclosed in the project areas and to all the PAHs. The disclosure was undertaken by the RAP Consultant teams, local administration jointly with the KWSCR team. The principle of the cut-off date was disclosed to the community prior to the field surveys. It was communicated to the affected communities during public meetings (barazas) and to individual PAHs during the fieldwork. They were clearly informed that persons moving to the project areas and those who may do further developments on their affected land after the cut-off dates would not be entitled for compensation and that persons settling in the project area after the cutoff dates may be subject to removal. The Asset register will be updated during RAP implementation as needed to reflect any additional information and justifiable changes and to correct any residual errors or omissions.

### **8.2.3 Category of PAH**

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

#### **PAH Categorization**

- Land Owners
- Land and Crop/Tree Owners
- Land and Structure Owners
- Land, Crop/Tree and Structure Owners
- Structure Owners/ informal occupants
- Structure and Crop/Tree Owners/informal occupants
- Crop Owners
- Encroachers

### **8.2.4 Entitlement Matrix**

The Entitlement Framework establishes the specific rights and entitlements to replacement assets or compensation and assistance. These rights are granted to any PAHs who will lose proven assets, as determined during the Cadastral, Asset and Valuation study. The framework established the specific rights per the type of loss, as well as differentiating the potential compensation entitlement granted to physically and/or economically displaced PAPs.

**Table 19: Entitlement Matrix**

The Table below highlights the entitlement matrix for all the categories of PAHs as identified in the RAP

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
1.	Dwelling structure used as primary residence	Rightful owners of the affected house and structures who choose to receive cash compensation for the affected houses	<p><b>Option 1:</b> Cash compensation for all structures at replacement cost, based on professional valuation.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period given to vacate as defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p>	<p><b>Option 1:</b> Cash compensation to owners of affected structures that are either complete or incomplete. All structures must have been present within the project area at the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Monitoring mechanism at main stages of construction of dwelling units.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>
		Rightful owners of the affected houses and	<b>Option 2:</b> Constructed in kind replacement house of size	<b>Options 2 and 3:</b> PAPs who choose in kind replacement house	Financial training for the sustainable and prudent use of

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		structures who choose to have replacement houses/ structures replaced in kind (built by the Project)	(measured floor area or number of rooms) at least equivalent to the PAH's pre-resettlement housing, with consideration of functional spatial use, at location of owner's own choice but within Kinango Subcounty. Choices of standardized replacement house design(s) offered to PAHs must comply with County Government building/ planning standards, take spatial and cultural function into consideration and comply with minimum standards of safety and allotments of space per occupant. Houses are to be constructed from durable wall and floor materials and with permanent roof. Houses will be considered complete when constructed as described above and fitted with lockable inner and outer doors and windows and connected with agreed services. Housing unit that meets minimum standards of safety, local housing codes and minimum allotment of space per HH member. will be provided to all PAHS who choose in-kind housing unit replacement regardless of the value of PAH's prior dwelling. If the PAHs prior dwelling was larger or of significant better quality or value than the basic units offered, the PAH can 1) agree with the MOWS on optional housing plants/ models; and/or 2) opt to receive the balance of the compensation in cash.	<p>and if the affected structure was present within the project area by the cut-off date and identified and verified through final asset and valuation by NLC.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All PAHs in this category must prove that the affected structure is their primary residence.</p>	<p>cash compensation</p> <p>Transport to new place of abode for all movable assets as well as registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of construction of dwelling units.</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an alternative.</p> <p>For PAHs who choose to have project build their houses, an agreement will be signed with the PAHs describing the house to be built, the location and the expected time of final relocation (in principle should not exceed 6 months)</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period given to vacate defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p>		
		Rightful owners of the affected houses and	<b>Option 3:</b> Provision of suitable temporary rented houses of	All listed vulnerable PAPs and other PAPs who will be required to	Financial training for the sustainable and prudent use of

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		structures who are on priority areas required by the contractors sooner than the project or the PAPS upon receipt of compensation money can construct permanent relocation homes	<p>equivalent functional spatial use to those affected and located within <b>defined radius/areas</b> until their permanent houses are complete. This is in addition to their rightful compensation for all affected assets under the RAP. They will use the temporary accommodation as residences until their relocation homes are constructed. The construction of the relocation homes will be monitored by the project to ensure that steady progress is made and PAPs are able to relocate to permanent houses as quickly as possible.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced. For PAHs who choose to have the project build their houses, an agreement will be signed with the PAHs describing the house(s) to be built, the location and the expected time of final relocation (in principle should not exceed 6 months)</p> <p>PAHs choosing to build their own homes will, in principle relocate directly to their final relocation sites within an agreed time frame of not less than three months from the notice to vacate and receipt of compensation or as otherwise agreed. Should the project require</p>	<p>move out of the project priority areas to enable commencement of project construction activities as they construct permanent or have replacement houses constructed for them at their own selected and acquired resettle land.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All PAHs in this category must prove that the affected structure is their primary residence.</p>	<p>cash compensation</p> <p>Assistance in identification of rental houses and negotiation of the monthly rent with the potential landlords if preferred.</p> <p>Execution of tenancy agreement for the rented houses between KWSCR and the landlords if preferred option is renting</p> <p>Timely payment of monthly rent and utility bills for the period of time in temporary housing</p> <p>Transport to new place of abode for all movable assets as well as registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>that they relocate sooner than the time they need to rebuild, the PAHs and the MOWS will sign an agreement stipulating the amount of cash needed to build the home to be paid in advance of the move, identifying the new home site and establishing a maximum time at which the PAH expect to be ready to relocate permanently. The PAHs will receive the balance of their compensation upon final relocation.</p> <p>PAHs who will not be able to relocate directly to their new housing will also receive additional moving assistance and an additional subsistence allowance to compensate for any other verifiable costs of the transition (additional transport costs to work, inability to plant subsistence crops, lost wages or other income, need for additional assistance of any kind).</p>		
2.	Structures used for secondary purposes e.g. commercial/business structures	Rightful owners of the affected structures	<p>Cash compensation for all structures at replacement cost, based on professional valuation. Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Housing designs and related three-dimensional models will be presented to PAHs before a final decision on self-construction is made and construction supervision will also be offered as an</p>	<p>Ownership established through final asset surveys.</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Cash compensation to owners of affected structures that are either complete or incomplete</p> <p>All structures must have been</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be</p>



#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>alternative</p> <p>Materials from the affected structure may be salvaged at the owner's expense within the notice period to vacate defined by the project schedule and prior to demolition.</p> <p>Compensation for loss of income for three months or the period of the time actually required to re-establish the business elsewhere if greater</p> <p>3 months' written notice to vacate the project area.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to valuation and paid for directly.</p> <p>Any other transitional costs such as extended storage, lost wages by other HH members, etc.</p>	<p>present within the project area by the cut-off date and identified and verified through final asset inventory and valuation by NLC.</p> <p>PAP must provide proof of business income generation at the affected structure and by the related business carried out at the structure through business records.</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/ Registered Valuers</p>	<p>provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>
		Renter/Tenants	Reimbursement for unexpired tenancy / lease period or the amount of deposit or advance paid by the tenant to the landlord or the	Proof of a formal tenancy agreement for the occupancy of the affected houses has to be provided.	Financial training for the sustainable and prudent use of cash compensation

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

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

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>Materials may be salvaged at the owner's expense within the notice period to vacate defined by the project schedule and prior to demolition.</p> <p>Assistance with transport for their property (including livestock) and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Any other transitional costs such as extended storage, temporary shelter or higher costs of feed for livestock, etc.</p>	valuation by NLC.	
6.	Land for Primary Residential land/ plot – permanent loss	Registered owner or claimants of customary held land on which complete immovable housing structure is established for primary residence.	<p><b>Option 1:</b> Self-managed relocation (Cash compensation with relocation plans overseen)</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Taxes and fees, and registration costs for Registration of property to</p>	<p>All PAHs in this category must prove that the affected land is their primary residence and either are PAHs who own other suitable resettlement land or have identified suitable resettlement land and have intention of buying it upon receipt of cash compensation (either through formal or traditional verification processes).</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>be added to valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law</p>	<p>PAHs must give proof of ownership of other suitable parcel of land or a verifiable intention to enter into a binding/ written sale agreement with a potential seller of the suitable parcel of land before release of cash compensation.</p> <p>To ensure security of tenure to the resettled PAHs, the Legal Consultant will facilitate the execution of Sale Agreements between the sellers of land and the PAHs</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.</p>	<p>the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>
			<p><b>Option 2:</b> Assisted relocation (Cash compensation held by project and land and structures identified and acquired by the project)</p> <p>RAP Implementation Consultant assist willing PAHs to identify suitable resettlement land whose value does not exceed compensation value of affected land and is within Kinango Subcounty. and to negotiate and conclude the sale agreements with sellers, transfer of cash to the</p>	<p>All PAHs in this category must prove that the affected land is their primary residence (either through formal or traditional verification processes).</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>All listed vulnerable PAHs and all PAHs who neither own other resettlement land nor have identified suitable resettlement</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Transport and personnel to help PAHs in moving around the host communities' areas and to identify suitable land and negotiate with the potential land sellers.</p> <p>Provision of support registration cost and required formalities to ensure security</p>

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

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law</p>	<p>agreement with a potential seller of the suitable parcel of land before release of cash compensation.</p> <p>To ensure security of tenure to the resettled PAHs, the Legal Consultant will facilitate the execution of Sala Agreements between the sellers of land and the PAHs.</p> <p>In the absence of business records to proof business income, the value of the affected business will be determined through observations and interviews among other methodologies done by NLC/ Registered Valuers</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.</p>	<p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p>
8.			<p><b>Option 2:</b> Assisted relocation (Cash compensation held by project and land and structures identified and acquired by the project)</p> <p>RAP Implementation Consultant assist willing PAHs to identify suitable resettlement land whose value does not exceed the total compensation and is within the defined project area and to</p>	<p>PAHs must prove ownership (either through formal or traditional verification processes) at the time of final asset surveys.</p> <p>Acceptable Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Payment of compensation for lost</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Transport and personnel to help PAHs in moving around the host communities' areas and to identify suitable land and negotiate with the potential land sellers.</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			<p>negotiate and conclude the sale agreements with sellers, transfer of cash to the sellers and successfully transfer of land ownership to the PAHs.</p> <p>Assistance in conveyancing and transferring title.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p> <p>Legally established interests, including user rights, on community land will be compensated in accordance with Kenyan Law</p>	<p>assets and land made before displacement.</p> <p>All listed vulnerable PAHs and all PAHs who neither own other resettlement land nor have identified suitable resettlement land.</p> <p>This is the is also a risky category of land PAHs who will require direct project intervention during RAP Implementation</p> <p>On community land (including the Mwavumbo Group Ranch) customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.</p>	<p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Monitoring mechanism at main stages of resettlement</p> <p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p>
9.	Permanent loss of grazing land	Registered owners or claimants of customary held lands	<p>Registered owners or claimants:</p> <p>Cash compensation of the value of the land at replacement cost.</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p> <p>Provision of support registration cost and required formalities to ensure security of tenure.</p> <p>Assistance in conveyancing and</p>	<p>For cash compensation, persons must prove ownership and interest (either through formal or traditional verification processes) at the time of final asset surveys. NLC will require to confirm the bona fide person(s) who have determined interest on the affected land and issue awards to them as provided in the Land Act</p> <p>On community land (including the Mwavumbo Group Ranch)</p>	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Agriculture and livestock development projects and support programs targeting the PAHs and host communities</p>



#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			transferring title.  Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.	customary uses of the land are recognised in the Ranch charter. These rights will be compensated under Kenyan Law where they are impacted by the project.	Monitoring mechanism at main stages of resettlement
10.	Annual Crops	Owners of crops on farm land	<p>The project will make every effort to ensure land is taken after annual crops have been harvested. In such circumstances, no compensation for annual crops will be paid.</p> <p>Where crops are planted as part of the regular farming cycle in the project area and land is required, prior to harvesting, Crop Owners receive:</p> <p>Cash: damaged crops will be compensated in cash as mature crops at agreed rates determined annually based on replacement cost determined by Ministry of Agriculture based on market prices plus transaction costs</p> <p>Statutory Disturbance Allowance of 15% of compensation amount.</p>	Crop owners identified through final asset surveys by NLC and verified by RAP IT	<p>Financial training for the sustainable and prudent use of cash compensation</p> <p>Household level livelihood restoration plan as a condition of compensation payment.</p> <p>Agriculture and livestock development projects and support programs targeting the PAHs and host communities</p> <p>Business skills training and enlightenment on alternative income generating activities.</p> <p>Monitoring mechanism at main stages of resettlement</p>
11.	Perennial Crops (Including fruit and economically valuable trees)	Owners of crops on farm land	Cash compensation based on replacement cost determined by Ministry of Agriculture and Kenya Forest Service for crops/ fruit trees and trees of economic/ medicinal value respectively based on market prices plus transaction costs	Crops or trees in place (rooted) at cut-off date and identified through final surveys by NLC and verified by the RAP IT	Household level livelihood restoration plan as a condition of compensation payment.

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			Compensation according to defined growth stage or size categories. Statutory Disturbance Allowance of 15% of compensation amount.		
12.	Restricted access to natural resource and recreational areas provided by river Mwache	Natural Resource and recreational users	<p>Project to address access restrictions through improved access to alternative natural resource areas or substitute the resource base by providing other water sources for the households who depend on the Mwache River as a source of meeting their domestic water needs.</p> <p>Secondly provide other recreational facilities to the PAPs and host communities who used the Mwache river as swimming grounds especially the young children who are often seen swimming at various spots of the river.</p>	Persons who gather natural resources such as medicinal herbs, thatching grass, timber or mushrooms and the boys and men who swim in river Mwache and the women who wash clothes and draw water from the river	Participation in Livelihood Restoration Programmes to restore livelihoods to pre-resettlement levels. This may include provisions to provide access to alternative resources (such as seedlings and accessible water points)
13.	Loss of agricultural employment	Agricultural workers	Three months lost wages at documented level or minimum wage, whichever is greater	Wage workers on agricultural parcels	Assistance to facilitate moving with employer or obtaining similar employment
14.	Vulnerable Support Program (Tailored)	All PAPs in the project area are considered vulnerable due to poverty and are hence entitled to livelihood restoration support. This category refers to PAHs with other forms of vulnerabilities which may require special consideration.	<p>Transitional hardship assistance program appropriate to specific cases and based on Project assessment, including: -</p> <p>Priority in physical mobilization and transfer to resettlement plot;</p> <p>A preference for in-kind compensation</p>	Identified through final census survey based on agreed vulnerability criteria relevant to Project.	<p>Special assisted transit to new land;</p> <p>Additional moving, loading and unloading assistance, if necessary;</p> <p>Other specific support related to moving process (e.g. medical assistance) identified by support case workers.</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
		Vulnerable individuals and families who may find it difficult to cope with the Transition e.g. the elderly (over 70 years old), physically challenged, those suffering from chronic illness; widows and children who are under 18 years	<p>Assistance in the compensation payment procedure</p> <p>Resettlement near to kin and former neighbors to maintain informal support networks where feasible</p>		<p>Psycho-social support will be provided in conjunction with the County Social Development Officers (CSDO) at County level. This will be through counselling and liaison to the existing welfare support programs under the CSDO's office;</p> <p>Assistance with transport for their property and salvaged properties during resettlement for all PAHs who will be physically displaced</p> <p>Follow up on orphans to make sure they identify and register in school upon relocation. The Persons with Disability (PWD) and those HIV affected access support services in areas of new settlement.</p> <p>Widows, orphans and affected vulnerable persons to be assisted through local administration and family for issuance of land registration documents;</p> <p>Relocation of the widows, orphans and vulnerable persons to be facilitated and receive adequate notice to relocate</p>

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
					<p>Assist and monitor orphans to make sure that these children get back to school in case of relocation and ensure they are compensated</p> <p>The vulnerable such as mentally sick, people with disabilities, aged, chronically ill to access information and opportunities</p> <p>Monitor the resettlement of the vulnerable e.g. orphans to make sure they gain school transfers; the HIV affected and chronically ill have access to medication and the persons with disability are locally registered with APDK office.</p>
15.	Graves/cemeteries	Family and community members	<p>Complete relocation of graves (exhumation, transportation and reburial) to designated cemetery around the project area or at the PAPs resettlement land as per individual preference</p> <p>Cash compensation at a rate/ grave that is determined by NLC in consultation with the PAHs and project staff. This cash is meant to assist the affected PAHs and communities to conduct customary ceremonies during the relocation of graves. This was specifically requested by the PAPS at various consultation forums.</p>	<p>Familiar graves identified during asset inventory and/or confirmed through the Cultural Heritage survey.</p> <p>Unmarked graves identified through chance-find do not qualify for ceremonial assistance and will be dealt with in accordance with the Chance Finds Procedure in the Cultural Heritage Management Plan.</p>	Contractors equipment/ excavator to relocate the graves when requested by the PAPs or community members

#	Type of Loss/Impact	Category of Affected Person	Description of Entitlements	Eligibility	Livelihood Restorative Entitlement
			Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.		
16.	Shrines	Family and community members	<p>Complete relocation of shrines in designated area around the project area</p> <p>Cash compensation at a rate/ shrine that is determined by NLC in consultation with the Kaya Elders and project staff. This cash is meant to assist the affected communities to conduct customary ceremonies during the relocation of shrines.</p> <p>Taxes and fees, and registration costs for Registration of property to be added to the valuation and paid for directly.</p>	Shrines identified during asset surveys and/or confirmed through the Cultural Heritage survey. Cultural Heritage Management Plan to be adhered to.	None
17.	All Actual transitional losses	All	In-kind assistance, subsistence allowances, lost income or wage extension payments, demonstrable additional expenses and any verifiable loss incurred during the transition period and prior to completion of the restoration process and not explicitly covered by allowances included above. These transitional support allowances should be phased out gradually as living conditions and livelihoods/ incomes are restored.	Ensure that PAPs whose asset substitution or LRP takes longer than three months, or who experience additional transitional costs are properly supported during transition and compensated for any losses	

### 8.3 Valuation Methods

The valuation methodology is summarized in this section.

#### 8.3.1 Valuation Process for Land and other Assets

The impacts that will arise from the development of the Mwache Dam infrastructures include:

- Loss of land;
- Loss of crops;
- Loss of trees;
- Loss of residential and commercial structures;
- Loss of community/public infrastructures
- Loss of graves and shrines
- Loss of business

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

##### 8.3.1.1 *Land - Market Research and Valuation*

To help establish the replacement cost, the valuation team carried out market research for land, structures, crops and trees in Kinango sub County in September-October 2017. This exercise was primarily aimed at attaining relevant and reliable information about market transactions within and near the project Area. The valuation team carried out research to elicit comparable value for land within and near the project area. The exercise was carried out together with the market research for crops and trees.

##### 8.3.1.2 *Land Market Research - Objectives*

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

##### 8.3.1.3 *Land Market Research - Target Respondents*

The market research exercise targeted the different land owners in the villages. It also targeted key informants such as the village elders, Land Office in Kwale, legal land conveyance firms in Kwale and Mombasa who have knowledge of land transactions by virtue of work.

##### 8.3.1.4 *Valuation of land using Comparison Method*

Comparable sales method has been adopted for valuing the affected land. This is based on the open market comparison of the land to be valued with what other similar parcels of land are currently selling for in the area but considering the differences between them on a **willing seller willing purchaser basis**. The comparability of the land is based on the use, location, site conditions and income related factors.

The project area experienced a vibrant land market as a result of the Standard Gauge Railway (SGR) project which affected land in the project area and the rates used in compensation for SGR have been used as benchmark and comparison.

The market-comparison method is ideal for establishing values of real estate and other goods in a competitive economy. The most critical aspect of the comparative sales method is what constitutes comparability. This is usually in respect of properties, comparability of transactions and market conditions. Each of these aspects must be thoroughly analysed to obtain an ideal rate. Where part of the property is acquired, the RAP has also considered damage to the remainder of the property. This is in cases where the physical taking of a part of the land might reduce the value of the remainder by making it less convenient for some purpose. This form of loss is called damage by severance and will be utilized during compensation. This is because after severance the highest achievable use cannot be realized.

### **8.3.2 Valuation of Structures Using Current Replacement Approach**

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

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

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

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

### **8.3.3 Replacement Cost Valuation of Crops and Trees**

This RAP study adopted local rates of department of agriculture of calculations and multiplied with these per parcel to arrive at the values. This was the methodology adopted in computing the unit rate for maize and other seasonal crops. For crop valuation, local rates from the State Department of Agriculture and markets were adopted taking into account acreage of each particular crop.

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

The crops and trees within the project area were categorised into two major categories:

- **Annual crops** - crops that complete their growing season within one year.
- **Perennial crops** - crops that go through their entire life cycle, in two or more years.  
Perennial crops are harvested multiple times before their death.

#### **8.3.4 Valuation of Special Assets (Sacred Places and Graves)**

Specialized assets are those that cannot have values per se but whose values are attached to an individual, community or religions. During our field inspections, we noted that the land affected by the project have graves on which the PAHs attach some sentimental values and cannot be ignored. Consultations were done with the elders, religious leaders, professionals of the community to get their views and believed the graves can be relocated but some rituals have to be performed before reburial of the remains is done.

During public consultations, the loss of graves and burial sites were an important concern of affected people. They requested that traditional ceremonies be performed for each burial site. They also requested that compensation will be made for graves. This impact on burial sites and graves will be in the reservoir and check dam areas, because the sites will be submerged under water after the inundation of the main reservoir.

The Project agreed to cover the cost of ceremonies associated with relocation of graves or spirits of ancestors. As there are numerous graves and these ceremonies take some time, the rituals will take place well before any relocation is required. The Project will develop detailed plans for every community, clan, and household during the start of implementation in consent with the PAHs. These shall involve the cost of feeding the mourners and other incidentals thereof. We have therefore placed a nominal value together for these costs but shall be subject to further negotiations between the project and the PAHs.

The above principles of compensation with the exception of graves and shrines are contained to a large extent in the Land Act of 2012 where the compensation is based on: -

- Market value of the acquired land;
- Any damages sustained or likely to be sustained by reason of severing such land from his other land;
- Any damage from loss of profits over the land;
- Additional 15% market value for disturbance.



## **9 RESETTLEMENT AND RELOCATION PACKAGES**

### **9.1 Role of Stakeholder Engagement and Surveys in Defining Resettlement Packages**

The entitlement framework and resettlement provisions are primarily adapted from those provided in the KWSCR-1 Resettlement Policy Framework (RPF). However, the social, economic, cadastral and asset survey findings, have been used to tailor these specifically to the RAP. The entitlement matrix, resettlement options and livelihood restoration options were presented to the PAHs in several baraza's (community consultations) and other consultations held at different locations in the project area. The barazas included question and answer sessions with the PAHs.

### **9.2 Process of Identifying Resettlement Land Alternative Land for PAHs**

The land ownership in the project area is private with PAHs in 17 out of the 20 affected villages having title deed denoting formal land ownership. There are 3 villages who share a single title deed as a result of the land they occupy being registered as a group ranch.

As noted, all PAPs losing land and houses will be provided assistance from the RAP Implementation Team to verify their claims over alternate parcels of land, verify the claims of potential sellers of other identified land, find other parcels of land and formalize the sale and title transfer processes as required depending on the PAPs individual circumstances.

### **9.3 Loss of Residential Land**

Households which will be losing residential land (that is land with a structure recorded as residence on the land) are eligible for replacement land or they may choose cash compensation at replacement value as per the Entitlement Matrix. However, this RAP notes that not all PAHs can lay legal claim over the land they occupy and use. These PAHs are mainly adult sons of the registered owner who are still residing on land owned by their father within a homestead and who are yet to be formally transferred to the land that they occupy and use. This is the case where freehold land title has been issued to the registered owner without recognized user rights identified against those titles. This category of household therefore has claim over primary residential structures, crops and trees but remain constrained in legally claiming the land they occupy. They remain at the mercy of the legal title holders on whose land they reside and use through customary inheritance. The legal title holders are highly unlikely to disinherit them as the Duruma cultural traditions prohibit disinheritance. Care will be taken to ensure that legal title holders do not fail to move with their sons and families and anyone else who has interest in the land to the new relocation sites or refuse to share land compensation funds with them and enable them purchase land on their own. These interests are reflected in the asset register and will be compensated as noted above.

This RAP notes that this is complicated by the NLC Act which compensates persons who produce title deeds in their names. This RAP requires that all PAHs including those who have not had land that they occupy formally transferred to them be entitled to full compensation i.e. land crops, trees etc.

This includes being co-titled on resettlement land or receiving a fair share of cash benefits per agreement entered into as part of the PAHs LRP required prior to payment of cash compensation. Remedial measures will be provided by the project as set forth in Section 3.3 above.

Note, on land registered as community or customary land, such as the Mwavumbo group ranch these customary rights are determined during the registration process and as such, user rights have a basis in Kenyan Law. This customary interest on affected land is provided for in the Land Act and all the persons with determined interest to the land are entitled to compensation as per the Land Act; Subsidiary Legislation Part V COMPULSORY ACQUISITION OF INTERESTS IN LAND para 27. These rights are recognized under Kenyan Law and will be compensated accordingly.

The two options for replacement residential land are as follows:

**Option 1** - Households that are to be relocated will identify their own replacement residential plots within an agreed budget and agreed area.

This budget will be the value of their residential land at full replacement cost and allowances (described below). During the RAP preparation, a total of 319 PAHs, out of 913 PAHs interviewed indicated that they had their own alternative land while 185 PAHs indicated that they had identified ideal relocation land. Those with other parcels of land not affected by the project were considered to have identified replacement land in the event that they chose own replacement in which case, they would be given cash compensation.

**Option 2** – With the guidance of the PAPs, RAP Implementation Team and KWSCRPN/NPMU and Safeguards PIU, the project will identify land available and suitable for resettlement within the existing villages for PAHs unable to identify their own replacement land. The RAP IT team will facilitate this process and will implement mechanisms to inventory potential available sites and to work with local leaders including Kaya elders to avoid price speculation in the project area.

409 PAHs of the 913 interviewed in additional consultations do not have their own alternative relocation land and are unable to identify the same on their own. However, from the consultations with the PAHs, some do not want to maintain a rural lifestyle and are likely to use the cash to move away from the project area. In these cases, it will be the responsibility of the RAP IT to follow the progress of such PAHs as they make a new life for themselves.

Households opting for assisted relocation will be entitled to a range of options for assistance. This could include the identification and acquisition of land and the construction of replacement structures in lieu of compensation payments. Replacement residential plot will be large enough to accommodate the envisaged replacement structures and to the same value as the acquired land. The following criteria will apply in such instances:

- The replacement land should not be located in gazetted areas such as forests and parks
- The replacement land should be within the 20 villages unless at the request of the PAHs
- Land will be acquired through willing buyer willing seller
- The land should not have any existing encumbrances such as a legal ownership dispute, undischarged mortgage (whether registered, unregistered, legal or equitable), caveat or any other third-party claims that affects the validity of title.
- The price of replacement land and other assets (trees, crops) etc should not be more than cash compensation being offered to the PAP.
- The land should not have any physical constraints to inhibit construction of replacement houses and associated buildings, including the sanitation option
- The land should provide similar access to social facilities and public infrastructure as the existing sites

As noted, the RAP team undertook extensive consultations to determine the viability of the community's preferred compensation methodology – i.e. cash compensation to facilitate land acquisition in the immediate vicinity of the project area. The data collected is useful for indicative purposes as it shows that many land-owning PAHs (about 55% of respondents) have alternative land earmarked to continue their lives.

Table 20 below show the results of this data collection process by village and shows the total number of PAHs with alternative relocation land of their own; PAHs with no alternative land of their own but have already identified ideal relocation alternative land from neighbors, kinsmen etc.; PAHs who have no alternative land to relocate and have been unable to identify relocation land.

note that this validation exercise was limited to land owners because the project aims at a land-based resettlement strategy since the livelihood of the Duruma Community to be affected are land-based.

Note that ALL PAHs claims must be verified prior to the release of cash as part of the livelihood restoration process and all PAHs will be entitled to whatever assistance they required regardless of the information collected and presented below. It is included here for indicative purposes only.

**Table 20: PAHs with or without other parcels of land and their resettlement alternatives**

	Village	Land owners on the Asset Register	PAHs with other parcels of land that are not affected by the project	PAHs without other parcels of land but have identified alternative resettlement land	PAHs without other parcels of land and have not identified alternative resettlement land	PAPs who did not respond against Asset Register
1	Fulugani	<b>203</b>	94	106	37	-34
2	Chinguluni	<b>70</b>	20	13	9	28
3	Mwache	<b>127</b>	38	4	29	56
4	Mtulu	<b>11</b>	11	0	8	-8
5	Ziwani	<b>26</b>	0	1	1	24
6	Chigato	<b>95</b>	11	0	37	47
7	Hanje	<b>94</b>	5	1	88	0
8	Mpirani	<b>63</b>	3	4	10	46
9	Mwachipa	<b>78</b>	17	12	5	44
10	Chigomeni	<b>41</b>	7	3	29	2
11	Bokole	<b>62</b>	7	3	12	40
12	Madiwani	<b>13</b>	32	0	0	-19
13	Vikinduni	<b>6</b>	1	0	0	5
14	Majengo	<b>28</b>	0	0	0	28
15	Mazeras <sup>5</sup>	<b>0</b>	0	0	0	0
16	Chigojoni	<b>7</b>	3	0	1	3
17	Nunguni	<b>244</b>	58	25	37	124
18	Luweni,	<b>191</b>	12	13	106	60
19	Changa,					
20	Mwashanga					
21	Mwatate					
22	Maweu					
<b>Total</b>		<b>1,359<sup>6</sup></b>	<b>319</b>	<b>185</b>	<b>409</b>	<b>446</b>

In some villages such as Fulugani, Mtulu and Madiwani there were more PAPs who responded to the land question that was asked than those who the census and asset inventory had identified as owning land. These were PAHs who were enumerated as owning structures only as they were not registered land owners of the land on which the structures are built and hence were not listed as land PAHs on the asset register. However, they hold an entitlement to the affected land through customary land rights as earlier explained and hence responded to the land question on the survey questionnaire. These PAHs are not included in Table 21 above as it refers only to landowners.

<sup>5</sup> PAHs in Mazeras are traders on existing Right of Way (ROW) and hence not land owners but encroachers.

<sup>6</sup> 446 Land PAHs did not participate in the survey for various reasons

**Table 21: PAHs with or without other parcels of land**

	Category of PAHs	Count	%
1.	PAHs with other parcels of land that are not affected by the project	319	35
2.	PAHs without other parcels of land but have identified alternative resettlement land	185	20
3.	PAHs without other parcels of land and have not identified alternative resettlement land	409	45
	<b>Total</b>	<b>913</b>	<b>100%</b>

From the results of the validation exercise as presented above, 55% of respondents have a clear and documented resettlement plan. However, 20% of these are waiting to be compensated by NLC to be able to purchase the identified/potential parcels of land for resettlement land as they have no other source of money to acquire these parcels. They also requested for additional support such as transport during relocation and resettlement process.

45% of the respondents do not have other parcels of land and have not identified potential resettlement land. This category of PAPs will require direct assistance in identification of resettlement land. They will require transport and personnel to help them in moving around the host communities' areas and identify suitable land and negotiate with the potential land sellers. This is the more risk category of land PAHs who will require direct project intervention during resettlement process.

446 affected land owners did not participate in the validation exercise for various reasons. Nothing is known about their intentions, however other consultations have revealed that a sizeable number of PAPs intend to move out of the project area, including to Mombasa, and it is reasonable to assume that this number covers many of these people.

### **9.3.1 Loss of Farmland**

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

### **9.3.2 Loss of Residential Structures**

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

functionality at the PAH's request.

Those who choose cash will be paid out an amount based on the replacement structure calculation with a 15% statutory disturbance allowance added on.

The existing dwellings impacted by resettlement are typically less than 20m<sup>2</sup> and comprise of one or two rooms. There is a limited range of materials with which the houses are constructed, and this is largely limited to locally sourced natural materials (typically termed traditional materials). The floor is nearly exclusively made of compacted earth, while the walls are constructed of either mud or wattle or mud blocks with mud cladding. Roofs are made of either grass thatch or corrugated iron sheets.

### **9.3.3 Loss of Non-Residential Structures**

Non-residential structures include commercial structures mainly found in project location where the access roads will require expansion. The project will affect 18 non-residential/commercial structures. As stated in the entitlement matrix, the project will provide cash compensation at replacement cost for all non-residential structures identified in the asset survey. Those who have impacted non-residential structures will only qualify for cash compensation.

### **9.3.4 Loss of Incomplete Structures**

All structures on the site that were incomplete in the asset survey, are regarded as secondary structures. This includes the following categories from the entitlement framework: dwellings used for secondary purposes, sanitation facilities and moveable structures. As stated in the entitlement matrix, all incomplete structures will be compensated in cash at replacement.

### **9.3.5 Loss of Communal Resources**

The Project will cause the loss of access to 4 communal resources specifically 3 educational facilities and 1 health facility. There are 2 other public facilities which will be partially affected (loss of perimeter fence). Because of the nature of communal resources, the definition of impact should not be limited to the PAHs which were surveyed. Communal resources are used by the wider community and it is impossible to determine and verify who exactly used communal resources in the Project Area in any given time period. Therefore, it is more effective to address the loss of communal resources through restoring these resources and making them available to the wider community.

### **9.3.6 Loss of Graves Burial Sites and Sacred Sites**

There were 240 graves and burial sites and 4 shrines contained within the Project Area. Where the project will disturb graves and sacred sites, the project will make provisions for either the physical or symbolic relocation of graves or sacred sites. The compensation for the loss of graves and shrines will in cash.

### **9.3.7 Procedures for the Removal of Archaeological Finds**

During the archaeological surveys, there were no significant archaeological items found that would require salvage/rescue excavation type intervention. However, the Chance Finds Procedure (CFP) found as part of the Environmental and Social Impact Assessment (ESIA) should be followed if any items of significance are found during construction or operation.

### **9.4 Compensation Procedure**

MOWS /KWSCRCP will liaise with NLC on compensation as provided for by the NLC Act 2012. NLC will take over the responsibility of providing to each PAH a Letter of Offer showing the amount of money that they will be paid for each affected property following asset valuation to be undertaken/verified by NLC in accordance with NLC Act 2012. Land acquisition will follow the procedure set out by NLC Act 2012 and will be followed through by NLC. Land owners will be required to provide proof of ownership of the affected parcel of land by either a Title Deed or Letter of Allotment or any other land ownership documents that are recognized by law. If the PAH is not satisfied with the valuation offer given, they will be free to seek redress through making appeals to NLC or judicial recourse via Environment and Land Court.

### **9.5 Payment of Cash Compensation**

If PAHs have no bank account available, KWSCRCP will provide assistance to PAHs to open such a bank account; all costs of this procedure will be borne by the KWSCRCP.

As indicated, the payment of cash compensation will be contingent upon the PAHs in good faith engagement with the RAP Implementation Team to verify their intentions for the use of cash compensation and avail themselves of any assistance required. This will involve, financial management training, verifiable plans for land acquisition or other business plans, a tailored livelihood restoration plan and a package of assistance and follow-up required to by the PAH to implement their strategy (such as land acquisition, title transfer, relocation assistance, etc as per the entitlement matrix)

Support will be provided to this process through the RAP Implementation Team (RAP IT). (Refer to Annex 9 for draft TOR of RAP IT). Where PAHs decline to avail themselves of the RAP IT assistance, compensation will only be released once the RAP Implementation Steering Committee (Refer to Annex 14 for TOR) has determined that the PAHs livelihood strategy is viable in the longer term and determined what form to tailored assistance and/or monitoring must be provided. Where a vulnerable PAP declines to avail himself for resettlement assistance and a finding of vulnerability is confirmed but engagement with the PAP fail, a social worker will monitor the PAP by visiting every three months until the PAH is restored or an LRP is agreed. Where regular monitoring becomes impractical or a period of 24 months lapses without the PAPs being fully restored, necessary remedial measures determined by the RAP Implementation Steering Committee and favorable to the PAP will be taken. Under any scenario, compensation for assets and land lost will be paid to PAPs before displacement.



### **9.5.1 Joint Spousal Authorization and Receipt**

Payment of cash compensation will be made to bank accounts of PAHs in both husband's and wife's names when such cases apply in accordance with the NLC Act 2012. If the asset to be compensated is used by or the property of a second, third, or subsequent wife, where a husband has more than one wife, that wife has the option of receiving payment in both her name and that of one of her children, rather than in her and her husband's names.

The Project promotes the joint spousal authorization and receipt in all cases: ownership rights to properties, rights to receive compensation, rights to participate in training or any development activities as outlined above are for both male and female members of PAHs. Husband and wife must be present at the time of having assets registered and when receiving compensation, and both must give their signatures, or thumbprints for those who cannot write their names, on any legal endorsements, papers or claims. Where compensation payment is made into bank accounts, the account will be opened with the assistance of the Project in both the husband and wife's joint names.

Land titles will be issued in both husband's and wife's name even in the case of polygamous marriage as provided for by the Marriage Act.

### **9.5.2 Assisted Relocation entitlements**

As noted, the RAP Implementation Team will assist PAHs to source and acquire land to the value of and in lieu of their compensation entitlements. The land title is to be issued or updated in the names of both husband and wife, or in the case of a second, third, or subsequent wife, where a husband has more than one wife, that wife has the option of obtaining the title in both her name and that of one of her children, rather than in her and her husband's names. All related costs (taxes, registration, and/or land transfer) will be borne by the KWSCR. P.

### **9.5.3 Compensation before Demolition**

All immediate compensation measures to enable relocation to happen without hardship will be concluded before PAH are required to relocate. Because transitional measures cover the period during and after relocation, these will commence prior to relocation and continue for the designated period thereafter. Additional entitlements like livelihood programs and replacement of tenure documents are part of ongoing programs and will be continued after impacts and relocation.

### **9.5.4 Compensation for Community Assets and access to Natural Resources**

Community property will be compensated by replacement assets or alternatives of the same or higher value as decided in consultation with the community impacted. State land will not be compensated. However, land which is located within the village boundaries and used by the community for specific livelihood purposes (in this project: schools, health centre), will be considered as community resources and eligible for replacement in kind as outlined in the Project's entitlement matrices.

When compensation is provided for common properties, such as school buildings, health facility, etc., clear records will be maintained when common properties are handed over to the Community and or County government. Prior to handover of common properties, responsibilities for operation and maintenance will be clearly spelled out and responsible parties for such works adequately trained and equipped, including clear mechanisms to fund Operation and Maintenance. Such handover events are regularly accompanied by a small ceremony. For such facilities, community property land titles will be issued, in the name of the community. This is to ensure that there is no encroachment on the land of these community properties and to prevent any attempts to retain teachers' housing as personal property.

Communities (resettled and host) will also be eligible for infrastructure improvements related to livelihood sustainability, access to public services and project benefits and support for group livelihood strategies according to the options and processes described in Sec 10.3.9

The project will work with communities to ensure that access to natural resources (forests, medicinal plants, building materials, water, recreational areas) is maintained or enhanced. If such access is affected it will be restored as part of the community LRPs described in Sec 10.4.

#### **9.5.5 Pre-Compensation Planning**

To allow PAHs informed choices and active engagement in the compensation process, pre-compensation planning will be a required condition of compensation payment release for all impacted households.

As indicated, the payment of cash compensation will be contingent upon the PAHs in good faith engagement with the RAP Implementation Team to verify their intentions for the use of cash compensation and avail themselves of any assistance required. This will involve, financial management training, verifiable plans for land acquisition or other business plans, a tailored livelihood restoration plan and a package of assistance and follow-up required to by the PAH to implement their strategy (such as land acquisition, title transfer, relocation assistance, etc as per the entitlement matrix).

Where PAHs refuse to engage in this process they will automatically be considered at high risk of impoverishment by the project and their case will be referred to the RAP Implementation Steering Committee for decision along with a detailed report prepared by the RAP IT including, among other things: 1) the support offered and the reasons for refusal, 2) the situation of the PAH and the feasibility of the proposed livelihood strategy; 3) the relative vulnerability of the PAH; 4) recommended action, including in addition to approval or not of the PAH request, additional engagement, tailored support or monitoring of the PAH; 5) draft agreement to be signed with the PAH. Having reviewed the case, if the Committee is satisfied that the PAHs plans are viable, then cash compensation will be disbursed, or else the PAH will need to progress to legal proceedings against the project to receive their

compensation.

In such cases, compensation for the PAH will be placed in escrow and rental property as close as possible to their pre-project dwelling (and subsistence support if needed) will be made available until the case is resolved.

#### **9.5.6 Gender Based Violence (GBV) Awareness Training**

The project staff will also provide training and awareness on gender-based violence among community members as part of community sensitization. GBV could be triggered by refusal of women to sign off on share of compensation. Violence may be used by the husbands to force their wives to sign off compensation money. The WB offered training to project staff using their inhouse resource staff specialized GBV. A GBV expert will be engaged on regular basis as required.

#### **9.5.7 Transitional Assistance Measures and Duration**

Transitional assistance measures are taken by the project to facilitate the transition of PAHs from their old situations to their new situations. Such transition assistance provides PAPs with smooth transition and hence minimizing adverse impacts of resettlement. If income recovery cannot be expected at the time of displacement, PAHs will be provided with transitional support. PAHs with subsistence livelihoods will receive food-based transition and other in-kind arrangements, but PAHs practicing commercial agriculture or living in urban areas may choose cash.

Termination of assistance will be linked to monitorable benchmarks: either full development of the productive potential of income-generating assets; or attainment of agreed income levels according to the PAH LRP. Gradually declining transition assistance will be matched to the gradual attainment of LRP goals until the end of transition phase. If implementation problems hamper or delay income restoration measures, transitional support should continue until alternative approaches are formulated and adopted and start yielding incomes.

KWSCRP will provide relevant transitional assistance to all PAHs in accordance with World Bank policies and procedures to cover PAH sustenance needs, and avoid additional losses as a result of conditions prior to completion of the livelihood restoration process. The Entitlement Matrix provides further details on the application of this assistance. The minimum transitional allowances will be defined as outlined below and, when the time actually required for livelihood/income restoration exceeds three months, these allowances will be extended on a month to month basis (and gradually phased out) to cover the full transition period.:

- Transitional allowances/subsistence support in kind for a period of 3 months or until subsistence means are fully restored.
- Income substitution and transfer costs during re-establishment
- Affected labour will be compensated for loss of income equivalent to a minimum of three months of wages and until employment is restored or replaced.
- Compensation for Loss of Business Incomes equivalent to three months incomes / wages in case of permanent closure. (Loss of trade / livelihood / occupation or business incomes) and until livelihood restoration plan is implemented and livelihoods/income are fully restored.

#### **9.5.8 Special Measures for Vulnerable Households**

- As noted, due to the high level of poverty in the project area - all people affected by this project will be entitled to assistance reserved for vulnerable groups. In fact, due to the high prevalence of vulnerability within the community, and the community's preference for cash compensation, assistance to overcome vulnerability will be a requirement for cash compensation rather than an entitlement. Please see the livelihood restoration strategy below as the core of the vulnerability assistance.

## **10 LIVELIHOOD RESTORATION STRATEGY**

As noted above, the high level of vulnerability of the community to the adverse impacts of displacement due to both poverty and the communities traditional land-based lifestyle, a livelihood resettlement plan tailored to the needs of each individual household will be a requirement of the release of cash compensation. This chapter of the RAP does not pre-empt that, but rather summarises some of the prospective livelihood restoration approaches identified during consultations with the community as an indication of what such tailored plans may entail.

The RAP Implementation Team will spearhead the development of these tailored livelihood restoration plans at the household level in consultation with each household separately.

### **10.1 Objectives and Schedule of Activities**

Livelihood Restoration Strategy are planned to correspond with other mitigating measures of the Project towards PAHs to comply with OP. 4.12. This RAP has identified a number of Livelihood Restoration Strategies based on the consultations with the PAHs during the socio-economic survey. A detailed Livelihood Restoration Plan will be developed for each impacted household is to be developed under a separate study guided by this Livelihood Restoration Strategy developed for this RAP. The RAP implementation Consultant will outline the plan and timetable for delivering these household level livelihood restoration plans in an inception report to be completed two weeks after mobilizing. The schedule outlined in the report will require regular updating, consultations, and negotiations with households for necessary adjustments to ensure it reflects the needs of the project for the release of land.

#### **10.1.1 Aims of Activities**

The Project aims to develop household level sustainable Livelihood Restoration programs with the following key requirements:

- To avoid dependency, encourage self-reliance, and create long-term benefits that can outlast project support;
- To focus investments on capacity building, participatory processes, and organizational development to enable local communities, institutions, and partners to take progressively greater roles and responsibilities;
- To reinforce, rather than replace, local institutions and processes;
- To measure returns for both the project's social license to operate and the community (resettlement impact mitigation), and;
- To use output and outcome indicators to measure the quantity and quality of change.

#### **10.1.2 Key principles of Livelihood Restoration**

The functions of Livelihood Restorations are as follows:

- LR will focus on the enhancement of livelihoods through the improvement of income, increased production, and a better quality of life.
- LR will ensure that land-based programmes are discussed and agreed to with affected communities only if replacement land is available and secured. When there is

insufficient replacement land, other measures such as improving of productivity of remaining land or training/capacity building will be explored.

- LR will equally endeavor to re-establish existing business enterprises and provide additional support to business owners in order to improve business operations (marketing, administration, operational efficiency) through training and other support measures.
- LR will be the focus of all monitoring and evaluation programmes until after completion of the resettlement to assure that the Project has successfully restored and improved livelihoods and standards of living.

OP. 4.12 defines the main objective of livelihood restoration as: *To improve, or restore, the livelihoods and standards of living of displaced persons.* The document further states that: For persons whose livelihoods are land-based, replacement land that has a combination of productive potential, locational advantages, and other factors at least equivalent to that being lost should be offered as a matter of priority.

For persons whose livelihoods are natural resource-based, implementation of measures will be made to either allow continued access to affected resources or provide access to alternative resources with equivalent livelihood-earning potential and accessibility. If circumstances prevent the client from providing land or similar resources as described above, alternative income earning opportunities may be provided, such as credit facilities, training, cash, or employment opportunities. OP. 4.10 specifically states that when it is not feasible to avoid relocation the borrower in the development of a RAP must obtain broad support for relocation of the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process including ensuring that the RAP is prepared in accordance with the requirements of OP 4.12, that is compatible with the Indigenous Peoples' cultural preferences, and includes a land-based resettlement strategy. Where possible, the resettlement plan should allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.

In addition to the guidance of OP. 4.12 and OP. 4.10, the Livelihood Restoration should be guided by the following principles and be done in close consultation with PAPs and other stakeholder:

- Strive for household food sufficiency and food security;
- Involve beneficiaries and other local stakeholders in choosing and implementing LR initiatives;
- Respect gender differences (roles, rights, responsibilities) and provide equally for women, men, girls and boys;
- Differentiate the needs of different types of PAPs, and provide for these appropriately;
- Strive for sustainable livelihoods (institutional, financial, environmental and social sustainability) by the end of the interventions;
- Build on present strategic plans for the County;
- Encourage household income diversification to spread risk;
- Base income-earning opportunities on tried and tested approaches in the Project area;
- Consider both incremental and radical changes;
- Consider options across the 5 livelihood capitals (human, social, financial, physical and natural);



- Remember the vulnerable, and provide specific measures to help them, and;
- Ensure options are relevant, practical and achievable.

Entitlements for livelihood and income restoration are presented in the Detailed Entitlement Matrices, and programs will be implemented together with PAHs according to their needs and requests. The public consultation process has already identified some preferences and concerns based on PAHs current livelihoods strategies and identified opportunities and limitations. The public consultation process has led to initiatives taken by communities themselves including; PAHs actively looking for suitable replacement land available on a willing-buyer willing-seller basis; Majority of the PAHs (99%) have expressed preference for cash compensation and self-relocation and continued cultivation of their land and plantations remaining unaffected.

PAHs are entitled to participation in livelihood restoration programs based on priorities identified by affected households during consultations between individual PAHs and will include;

- Trainings for alternative livelihood activities or
- Enhancement of current livelihoods based on the individual preference of the PAH or
- A combination of both.

## **10.2 Context of Livelihood Restoration**

The main types of livelihoods encountered in the project affected area of influence are land-based livelihoods with some non-land micro-businesses (e.g. tailoring, internet CD, hairdressing, boda-boda), and livelihood options have been selected according to the current documented livelihood activities. As land in the vicinity of the proposed project is limited in its availability, and resettlement will lead to increased pressure, emphasis has been given to alternative livelihoods (through vocational and business training and linkages to potential employers and microfinance),– including financial literacy), improving the quality of life (through improved water, sanitation services) and improving the productivity and profitability of farming activities (through training and advisory services, improved inputs and access to credit).

## **10.3 Potential Livelihood Restoration Options**

### **10.3.1 Training on Financial and Business Management**

**Context:** -PAHs are not accustomed to receiving large amounts of cash, and may spend/invest it unwisely. In addition, literacy and numeracy levels are low, and particularly low for women. This is a consequence of low secondary school attendance. These limit access to employment outside farming and unskilled labour, and limit the acquisition of knowledge through written media. Several types of one-person micro-businesses were identified during the socio-economic survey, including fish trading, livestock trading, boda-boda, hair dressing, tailoring and phone charging where both women and men are involved. None of these groups had received any business training, and all said getting finance of any sort was difficult in order to expand the business.

**Objective:**

- To ensure that PAHs have adequate money management skills through financial training before receiving compensation payments
- To assist PAHs (men and women) to handle and use their cash compensation sensibly to restore their livelihoods and build a sustainable future
- To increase the capacity of entrepreneurs to function more effectively and expand their businesses. To provide time-bound business support to self-employed enterprises, aiming to grow them into viable and sustainable businesses

**Beneficiaries**

- PAHs receiving cash compensation for structures, land or crops.
- Existing traders/business people (men and women) and those interested in establishing businesses from among the PAHs. Youth and vulnerable groups to be prioritized.

**Sustainability factors:** -This measure will provide information so that PAHs can make an informed decision on how to use their cash compensation, and have the money in a Bank account rather than as cash that can be stolen or used rapidly and unwisely leading to impoverishment and discontent. Women (as PAPs or spouses) will be encouraged to attend, and special efforts may be needed to enable vulnerable PAHs (elderly, disabled etc.) to attend. Skills imparted will last a lifetime and provide openings for employment and acquiring knowledge from written media. Finally, trained entrepreneurs will be able to earn a living and contribute to a diversified rural household income.

**Monitoring and evaluation**

- Number of men and women attending training and attaining completion certificates; number of Bank accounts opened. Evaluation of how PAHs have used their cash, and their situation after 2 years. Evaluation of new activities being performed by graduates as a result of the skills acquired from the courses.
- For business management training, number of new activities that PAHs are doing as a result of their training after one year. Improvement in circumstances/income resulting from the course. Number accessing micro-finance or credit.

**10.3.2 Agricultural and Livestock Development****10.3.2.1 Cattle Raising**

**Context:** -One of the most important livelihood strategy of the PAHs is cattle raising. Affected people consider livestock as their bank savings. When these villagers want to make a large investment e.g. build a house, purchase a motorbike or marriage of their children, they raise money through selling livestock. They also consider the cattle as security for “good health”, in time of illness they could sell individual animals to get medical treatment. Apart from these pragmatic financial roles, the bull also has an important role in the Duruma culture for fighting with other bulls. Raising cattle is a very lucrative business as long as sufficient fodder can be found. PAHs have cattle and the Project has agreed on a livestock improvement program as an important component of the project, including vaccination to guarantee a healthy and sustainable stock of cattle in the resettlement site and prevent

transmission of disease from one locality to another on relocation.

Furthermore, the Project will assess current cattle raising procedures and assess potential for improvement as part of the support measures.

#### **10.3.2.2      *Poultry Farming***

Every family usually has at least one or two chickens, and poultry is an important option in livestock raising. Poultry is mainly raised for the market and sometimes sold to middlemen who come to the village to buy. Occasionally poultry will be used for consumption by the household themselves; Food is the main cost for the villager who determines either making a loss or making a very good profit. While large poultry enterprises provide cheap poultry from mass production to the markets throughout the country, people in the country still prefer free range chicken from the villages, which has less meat, but more taste; and can demand a much higher market price. Poultry raising is also an important livelihoods strategy that the Project will focus on for poorer and more vulnerable households, as investment requirements are low, birds can be kept near the home, and the demands of raising them are limited.

#### **10.3.2.3      *Improved Fodder Development***

For the livestock options, fodder is a key factor in calculating if a livestock business is profitable or not. For livestock, the development of productive and sustainable grazing areas is important. The Project will invest in soil and fodder improvement for grazing areas, starting before physical relocation of the PAHs. For medium and small livestock, value chains are important, with production of fodder, maize, or other crop planting needed to reduce the necessity to buy in from outside.

#### **10.3.2.4      *Fish Catch in the Reservoir***

Studies of other multipurpose dam projects show, that immediately after impoundment a windfall increase of fisheries can be expected, but consequently fisheries rates drop drastically if not managed properly. Mwache Dam PIU will hire a fisheries expert to undertake fisheries studies. The experts working on the fish catch monitoring program will therefore develop together with PAHs a fisheries-co-management program to allow sustainable development of fish catch. Furthermore, reservoir fishing is different from river fishing and training is necessary, including adapted fishing technologies and safety measures for boat fishing in deep reservoirs.

#### **10.3.2.5      *Agricultural Extension***

The Project will work with County Department of Agriculture, to support and enhance on-farm livelihood activities for PAHs both before and after relocation. In order to restore the land-based livelihoods of the project communities, an agricultural extension programme or package will be implemented. This program will provide agricultural extension assistance to PAHs that are affected by the proposed project.

The components of the programme include:

- Increased access to extension services (facilitative role – allowances, skills upgrades and transport costs)

- Management of animal diseases to improve productivity and reduce risk. The health of livestock is a key element in successful livelihoods development. The Project is focusing on this from the outset by facilitating a vaccination program for large livestock before resettlement, to guarantee a clean start in the identified resettlement site.
- The Project will work together with experienced veterinary services from the County Government of Kwale towards this goal.

### **10.3.3 Traditional Shrubs and Tree Planting**

The project will provide traditional shrubs and other trees seedlings to the PAPs to plant on their resettlement land. The seedlings will be bought from the existing tree nurseries owned and management by community self help groups and from the Kenya Forest Services stations in the project areas. This will help enhance and restore trees and shrubs which will be lost and destroyed as a result of land acquisition.

### **10.3.4 Water Supply Investments**

**Context:** Kinango is water-stressed in terms of water for domestic, hygiene and sanitation use. It is also short of water for livestock and for irrigating horticultural, food and cash crops. Lack of access to clean piped water is a significant problem in the project area and leading to water borne related diseases, which ultimately affects the well-being and livelihoods of the PAHs. KWSCRП is planning to construct a small dam for domestic water supply for the residents of Kinango sub County including the project affected villages.

**Objective:** -To provide minimum domestic drinking, hygiene and sanitation water supply to the residents of Kinango Sub County and specifically the 20 affected villages.

**Outcomes expected:** -Health and comfort benefits due to better quality and quantity of water for drinking and hygiene; time saving on water collection allowing more productive activities.

**Beneficiaries:** -Beneficiaries of rural water supply investments will be displaced PAHs who will be accorded first priority in terms of provision of access to water supply in their new relocation areas or current areas. There will be other beneficiaries who are non-PAHs as well who will be accorded priority only after the PAHs are connected to water supply.

**How will it be implemented:** -N.B. This option will be strictly subject to a detailed feasibility and design study that is currently on-going and being undertaken by KWSCRП with the IDA loan funds.

**Schedule:** -Full feasibility and design study to be completed within 6-months of RAP approval KWSCRП and World Bank to review and approve.

**Sustainability factors/local ownership:** -From the start, this would be a Kwale Water and Sanitation Company (KWAWASCO) initiative, supported by the Project financing. Water-use committee for collection of fees for maintenance and management of the facility at the community end. Maintenance of the infrastructure will be catered for by KWAWASCO.

**Monitoring and evaluation:** -Full design study conducted; piped water supply completed and producing to specification by end of year 2; Reduction in time taken to collect water compared to the household survey

**Further steps:** -Full design study and then approval by KWSCR and World Bank.

### 10.3.5 Sanitation Investments

Kwale County has no piped sewer system. The urban population relies on septic tanks while pit latrines are used in rural areas.

Sanitation services and hygiene practice in rural areas that include CLTS<sup>7</sup> services are provided by non-governmental organizations with funding from respective development partners.

PAHs as part of livelihood restoration, will receive sanitation support through increased access to improved sanitation facilities. The project will support the development of a strategy to promote household sanitation, taking into account cultural beliefs. In addition, communities will be trained on sanitation and hygiene. This training is expected to run concurrently with implementation schedule.

Specifically, and in line with the Ministry of Health's approach and guidelines, the project will support Kwale County in strengthening the programmatic conditions to implement Community-Led Total Sanitation (CLTS) and sanitation marketing at scale, while strengthening supply and household demand for improved sanitation. In addition, in order to have sustained behavior change, continued Behavior Change Communication (BCC) will reinforce CLTS. This will be based on an innovative, evidence-based communications campaign developed by the Ministry of Health.

The core objectives of the campaign are to create a need for improved sanitation among the target audience and educate the target audience on improved sanitation options and hygiene (including hand washing with soap). The project will also support the establishment of a "sanitation hub" at the county level to ensure coordinated implementation of sanitation activities, as well as the creation of community units to ensure long-term sustainability of sanitation and hygiene.

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<sup>7</sup> CLTS inspires and empowers communities to stop open defecation by building and using toilets. If facilitated properly, CLTS can trigger a community into collective action and can have immediate results. The process is community driven. Under CLTS, with a little follow up, communities are self-monitoring, relieving the district of some of the responsibilities.

Investments under this sub-component will include the construction of public sanitation facilities in selected schools and health facilities in both rural and urban areas, in line with post-2015 targets and indicators. Schools and health facilities in the Project area will be given preference and priority. Beneficiaries will include PAHs who will receive training on sanitation and hygiene.

**Beneficiaries:** -Beneficiaries of rural water supply investments will be displaced PAHs who will be accorded first priority in terms of provision of access to water supply in their new relocation areas or current areas. There will be other beneficiaries who are non-PAHs as well who will be accorded priority only after the PAHs are connected to water supply

#### **10.3.6 Off-Farm Activities**

While on-farm livelihood activities form the main strategy of the Project to support transfer and enhancement of traditional livelihoods of PAHs and to invest in food security, off-farm activities are an important second element of the livelihood restoration program. Given that in the Project area, 20% are 20 years or younger, this becomes a key element in livelihood development.

With mobile phones, DVDs, and even internet reaching villages, adaptation to a broader national and international lifestyle is sought by many young people. The Project will support these young people in their aspirations, while at the same time providing information regarding the necessary steps and inputs of changing livelihoods and also discussing with them the related risks. The Project will support PAHs who would like to engage in the service sector, while also supporting small-scale production. The following sub-sections describe some opportunities which have been preliminary identified, and which have proved viable in other projects in Kenya.

**Beneficiaries:** -This will target specifically PAHs who are traders conducting businesses along the existing ROW in Mazeras villages as priority.

#### **10.3.7 Shops and Transport**

A key livelihood activity, in which PAHs engage already, is small-scale shops providing day-to-day products such as cosmetics, cooking oil, drinks, cigarettes, etc. Profit on a larger scale can be achieved by trading local products and external goods. With increased access to district and county markets, the necessary cost of investment decreases and more PAHs have the chance to engage in such businesses. This is not necessarily to the disadvantage of traders within the communities, but can replace external traders and thus decrease dependence from these middlemen. Transport of people is also a business opportunity. With improved roads and shorter distances to urban areas, peoples' mobility has increased and with it the demand for transport services. As with other services, there is, however, a limit to the demand and thus to the number of business opportunities. Opening up a motorbike repair shop is one of the preferred alternative livelihood strategies expressed by PAHs.

**Beneficiaries:** -This will target specifically PAHs who are traders conducting businesses along the existing ROW in Mazeras villages as priority.

#### **10.3.8 Selling Silt Materials from Check Dam**

The check dam will also serve a dual purpose to hold, remove, and reduce the sediment loads to the Mwache Dam site. The silt from the check dam provides useful construction material with a high demand and market in Mombasa Town. This RAP considers this a suitable livelihood restoration activity for the PAHs who should be supported into establishment of an entity with membership (cooperative for instance or Community Based Organization) and sell the silt with sales being shared among the membership who will be PAHs.

**Beneficiaries, Management of Access and Use:** Anticipated benefits of the piled silt will specifically target PAHs especially the youth as an Income Generating activity. The design and modalities on how to establish an entity to manage access and use the silt deposits will be deliberated upon and documented further during RAP implementation phase between the target beneficiaries, local communities and the leadership with the RAP Implementation Consultant taking leadership to offer technical guidance. Silt texture details are still not very clear at the moment. The silt could be agricultural top soil that is suitable for farming, coarse sand suitable for construction or a mixture of both.

The project facilitated community/ beneficiary consultation process will set up rules of access, quantities accessible to beneficiary households and whether or not fees will be charged to the beneficiaries to collect silt and if so, how much per measured quantities. The MoWS/the dam operator will analyse the quality of the silt and estimated quantities and share this information with the PAPs as part of the consultation process. Health and safety measures will also be set up to ensure that the silt pile area is safe for the operator staff, beneficiaries and the neighbouring communities.

#### **10.3.9 Community Infrastructure and Support**

In addition to individual support, affected communities will be eligible for small projects intended to support the livelihood strategies of the PAHs, improve access to project benefits and public services, promote community cohesion and integration of resettled and host families. Each affected village will have access to a budget of up to KSh 7,200,000/year (villages can combine their resources for common projects) to support one or more small projects selected by the community in a participatory manner through the engagement process facilitated by the RAP IT. In principle, eligible categories will include community/cultural centers, markets/warehouses to take advantage of improved roads, community gardens and forestry and access maintenance that support and enhance access to forest areas and medicinal plants, small irrigation canals, mobile health and education services, recreation centers and other projects identified and selected by the community. The RAP IT will work with communities and the Project personnel to identify project options, facilitate project selection and ensure that selected projects are implemented.



#### **10.4 Community level Livelihood Restoration Plans**

Community level Livelihood Restoration Plans will be available if requested by PAPs who may be resettled together/ in close neighbourhood or as determined by the project in consultation with the PAPs and the Host Communities including where needed to maintain or restore access to natural resources. The PAHs will have access to community programs such as improved access to natural resources, improved access roads, modern schools, provision of irrigation and potable water to be provided under the project.

#### **10.5 Implementation of Livelihood Restoration Programs**

A RAP Implementation Consultant will be contracted to support the project in implementing the RAP including delivering the livelihood restoration plan.

## 11 GRIEVANCE MANAGEMENT AND REDRESS

### 11.1 Grievance Redress Mechanism

This section outlines the Grievance Mechanism for the development and implementation of the Project. The purpose of the Grievance Mechanism is to create a systematic process for recording, processing and resolving grievances raised during the resettlement planning by PAPs and other stakeholders. Grievances are likely to occur as a result of the project as: i) peoples' key economic asset - land would be acquired for the project leading to changes in their production systems, livelihoods, income and lifestyles; and ii) the process of resettlement and rehabilitation of PAHs shall be a long drawn and complex process given their present set of skills and levels of understanding. Types of grievances that have already occurred at the planning stage and would occur during the implementation stage are listed below:

- Lack of awareness of the project boundary;
- Missing of parcel, error in identification and/or incorrect measurement (or perceptions over incorrect measurement) of affected assets;
- Disagreement regarding inheritance or ownership of assets and fearing loss of compensation;
- Lack of adequate communication on the project developments,

During the RAP preparation, a number of grievances were documented as shown in the table below. Some of these grievances have been resolved especially those related to missing names, data base errors etc. Other grievances including succession cases, land disputes will be handled by the RAP conveyance consultant.

**Table 22: Grievances Recorded during RAP Preparation**

#	Grievance	Total number of PAPs
1.	Succession issues	19
2.	Land disputes	9
3.	Missing structures	5
4.	Missing crops	1
5.	Missing trees	3
6.	Land not captured	6
7.	Misplaced PAP (Found in another village)	193
8.	Naming error	5
9.	Missing ID and/or LR Number	11
10.	Missing LR No.	8
	<b>TOTAL</b>	<b>260</b>

#### 11.1.1 Need for Grievance Redress Mechanism

The Grievance Redress Mechanism involves formation or operationalizing of Grievance Redress and Resettlement Committees. The main objective is to provide a step-by-step process of registering and addressing the grievances.

It is expected that this mechanism will ensure redress of disputes through participative process. An effective mechanism to redress grievances requires:

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

#### **11.1.2 Essentials in Grievance Redress**

The Essentials in Grievance Redress are

- Acknowledge dissatisfaction: Accept that the Project Affected Person and community members shall generate grievances, rather than ignore or turn away
- Effective listening: Careful listening to elicit information regarding the grievance shall help to accurately define the problem
- Separate facts from fiction: Ask for facts and record it (preferably by the PAH himself). If illiterate, provide support as necessary;
- Quick turn-around: Take optimum time to analyse ascertain and decide and finally communicate the decision to the PAP. Keep communicating with PAHs in case of delays
- Follow-up: If decision requires a follow up action, take it soonest to instill confidence in the PAP regarding the grievance mechanisms and process.
- Grievances will be recorded by using a Grievance Form (in local language, also available in Kiswahili and English). Grievance forms will be available for recording complaints and will contain details regarding the grievance as well as the name and address of the applicant, application date, type of application and the name of the persons receiving the grievance. The forms will be logged in a register where they will be tracked through to a suitable resolution. Grievances can be submitted orally (and will be recorded) or in written form;

#### **11.2 Grievance Redress Mechanism Players**

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

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

### **11.3 Principles Grievance Redress Mechanism**

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

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

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

### **11.4 Grievance Management Level and Roles**

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

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

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

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

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

The Council of Elders also presides over rites of passage including circumcision, marriage rights among others.

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

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

Council members are not elected, as long as one has a good reputation in the society and is regarded as impartial then he is welcomed in the council. Women are not part of this forum. There is no term limit, one serves until they are too old and retire on their own volition or when they die. The other way to be removed from the council is if a person's reputation becomes negative, then the council members will not involve them in council matters. The person may not be formally informed that he is no longer a council member, but will not be informed of meetings and decisions made, basically he is sidelined.

This RAP prefers the first level of grievance or conflict redress on land related issues as a result of this project to be handled by the Council of Elders as an organ that has as part of Duruma culture been handling land related disputes. Grievances not resolved by the Council of Elders will be taken to the second level. A record of any/all grievances received and handled will be kept at all phases of the implementation process.

#### **11.4.2 Second Level: Sub-Location Resettlement and Grievance Redress Committee (SLRGRC)**

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

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

Composition of members is as follows:

1. Assistant chief
2. Village Administrator
3. Village Elders
4. One project affected youth,

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

#### **11.4.3 Third Level: Kinango sub-County Resettlement and Grievance Redress Committee (SCRGRC)**

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

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

Composition of members is as follows:

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

#### **11.4.4 Forth Level: County Arbitration Committee**

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

Composition of members is as follows

1. County representative
2. National Government representative
3. County Legal Officer
4. KWSCRCP Coast Region PIU Social Specialist
5. NLC County Co-ordinator

6. CDA Social Development Expert
7. RAP Implementation Consultant RAP Expert
8. PMU Social Safeguard Specialist

#### **11.4.5 Fifth Level: Resort to Justice**

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

#### **11.5 Appointment of Grievance Redress and Committee Members**

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

#### **11.6 Grievance Redress and Compensation Committee Members Remuneration**

All the members of the RGRCs established at the different levels will perform their duties on a voluntary basis. There will be no remuneration other than costs associated with transport, communication, meals and sitting allowance that will be based on the agreed Government of Kenya rates. The financial rates for the above costs will be decided upon jointly between KWSCR and committee members. This RAP has included a budget estimate for the associated cost under the RAP implementation budget line item (administration costs). Similarly, the terms of the RGRCs will be decided upon through joint consultations between KWSCR and the GRRCs.

#### **11.7 Capacity-Building For Grievance Officer and Grievance Committee**

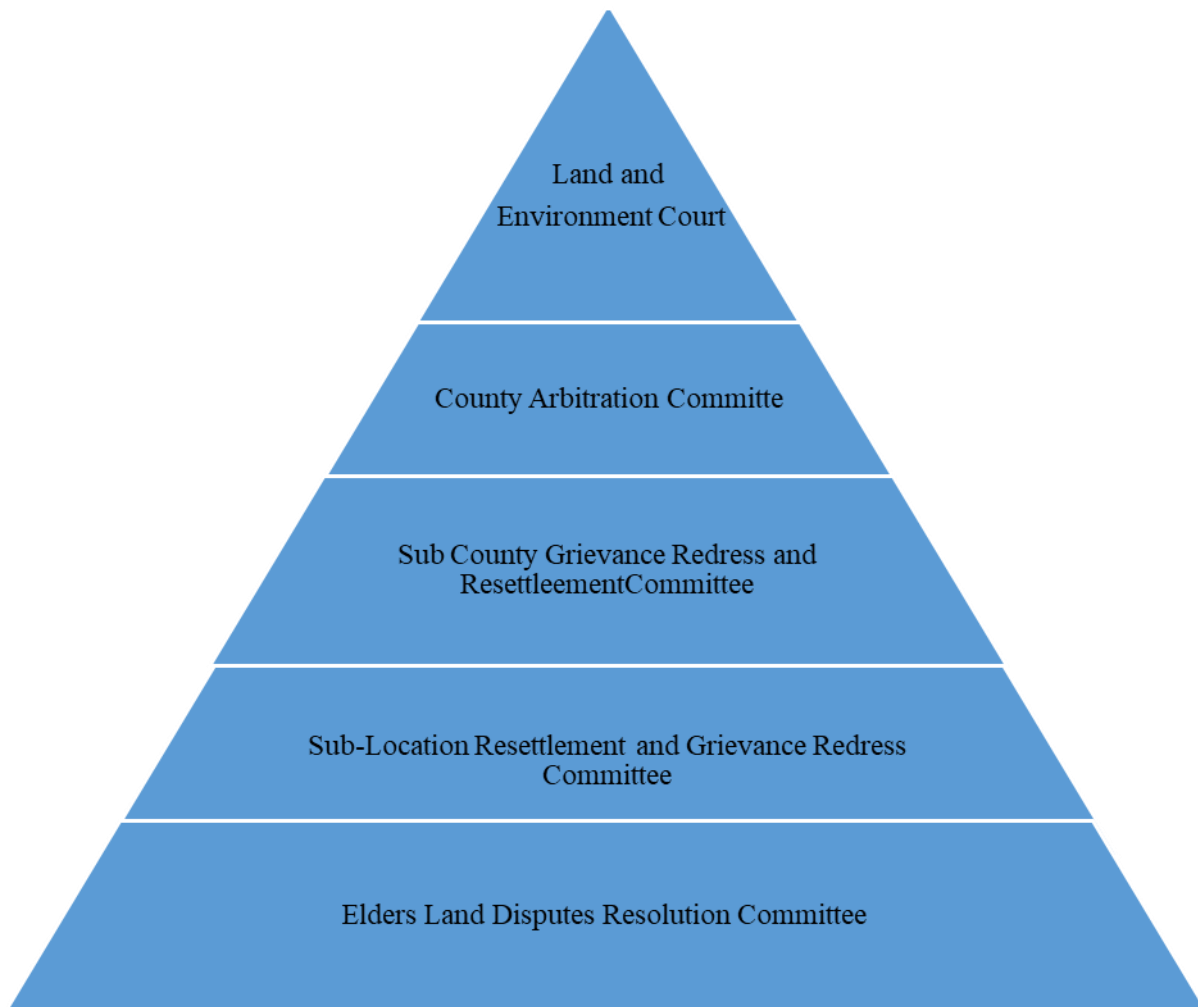
The Grievance Committee members will also need to be oriented to the grievance management system suggested in the RAP as adopted from the RPF through an already scheduled training program. The capacities of the Grievance Committee members will also need to be built around issues of conflict identification,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

#### **11.8 National Land Commission**

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

### 11.9 Grievance Redress Hierarchy

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



**Figure 13. Pyramid showing the various RGRC**

### 11.10 Grievance Registration and Monitoring

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



**Table 23: Grievance Redress Mechanism Steps**

Steps	Description of Steps
<p><b>Step 1:</b> <b>Establishing and Publicizing Grievance Management Procedure.</b></p>	<p>The grievance procedure needs to be available and accessible to all affected communities and therefore once established will need to be publicized and communicated within Project Affected Households.</p> <p>Consultation on the workings of the procedure will take place with communities and stakeholders at village, sub county and county across the Area of Influence (AoI) and with institutions in selected locations in the AoI.</p> <p>A range of different approaches will be used for this communication as deemed appropriate, including face to face meetings and group (e.g. village) meetings.</p> <p>In addition, information materials such as a brochure or flyer, describing the process will be produced and distributed by hand and via posting in publicly accessible locations in the Project AoI.</p> <p>The contact details of the Operator's Project Community Liaison Officer (CLO) and Grievance Officer (GO), secretary of sub location, ward, sub county and county level Grievance Redress Committee will be provided clearly on this notice as the key points of contact for receiving grievances.</p>
<p><b>Step 2:</b> <b>Receive and Track Grievances</b></p>	<p>Grievances can be submitted in writing, telephonically, email, mail, SMS, webpage, in complaint boxes or face-to-face/presented verbally to the Project CLO or Grievance Officer or secretary of sub location, sub county and county level Grievance Redress Committee. The uptake channels will be publicized and advertised via local media, the operator, and secretary of ward, sub location, sub county and county level Grievance Redress Committee.</p> <p>Grievances shall be made in local language, in Kiswahili, Duruma or English.</p> <p>All grievances shall be logged using a Grievance Form. The operator/proponent will log, document and track all grievances within a Grievance register to be managed and updated by the Grievance Officer with oversight from the Project CLO and secretary of ward, sub location, sub county and county level Grievance Redress Committee.</p> <p>This RAP has developed a series of sample forms to be used for recording grievances and the actions taken (list below). These are available in English (contained in <b>Annex 6</b>): -</p> <ul style="list-style-type: none"> <li>• Grievance Statement Form.</li> </ul>

Steps	Description of Steps
	<ul style="list-style-type: none"> <li>• Grievance Receipt Acknowledgement Form.</li> <li>• Grievance Investigation Form.</li> <li>• Grievance Investigation Outcome Form.</li> </ul> <p>The database shall be monitored regularly for recurring grievances so that appropriate standardised mitigation can be developed. The following information shall be recorded for each grievance:</p> <p><b>Grievance case number;</b>  Complainant's name and contact details  (1)Date of complaint;  (1)Name and contact details are necessary for interaction around the resolution of the grievance.</p> <p>Anonymous and confidential submissions will be permitted. Confidentiality will be managed on a case by case basis especially where needed to protect Complainant's safety including in cases related to GBV; Anonymous submissions will be investigated and addressed as needed but a direct response will not be possible.</p> <p><b>Details of complaint;</b></p> <ul style="list-style-type: none"> <li>• History of other complaints / queries / questions (if known);</li> <li>• Resolutions discussed and agreed with the party(ies) in question;</li> <li>• Actions implemented (including dates) and;</li> <li>• Outcome of the actions implemented. For complaints in person, typically the responsible sponsor staff (CLO, GO or secretary of sub location, ward, sub county and county level Grievance Redress Committee.) shall either complete himself or help the complainant with the completion of a feedback form. For complaints by phone, sponsors staff shall register the complaint themselves using the feedback format.</li> </ul>
<p><b>Step 3.</b>  <b>Acknowledging Receipt of a Grievance</b></p>	<p>The sponsor shall formally acknowledge receipt of any grievance as soon as possible, and within a standardized time period.</p> <p>An initial response should be provided not more than (5) five days from the date it was submitted and shall inform the complainant about the timeframe in which a response can be expected.</p> <p>A full response should then be provided no later than a month from receipt and acknowledgment of the grievance. The acknowledgement must be sent in written form although it can be anticipated by phone depending upon the complainant.</p> <p>The process of acknowledgement shall include responding to the complainant, using appropriate communication channels, about the following issues: -</p> <ul style="list-style-type: none"> <li>• Explaining next steps;</li> <li>• Providing a target date for resolution of the issue or, if necessary,</li> </ul>

Steps	Description of Steps
	<p>the full response to the feedback; Ideally, acknowledgment of a grievance to the complainant should include the name of the person assigned to resolve the issue.</p>
<p><b>Step 4:</b> <b>Investigate Grievances: -</b></p>	<p>Operator/proponent and relevant grievance redress committees will investigate fully all grievances submitted, and where necessary will involve other departments, contractors and senior management in the process in order to fully understand the circumstances that led to the grievance being raised.</p> <p>This investigation should be performed in a timely manner to avoid delaying the resolution of a grievance. Project will aim to resolve any grievances within 30 days from the date that of receipt. This timeframe can be extended to 90 days for more complex grievances, if required.</p> <p>The following steps shall be performed as part of an investigation to avoid delaying resolution of a grievance: -</p> <ul style="list-style-type: none"> <li>• Obtain as much information as possible from the person who received the complaint, as well as from the complainant to gain a first-hand understanding of the grievance. In addition, an appropriate liaison official (CLO, GO and members of grievance redress and resettlement committees,) must be present during any interactions with the stakeholder registering a grievance.</li> <li>• Undertake a site visit, if required, to clarify the parties and issues involved. Gather the views of other stakeholders, if necessary and identify initial options for settlement that parties have considered.</li> <li>• Determine whether the grievance is eligible for consideration and valid.</li> <li>• Eligible grievances include all those that are directly or indirectly related to the Project and that fall within the scope of the Grievance Mechanism as outlined above.</li> <li>• Ineligible complaints may include those that are clearly not related to the Project or its contractors' activities, whose issues fall outside the scope of the Grievance Mechanism procedure or where other community procedures would be more appropriate to address the grievance.</li> <li>• If the grievance is deemed ineligible it can be rejected however a full explanation as to the reasons for this must be given to the complainant and recorded in the Grievance Database.</li> <li>• If the grievance is eligible, its risk level should be determined using the significance criteria. This will help to determine whether the grievance can be resolved immediately or requires further investigation and whether senior management will need to be informed of the grievance.</li> <li>• If the grievance concerns physical damage, (e.g. fishing boat, crop, house, community asset) a photograph should be taken of the damage and its exact location recorded the as accurately as possible.</li> </ul>

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

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

#### **11.11 Hearing of Complaints: where and by whom**

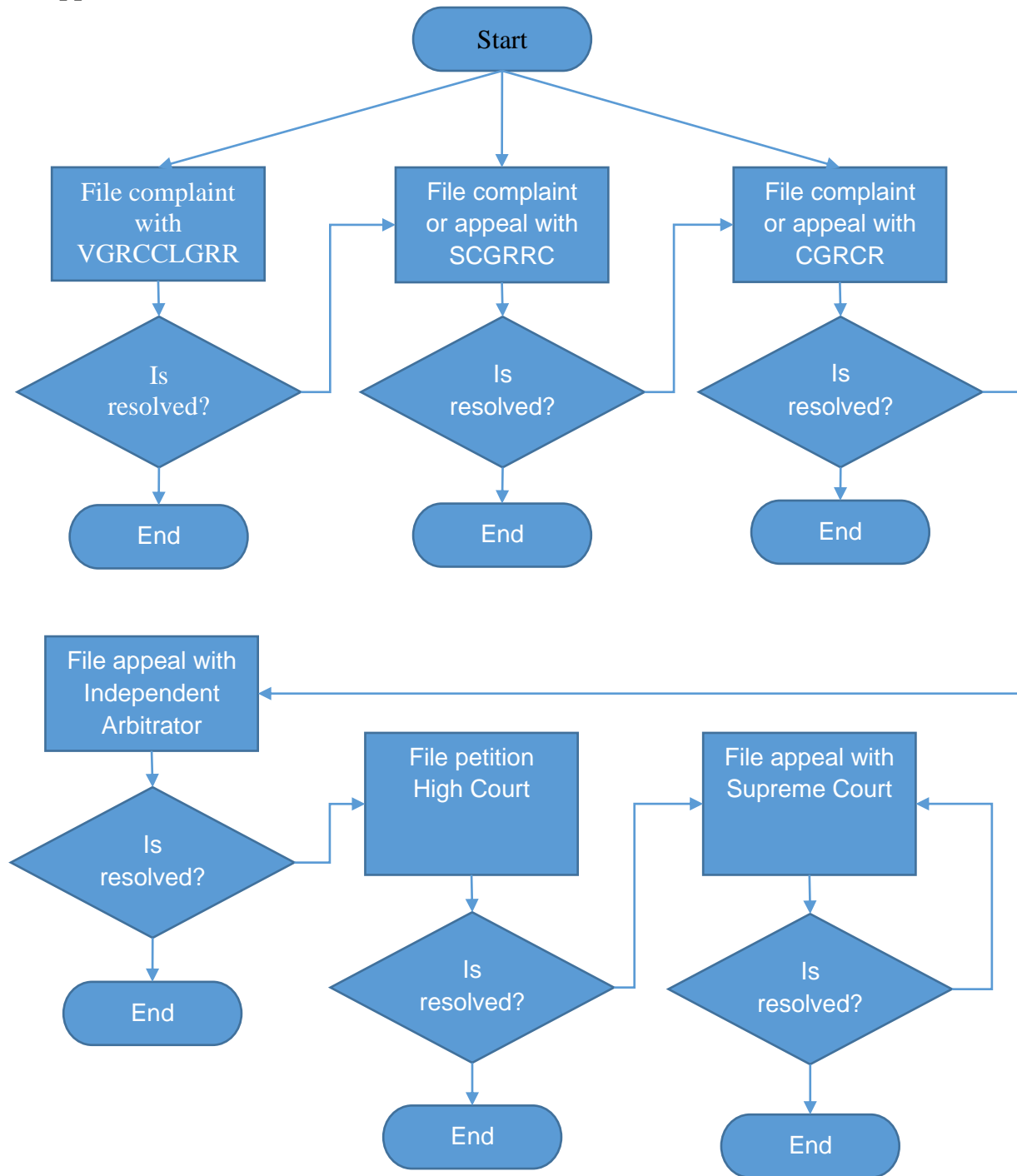
Every complaint and appeal shall be heard by a GRC without any procedural technicality, but in a manner that is consistent with normal, traditional way of resolving contested matters minus any manifest bias and exclusionary practice. All hearings by a higher committee shall be open, unless the nature of the dispute is such as would warrant some restriction of public access to the proceedings, except that such restriction shall be very rare and then only in exceptional cases. A complaint shall have a right to prove his/her case entirely through the testimonies of others (without him/her testifying directly).

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

#### **11.12 Appeal Procedures**

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

**Figure 14: Process of filing complaints and the taking, hearing and resolution of appeals.**



## **12 INSTITUTIONAL ARRANGEMENT AND IMPLEMENTATION**

A complex Project such as the Mwache Multipurpose Dam Project with the requirements of the RAP requires an adequate implementation set up, with agreed roles and responsibilities. The RAP will be implemented within one overall organizational set up, by multi-disciplinary teams (see below) on different levels.

The intended implementation arrangements with a range of key actors on different levels, representing different entities, require the development of an overall communication plan for Project implementation (see below), in order to facilitate efficient performance. A mix of institutions – government agencies at the County, Sub County and National levels and specialized technical agencies would be involved in RAP implementation.

### **12.1 National Government-Ministry of Water and Sanitation**

Ministry of Water and Sanitation (MoWS), through Kenya Water Security and Climate Resilience Project (KWSCRCP) will be responsible for the overall RAP implementation and coordination or related activities. The MoWS is responsible for mobilization of financing from The National Treasury (NT) and sourcing for grants where necessary for the successful implementation of this RAP. MoWS has been given money by the National Treasury for RAP implementation and has in turn given a deposit of the required funds to NLC to compensate the first batch of PAHs in accordance with the National Land Commission (NLC) Act 2012.

### **12.2 KWSCRCP-National Project Management Unit and Coast Project Management Unit**

The KWSCRCP has 2 full time safeguards-dedicated staff based at the NPMU office in Nairobi and a full-time Social Development Officer based at the Coast PMU Office in Mombasa. These 3 experts have directly been supporting and supervising the RAP Consultant in preparing the Mwache Dam RAP and hence have in-depth knowledge of the social setting of the Duruma community and their complex land tenure system. They are therefore well prepared to support the PAP community during the RAP Implementation phase to ensure they have a safe landing in their new resettlement areas. PMU is currently recruiting one Communication Expert and one Social Safeguards Expert. The PMU Dam Engineer will oversee the dam construction activities. He will be the link between the engineering teams (contractors and supervising engineers) and safeguards team ensuring that the integrated construction and safeguards work schedule is followed and updated where necessary. The staff will be mobilized at the project area by the start of the resettlement activities. This PMU team of experts will hence provide the management and technical support and supervision necessary to ensure successful RAP implementation. PMU is headed and all coordination meetings chaired by the Project Manager.

### **12.3 RAP Conveyance Consultant**

The project has engaged a legal conveyance consultant to address the issues with respect to land ownership rights which have significance on the ability by NLC to award compensation.



The consultant is required to assist all Project Affected Households (PAHs) with succession issues including lack of title deed resolve these issues and obtain title deeds in order to receive compensation as required by NLC Act 2012. The RAP Conveyance consultant reports directly to the KWSCR/NPMU.

#### **12.4 RAP Implementation Team**

The project is recruiting a RAP Implementation Team (firm of experts) who will have primary technical responsibility for implementation of this RAP (and the VGMP) and will, among other tasks: Lead the development and implementation of household level Livelihood Restoration Plans (LRPs) and communal LRPs in cases where a number of PAHs decide to relocate and resettle together; Provide support and assistance in relocating PAHs in accordance with their preferences and the commitments outlined in this RAP; Facilitate the process of land identification and acquisition for PAHs who wish to acquire land and have not identified potential parcels; Provide financial training to PAHs prior to receipt of cash compensation to help manage their compensation; Provide business and vocation training opportunities to the PAHs; Ensure that livelihood support activities capitalize on the project benefits to the community, such as improved access roads, provision of irrigation and potable water to be provided under the project; Ensure that additional assistance is available and provided to people vulnerable to disproportionate harm due to the project; Prepare a working schedule for RAP implementation with appropriate budgetary provisions and coordinate with all other actors in the project area to ensure that the RAP implementation is sequenced with the needs of the project construction schedule. The RAP Implementation Team will report directly to the KWSCR/NPMU. The RAP Implementation Team will also assist the RAP Implementation Steering Committee in the evaluation and determination of approach to difficult cases (including PAHs who opt out of livelihood support or those who have difficulty securing land for any reason including anyone currently dependent on family land) and advise the NLC on a schedule of payments.

#### **12.5 RAP Implementation Steering committee**

The large number of actors involved in the implementation of this RAP and the atypical arrangements under which cash compensation will be released under this RAP, there is a significant requirement for multi-stakeholder coordination and decision making. As such, RAP implementation will be overseen by a Steering Committee chaired by the Governor of Kwale county with the KWSCR providing the secretariat. The committee will include CDA, Kwale county, KWSCR, the NLC, the ministry of lands and planning, and the RAP implementation team and GRC chairpersons. The Steering Committee will provide a forum for coordination and resolving problems associated with RAP implementation. In addition, the Committee will provide the RAP Implementation Team with guidance on how to proceed in any individual case where the PAHs insists on opting out of an assisted Livelihood Restoration Plan as a pre- condition of release of cash compensation. . The TORs for this committee are at Annex 14

## **12.6 Safeguards Implementing Unit**

In addition, a Safeguards PIU has been constituted with the mandate of specifically managing and supporting the Mwache Dam RAP implementation related activities on a full-time basis. The Safeguards PIU team will have 44 members who include all the above described staff from the PMU, staff sourced from the CDA PIU, Kwale PIU, RAP Implementation and RAP Legal Conveyance Firms of Experts and Grievance Redress and Resettlement Committees. (Refer to **Annex 11** for the Safeguards PIU Organogram).

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

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

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

### **Communication and Coordination**

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

**Management of RAP Implementation**

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

**Change Management**

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

**Capacity building**

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

**12.7 National Land Commission**

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

**Summary Roles of NLC**

- Accept and approve request made by KWSCRPMU to acquire land for the Project;
- Gazette all the PAHs
- Notify PAHs by gazette notice of the intention to acquire land;
- Undertake public consultation on intended acquisition;
- Conduct asset valuation of all assets
- Assist in resolving disputes related to compensation;
- Undertake actual payment of entitlement awards to PAHs
- Acquire land on behalf of client;

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

#### **12.8 Grievance Redress and Resettlement Committees**

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

#### **12.9 Ministry of Lands**

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

## 13 RAP IMPLEMENTATION SCHEDULE

The Integrated RAP Implementation and Construction Schedule is presented in **Annex 12**. A start and end date are not proposed at this stage; the construction implementation is presented over a 34-month period. Activities including but not limited to Stakeholder Engagement, Livelihood Restoration and Monitoring and Evaluation will continue beyond this 12-month period up to a period 5 years. All activities in RAP implementation are listed below but these activities and schedules are estimated in terms of timelines and chronology. A RAP implementation consulting firm hired by the KWSCRCP will prepare the actual RAP implementation plan guided by the activities cited below.

### 13.1 Disclosure of RAP

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

#### **RAP Disclosure Websites**

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

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

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

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

### 13.2 Operationalize Grievance mechanisms

Grievance Redress and Resettlement Committees (GRRCs) at all the levels (Village, Location, Sub County, County) will be established and operationalized and provided with training as required to execute their tasks. This has been scheduled for March 2019 after letters were sent to CDA and Kwale County Government to nominate officers to support t GRCs formation and operationalization. The Office of the County Commissioner has been requested in writing to spearhead this process and a budget prepared and waiting provision of fund by the Ministry's accounts department,

**Devise Phase-Wise Plan:** The KWSCRCP/NPMU and PIU for Mwache Dam and RAP Implementation Consultant will use the construction schedule from the Dam Contractor that specifies the areas that shall be: i) used for construction purposes such as borrow pits or quarry sites; and ii) areas submerged and the time period when it is likely.

It shall help to prepare a clear list of PAHs who need to be addressed on priority, provide them with stipulated time following issuance of expropriation notification, prepare a relocation plan, urgently plan the preparation of resettlement sites (if determined to be necessary) process and pay entitlements before physical displacement.

### **13.3 Conduct Training Programme for Officials**

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

### **13.4 Other RAP Implementation Activities**

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

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

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

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

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

**Payment of compensation and vacation of land:** All payment of compensation will be made by NLC as provided by NLC Act. Payments will be made directly to PAP's bank

account no later before the date by which the land must be vacated.

Upon payment by NLC, PAHs will be given 30 days' notice as provided by NLC to vacate site before possession of site by client. The 30-day notice before vacation of site is to allow PAHs to prepare adequately for relocating if necessary.

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

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

**Internal Monitoring:** The internal monitoring programme under PIU will commence soon after RAP approval. It shall record: a) progress made and record project inputs and the number of persons affected and compensated; and b) measure progress with involuntary resettlement against scheduled actions and milestones, using input and output indicators. Report with comments about activity progress will be prepared each week towards the monthly report and detailed quarterly will be sent to the KWSCR. The monitoring results will be shared with the PAS/communities and accessible to all stakeholders.

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

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

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

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

Refer to table below and to Annex 12



**Table 24: RAP Implementation Schedule**[illegible]

## **14 MONITORING AND SUPERVISION**

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

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

### **14.1 Adaptive Management Approach**

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

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

Key features of adaptive management are:

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

### **14.2 Internal Monitoring and Reporting**

The RAP requires Safeguards PIU to engage in continuous, pro-active and comprehensive self-monitoring of the activities related thereto all adverse impacts, and compliance. Starting from the beginning of preliminary works and consequent construction phase Safeguards PIU will be responsible for monitoring the infrastructure construction of the resettlement areas and will establish a monitoring group for this purpose. The monitoring staff will report regularly to the KWSCRП safeguards unit of the NPMU. Self-monitoring and reporting by the Safeguards PIU to KWSCRП is intended to be the chief (but not

exclusive) means of ensuring compliance with its obligations.

#### 14.2.1 Monitoring of Construction Activities

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

#### 14.2.2 Monitoring of Resettlement Activities and Measures

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

**Table 25: RAP Monitoring Indicators**

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

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

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

Item	Indicator	Variable	Impact Aspect
	Procedures in operation	<ul style="list-style-type: none"> <li>• Census and asset verification/quantification procedures in place</li> <li>• Effectiveness of compensation delivery system by NLC</li> <li>• Number of land transfers effected</li> </ul>	

### 14.3 External Monitoring and Reporting

#### 14.3.1 RAP Audit Consultant

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

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

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

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

#### **14.3.2 Disclosure of Monitoring Reports**

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

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

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



## **15 RAP BUDGET**

This chapter contains a summary of the costs for implementing the resettlement action plan and a high-level implementation schedule. Critically, it also lists the assumptions that underpin both the cost estimate and the schedule.

### **15.1 Assumptions**

The assumptions listed below contribute to defining the boundaries of this cost estimate.

- The compensation amounts contained in the government-approved valuation report are the numbers that will be used to direct compensation payments and other entitlements. Any disputes may delay the process and could necessitate a revision of the estimate.
- The budget is focused only on the compensation of resettlement impacts, including livelihood restoration. It currently excludes:
  - Cost of contractor fees for RAP implementation.
  - Cost of training and capacity building.
  - Cost of legal support and grievance management.

### **15.2 Unit Cost of Land in the project Area as established during the RAP Period**

This report considered the local rates, consulted the county's department of land and local land economists for comparables, and most gave a figure of between Kshs 100,000 to Kshs. 150,000 per acre for rural Kinango sub-county and up to Kshs 250,000 for urban Kinango i.e. Mazeras and neighboring settlements. This RAP has adopted a rate of Kshs. 350,000 per acre for land parcels lying within the main dam and Kshs. 300,000 for parcels further inland i.e. the check dam to allow for provisions of full replacement cost as allowed by WB O.P 4.12.

### **15.3 Unit Cost of Affected Structures**

In valuing the structures, that is, the cost of replicating a similar structure at the current cost/rate of construction per square foot, the rates below per unit cost were considered during valuation of the structures. Most of the structures in the project area are built using mud and palm (makuti leaves) as construction material.

The unit cost used for valuation of structures

- Mud walls house plastered, @ 1,000/= per sq. ft.
- Brick walled house, @ 1,500/= per sq. ft.
- Mud walls and makuti roofing, @ 800/= per sq. ft.
- Stone walled houses @ 2,500/= per sq. ft.

In addition, a 15% disturbance allowance was allowed to cater for relocation cost which included cost of transport and labour. Additionally, the RAP report also provides for the PAPs to salvage construction materials from their houses.

### **15.4 Unit Cost of Affected Crops and Trees**

The carrying capacity of 1acre for maize is estimated at 30 bags while other seasonal crops are estimated at 200 kilos.

In computing the replacement cost for loss of maize and other seasonal crops, the RAP study adopted local rates of department of agriculture of calculations and multiplied with these per parcel to arrive at the values. This was the methodology adopted in computing the unit rate for maize and other seasonal crops. For crop valuation, local rates from the State Department of Agriculture and markets were adopted taking into account acreage of each particular crop. The emphasis was to ensure full replacement cost of trees likely to be affected and therefore the valuation adopted the local KFS (Kenya Forestry Services) rates, considering the age factor for trees.

This was the methodology adopted in computing the unit rate for maize and other seasonal crops.

For crop valuation, local rates from the State Department of Agriculture and markets were adopted taking into account acreage of each particular crop.

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

For soft wood the following rate was adopted for a unit cost;

- Young @ 200/=
- Medium @2,000/=
- Mature @4,000/=

For hardwoods and fruit trees, the following rate was adopted for a unit cost;

- Young @ 200/=
- Medium @ 3,000/=
- Mature @ 6,000/=

For other categories of trees, the valuation adopted the following unit rates;

- Bamboo- @ 100/= per stem
- Banana - @500/= per stem
- Baobab - young @600/=, medium @3,500/=, mature @ 10,000
- Coconut - young@600/=, medium- @5,000, mature- @15,000
- Mango - young@ 600/=, medium @ 3,500, mature @ 10,000
- Cashewnut - young @600/=, medium @3,500, mature@10,000

**Annex 3** of this RAP report provides details of PAPs enumerated on site and appropriate compensation packages eligible to them.

### **15.5 Approval of RAP Cost Values**

In accordance with the National Land Commission (NLC) Act, the RAP budget will be reviewed and approved by the National Land Commission.

The Ministry of Water and Sanitation (client) will submit this RAP report to NLC which NLC will then use as a basis for going to the field to undertake its own inspection and valuation of assets and thereby coming up with the RAP cost which may or may not be similar to the cost arrived at for this RAP. The cost arrived at by NLC shall form the actual compensation cost of this RAP.

NLC will submit the cost based on its valuation of assets to MOWS with a request for authorization by the client to give NLC the go ahead to make payments based on the payment schedule submitted.

Payments to the PAHs will be made upon official and written authorization by the client upon which NLC will make payments to the Bank accounts of the PAHs.

The total budget for resettlement compensation is Kshs. 3,904,699,941.33 including disturbance allowance and livelihood restoration costs. In addition, administration cost of 15 percent for the RAP implementation and monitoring and evaluation has been considered. All costs associated with this RAP as highlighted in Table 26 below will be met by KWSCR. However, the total costs of the RAP are bound to change as the unit prices will further be reviewed at the early stage of implementation to reflect the market prices and/or value and hence full replacement cost at that time.

**Table 26: Total RAP Budget**

	<b>Total RAP Cost</b>	<b>Amount (Ksh)</b>
1	Land	1,001,335,390.37
2.	Structures	284,457,620.50
3.	Crops and Trees	126,923,544.00
4.	Loss of Business	61,264,200.00
	<b>Sub Total 1</b>	<b>1,473,980,754.87</b>
5.	Disturbance Costs (15%)	221,097,113.23
	<b>Sub Total 2</b>	<b>1,695,077,868.10</b>
6.	Livelihoods Restoration Activities/ Community Projects (SC 1.3)	1,983,524,960.00
7.	Facilitation of Grievance Redress and Resettlement Committees	5,000,000.00
8.	Contingency Costs (15%) of RAP cost	221,097,113.23
	<b>Sub Total 3</b>	<b>2,209,622,073.23</b>
	<b>Grand Total (2+3)</b>	<b>3,904,699,941.33</b>

## **15.6 Budget Requisition and Flow of Funds for RAP Implementation**

The Government of Kenya through the Ministry of Water and Sanitation (MOWS) has committed to provide funds for RAP implementation to ensure it is implemented in a timely manner. MOWS shall be the responsible agency for implementation and monitoring of all the RAP activities. It will be responsible for making the budget requisition from National Treasury for implementation of the RAP.

The Ministry shall then provide the National Land Commission (NLC) with the necessary funds for direct payment of compensation to the PAPs. The compensation payment will be for the acquired land, houses and other structures, trees, perennial crops and any other allowances thereof. The funds will be made available to NLC in a timely manner to complete all aspects of RAP implementation.

The RAP Implementation Firm and related activities that the firm will be required to undertake under the ToRs will be financed by the IDA funds.

The Project Management Unit (PMU) will be responsible for contracting an independent RAP Audit and monitoring Consultants so as to evaluate how the compensation process is being carried out and measure its success or otherwise.

## **ANNEXES**

## **Annex 1: Minutes of Various Consultation Meetings**

## Minutes of Consultation Meetings

### 1) PUBLIC CONSULTATION AT KASEMENI DO'S OFFICE ON THE 10 JULY 2017

#### **Agenda**

Agenda 01: The meeting began at 11:15 am. Opening prayers conducted by Mlongo Rocha.

Agenda 02: Introductions. Assistant Chief Mr. William Kamanza Nyundo then introduced the participants. He urged the gathering to take advantage of the meeting to discuss soberly and focus on the development that will be brought about by Mwache Dam.

The Assistant Chief urged the participants to be much focused and not to allow politics to interfere with the development project. The youth were also urged to be careful not be taken advantage of by the politicians especially during the campaign period. He then called Ward Administrator Mr. Price Katana.

**Mr. Katana** informed the community that the RAP exercise was being updated since implementation did not take place after the first one was carried out in 2014. The update he reiterated was important since there a lot that has changed in the three-year period. He urged the RAP consultants to engage the Dam Committee in all the activities.

**Fauzia Abdalla (CDA):** Fauzia informed the gathering that she was extremely happy the dream of having Mwache Dam Project implemented was coming to pass. She requested the community to give the consultants maximum cooperation to allow for a smooth process.

**Eng. Wainaina (CDA):** Eng. Said he was extremely happy that the government has decided to update the RAP. He urged the Community to collaborate with the consultants for a smooth process.

**Mr. Stephen Mwachiti (Dam Committee Chairman):** The chairman was thankful that the government had chosen Mwache River for the Mwache Dam Project. He requested that the compensation for the losses be expedited and he also promised to work very closely with the consultants.

**MCA-Hon. Yama:** The MCA thanked the government for having settled on Mwache River for the project. He however cautioned the Consultant to exercise fairness in his report especially on Valuation and also to ensure that the locals (Duruma's) customs and traditions are observed during the census process.

**Consultants-Tech Training and Research Team:** The consultant informed the gathering that the RAP was being updated because a lot has changed on the ground since 2014. The dam design has also been changed with the dam height being increased. This implies that more households would be affected thus making an update a necessity.

The Consultant explained the whole RAP process from Public Consultation to Compensation. He informed the gathering that Public Consultation forms an integral part in the RAP process and therefore open and focused discussions were needed for a successful process. The floor

was then left open for views of the participants on the proposed project.

### **Issues and Response PAHs Meeting in Kasemeni**

<b>Questions and Comments</b>	<b>Responses</b>
How will compensation for sub-divided parcels of land be done?	Sizes of each parcel of land will be obtained and each owner will be compensated for the size that will be affected by the project
Why is the process being repeated? What assurance are you giving us that implementation will take place?	The 2017 census is an update of the previous study. It arises due to the fact that the dam height has been increased which indicates that new households will be affected.
There were assets that were there in 2014 and perhaps will not be there when this new census will be done. How will you handle such cases?	The RAP team will be conducting a fresh census and asset inventory. What is existing during this study is what will be documented.
What about graves? Will you compensate for graves as well?	The consultant team will record all affected assets including graves during the census survey and inventory of assets and then compensation will be done in line with the traditional/religious norms/rites of the people affected.
Will Project Affected Persons able to know their compensation immediately the census is done?	The PAHs will only have information on this once the RAP team has compiled and submitted a report and the report is approved by MOWI and the WB. Both MOWI and WB will disclose the report and its annexes to the public.
In past projects like the SGR, a lot of PAHs were not happy with what they got as compensation (valuation). How are you going to ensure that such cases do not arise here?	The RAP team's valuers will conduct the valuation process professionally. In the event that the asset owner feels that valuation is insufficient, PAHs can approach the grievance redress and compensation committees at all levels.
We have seen cases where a family is compensated and then the household head (husband/father in most cases) disappears with all the money leaving the family in abject poverty. Are you able to put some systems in place to look into such kind of behaviors?	We will recommend in our report that PAHs undergo financial management training before compensation is made. We will also advice couples to have a joint account where both will be signatories to ensure that compensation funds are not mismanaged.
Will our youth get jobs in this project?	The youth will get jobs beginning with this RAP exercise. The RAP team will require around 25 youth of both gender who will assist in data collection. The youth will be recruited through the office of the Chiefs and ward administrators across all the villages in the



Questions and Comments	Responses
	<p>project area.</p> <p>RAP report will recommend for employment of locals in activities that do not require complex skills hence ensuring that the locals benefit.</p>
What qualifications would the Research Assistants have?	College education would be preferable, though a minimum of form four education with at least a “C” grade would suffice. Knowledge of Swahili and the local language (Duruma) is also required.
Most of us have land but they are not registered, i.e. we have no titles for these parcels. Will this not affect compensation?	This will not affect compensation as each PAH will show the Consultant his parcel of land, the size that will be needed for the project will be measured and valuation done as per the affected area. The meeting was also reminded that in case a significant portion of land is to be affected then the whole parcel would be acquired outright by the project and compensated as needed.
Yes, we have areas within the community that is not affected by the project that we can move to once we are compensated. Our neighbors are our kin and will be able to accommodate us.	Are host communities able to absorb those affected and need to be relocated?

## 2) PUBLIC CONSULTATION AT MNYENZENI PRIMARY SCHOOL ON THE 11 JULY 2017

<p><b>Agenda Items (Meeting with Potential PAHs in Mnyenzi)</b></p> <p><b>Agenda 01:</b> The meeting began at 10:38 am with a word of prayer from Mzee Katana.</p> <p><b>Agenda 02:</b> Introductions. The area assistant Chief Mr. Nyamawi Mbudzya called the meeting to order and then gave a brief of the purpose of the meeting.</p> <p>He informed the potential PAHs that the main reason why the RAP process was being redone was because three years had elapsed without implementation since the first one was done in 2014. This was going to be an update of the previous RAP study.</p> <p>He urged the participants to be free and open in the discussions and give their views about the process and the project in general. The floor was then left open for questions/Comments and responses.</p>
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### Issues and Response PAHs Meeting in Mnyenzi

Questions and Comments	Responses
Who exactly are the affected People in this project?	There is a design and a map that has been developed. The RAP team will therefore use

Questions and Comments	Responses
	the maps that have been developed and downloaded into our GPS machines to identify the PAHs.
What is the process of census survey, asset identification and valuation?	The RAP consultants have prepared survey questionnaires that will be use to enumerate the PAHs, undertake census survey and conduct valuation of assets.
How will you handle land disputes?	The RAP team will encourage parties in any disputes to try and resolve their cases before we carry out any census. A GRM system will also be set up and PAHs will be encouraged to resolve their disputes through this system.
Will the Consultant involve the locals during this process?	Local residents will be involved during this study. At least 25 Research Assistants will be recruited through Chiefs/ Ward administrators across all the villages within the project area. In addition, the consultant will be accompanied by two village elders on a daily basis.
Will we be compensated for the whole parcel?	Where less than 20% of the land is affected, this is what will be compensated. Where a significant portion is affected rendering the remainder as uneconomically viable, the whole parcel will be acquired and compensated for as per requirements.
Will we have the opportunity to know of what size of our land will be affected immediately?	This information will be availed during the disclosure of the RAP report.
Will Self Help Groups having projects within the project area be compensated?	All parties with land, structures, crops and trees and any income generating activity within the PA and who will be affected will be compensated. An entitlement matrix will be developed indicating what each PAH is entitled to arising from the findings of the census and inventory of assets.
Will land owners without title deeds be compensated?	The parcels will be valued and compensation done.
What makes this process unique from the 2014 one? How sure can we be that implementation will be done this time round?	The government and financial partner (WB) are committed to ensuring that the project is implemented as part of developmental goals set. Funds have already been set aside and once this RAP study is complete and the report approved, compensation will follow and construction will commence.
What will form the basis of your valuation?	Valuation will be done in line according to the current market value/rate of this particular

Questions and Comments	Responses
	region and it will be carried out by qualified valuers who are part of the RAP team.
What of in areas where almost the whole piece of land is affected, will you only compensate for the affected area?	In cases where a significant portion of the land is affected, the land owner will be compensated for the whole parcel.
We have seen cases where Project Affected Persons are promised compensation like you are doing now, and then later abandoned without a single cent. Is this also going to be the same?	All affected individuals will be reasonably compensated and this will be done before they are relocated. No construction will commence before compensation is done. PAHs will also have the right to salvage and a grace period before relocating.
How and who will take the inventory of our assets? What criteria will be used for compensation?	The RAP team is composed of enumerators who are well trained to document all the assets that will be affected by the project. Compensation will be pegged on the prevailing market rates.

### 3) CONSULTATION MEETING WITH PAHs AT FULUGANI VILLAGE, KASEMENI LOCATION - 13 JULY 2018.

<b><u>Agenda</u></b>
<ul style="list-style-type: none"> <li>The meeting began at 14:00HRS with a word of prayer from Shaban Ndegwa followed by introductions.</li> <li>Mkalla Mwero from KWSCRIP gave an overview of the project and the need for additional works (RAP) as well as introducing the consultant's team.</li> <li>The Consultant explained to the gathering the whole process of RAP from Consultation to project implementation. The consultant emphasized that a similar process would be undertaken on this additional works as done during the previous study.</li> </ul>

#### **Issues and Response PAHs in Fulugani Village**

Questions/Comments	Responses
A similar study was done 1 year ago, why is it being repeated?	Yes, a RAP was conducted in 2017. This is additional to the previous study due to additional components added by the project.
We need transparency when it comes to land issues; this is because we would not want cases where people who are being compensated are not real PAHs.	The RAP team has conducted the exercise here previously. A similar system will be utilized so as to conduct a census of PAHs guided by the project design as fed onto our GPS machines. We will be able to identify those actually affected, enumerate them and take an inventory of their assets. These will be valued and compensation recommended.
The project has both positive and negative	The dam design and management will ensure

Questions/Comments	Responses
side for example wild animals like hippopotamus and crocodile will come because of the project how will this be helped?	that such risks are eliminated or limited significantly.
If the consultant gives low value to our land and structure can we reject it?	What the consultant will have recommended will be arrived at using the rates and standards prevailing at this time, NLC will also do their valuation and if one is still not satisfied with what is offered, they will be encouraged to channel their grievances through the GRM system that will be set up. One can also use other legal means if still not satisfied.
Who will manage the dam?	The dam will be managed by MOWI through the PMU in conjunction with CDA and the County Government of Kwale.
We have not seen the report for the study done in 2017, where is it?	A draft report was submitted by the consultant to KWSCR. Due to these additional requirements, the report will be disclosed inclusive of additional works.
We have sons who have reached maturity and had us subdividing the land. How will it be reported in the final draft?	An entitlement matrix has been designed and will incorporate all PAHs.
Additional works scope covers areas we were planning to move to after displacement in the original design, what alternatives do we have?	The project has put in place elaborate mitigation measures to ensure all PAHs have adequate compensation and their livelihoods restored.

#### 4) CONSULTATION MEETING WITH THE BEACH MANAGEMENT UNIT (BMU) AT BONJE ON THE AUGUST 2017

<ul style="list-style-type: none"> <li>The meeting began at 3:00 pm by a word of prayer from Beatrice and then the introductions followed soon after.</li> <li>Engineer Wainaina then gave the gathering an overview of the project and then introduced the Consultant.</li> <li>The Consultant explained to the gathering the whole process of RAP from Consultation to project implementation. He also explained to the gathering the reason as to why the process was being redone. The consultant then urged the gathering to be open and candid in the discussions.</li> </ul>
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#### Issues and Response Beach Management Unit

Questions/Comments	Responses
In your explanation, you said the project will be implemented this time round, How	We have gotten assurance from the government that the funds have been set aside

sure are we that it will not be like last time?	and what is remaining is just the RAP report. So the process of implementation will commence immediately the RAP report has been accepted.
Will the Dam not change our lives to the worst instead?	The project is aimed at improving the lives of the people of Kwale, Mombasa county and the Country at large.
Will our families also be considered for employment?	The locals will be considered for employment especially manual jobs. The contractor will be advised to take this into consideration.
We understand that the road linking areas like Bofu to Mazeras will be affected. Does it mean therefore we will not be able to access towns like Mazeras?	The project is aware of this issue and has set up measures to ensure connectivity is not hampered.
When will the implementation begin?	Implementation will commence immediately compensation of the PAHs has been carried out.
How many households will be affected?	It is still not known, however the consultant will be able to tell after the census process is completed.
What size of land will be required for the project?	It is still not known, however the size and the number of parcels will be known after the census process is done and the report compiled.

#### **5) CONSULTATION MEETING WITH PAHs AT CHIGATO VILLAGE, KASEMENI LOCATION – 3 AUGUST 2018**

<b>Agenda for Meeting at Chigato Dispensary Grounds</b>	
<ul style="list-style-type: none"> <li>• The meeting began at 11:00HRS with a word of prayer from Tuku Nyondo followed by introductions.</li> <li>• Mkalla Mwero from KWSCRIP gave an overview of the project and the need for additional works (RAP) as well as introducing the consultant's team.</li> <li>• The Consultant explained to the gathering the whole process of RAP from Consultation to project implementation. The consultant emphasized that a similar process would be undertaken on this additional works as done during the previous study.</li> </ul>	

#### **Issues and Response to PAHs**

<b>Questions/Comments</b>	<b>Responses</b>
What is the project about? We already have been sensitized on dam components.	The proposed upgrading of this access road will ensure easy access for construction equipment to the lower check dam.
What is the width of the road and extent of RoW?	The road RoW width is 20 meters to be measured from the centre. Any PAH asset within the RoW will be compensated as per the

	developed entitlement matrix but not land.
Some of us are already affected by the proposed dam i.e. we are within the dam sphere of influence, do we get compensated for loss regarding this component?	An entitlement matrix has been developed and will capture all categories of PAHs and their entitlements. Those with assets lying within RoW will be captured and compensated as laid out in the entitlement matrix.
We are not privy to the recommendations of the previous study. When will it be disclosed?	The RAP report comprising all the components of the project will be submitted and disclosed publicly by the client (MOWS) and World Bank. The document will be disclosed in hard copies as well at the County, Sub County and CDA office.

#### **6) CONSULTATION MEETING WITH PAHs AT CHIGATO VILLAGE, MWATATE LOCATION - 19 JULY 2018.**

<b><u>Agenda</u></b>	
<ul style="list-style-type: none"> <li>• The meeting began at 14:00HRS with a word of prayer from Umazi Mwanziye followed by introductions.</li> <li>• Mkalla Mwero from KWSCRIP gave an overview of the project and the need for additional works (RAP) as well as introducing the consultant's team.</li> <li>• The Consultant explained to the gathering the whole process of RAP from Consultation to project implementation. The consultant emphasized that a similar process would be undertaken on this additional works as done during the previous study.</li> </ul>	

#### **Issues and Response PAHs in Chigato Village**

<b>Questions/Comments</b>	<b>Responses</b>
A similar study was done 1 year ago, why is it being repeated?	Yes, a RAP was conducted in 2017. This is essentially not a repeat but additional works to the previous study due to additional components added by the project.
How will the silt pile benefit the community?	The designated silt pile area will hold silt/sand from the check dams i.e. upper and lower. This will be put to commercial use hence be of benefit to the community.
Why does the silt pile require such a large area? 500 acres?	The area size has been determined by designs and projections done by the PMU.
If the consultant gives low value to our land and structure can we reject it?	What the consultant will have recommended will be arrived at using the rates and standards prevailing at this time, NLC will also do their valuation and if one is still not satisfied with what is offered, they will be encouraged to channel their grievances through the GRM system that will be set up. One can also use

Questions/Comments	Responses
	other legal means if still not satisfied.
We have not seen the report for the study done in 2017, now you have additional requirements where is it?	A draft report was submitted by the consultant to KWSCR. Due to these additional requirements, the report will be disclosed inclusive of additional works.

## **7) CONSULTATION MEETING WITH PAHs AT MAZERAS VILLAGE, MWATATE LOCATION – 3 AUGUST 2018**

<ul style="list-style-type: none"> <li>The meeting began at 14:00HRS with a word of prayer from Rashid Makanzu followed by introductions.</li> <li>Mkalla Mwero from KWSCR gave an overview of the project and the need for additional works (RAP) as well as introducing the consultant's team.</li> <li>The Consultant explained to the gathering the whole process of RAP from Consultation to project implementation. The consultant emphasized that a similar process would be undertaken on this additional works as done during the previous study.</li> </ul>
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### **Issues and Response PAHs in Mazeras Methodist Church Grounds**

Questions/Comments	Responses
What is the project about?	The upgraded access roads will ensure easy access for construction equipment to the dam site.
What is the extent of the RoW?	The road has a width of 40 meters as measured from the centre i.e. 20 meters on each side from the centre.
Will we be compensated? The land we have built on is under the Methodist Church title?	An entitlement matrix has been developed and will capture all categories of PAHs and their entitlements.
Can the access road design be redone to reduce number of potential PAHs? This is because a number of us have built close to the road RoW.	The area size has been determined by designs and projections done by the PMU and KeRRA. RAP study results will assist the PMU in final decision making.

### **PUBLIC CONSULTATION WITH PAHs AT MTAA LOCATION (BOFU) AT THE CHIEF'S CAMP ON THE 12 JULY 2017**

The meeting began at 10:40 am with a word of prayer from Hamisi Ngoro.

- The Village administrator who was also the master of ceremony introduced the guests and the locals as well.
- The consultant then took the floor and explained the RAP process from Consultation, enumeration and inventory of assets to report submission.

### **Issues and Response PAHs Meeting in Bofu**

Questions/Comments	Responses
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<b>Questions/Comments</b>	<b>Responses</b>
How will we benefit from the project as the locals?	Job opportunities will be created during the construction and operational phase of the project.
Will the Ministry manage the dam on our behalf or it will be left for the locals to manage?	The Ministry of Water and Irrigation through the project PIU and CDA will manage the project in conjunction with the county government.
We understand that the only bridge that helps access the town will be affected; will there be an alternative route?	The government through the ministry is looking into the matter and is in the process of designing alternative access roads.
Will the project help improve roads as well?	The project has potential to improve existing infrastructure and improvement of roads will be considered.
What size of our land will be taken?	The size is not uniform to every individual. It will vary from person to person and will be determined during census and asset inventory
Will you value cash crops like “mnazi?” - coconut tree	All assets i.e. structures, crops and trees and land parcels will be inventoried documented and valued thus ensuring compensation to respective owners.
What do we do in case we have a dispute on how to share compensation proceeds or if we are not satisfied with the compensation provided?	The project will establish a resettlement and grievance management committee, which will handle any disputes related to compensation. PAHs will be made aware of this committee and will be encouraged to channel their grievances to the said committee. In case they would not be satisfied, they will be free to use other legal channels available.
When will the project implementation commence?	The project is expected to commence in early 2018 subject to approval of the RAP and compensation to PAHs
You are likely to encounter a lot of land disputes; how will you deal with this?	Together with the chiefs and village elders, we will try and assist parties in disputes to come to a harmonious resolution but we will not make any decisions on their behalf. In cases where parties to a dispute do not agree at all we will not carry out any exercise on such a parcel of land.
Will there be overflows from the dam?	The dam is designed in a way that overflow is controlled. The design has been reviewed by a panel of dam experts and is expected to be safe
We have seen cases where contractors come with their own workers even for manual jobs; We will not allow the same here	The procured contractor will be expected to hire the residents within the project area both for manual and skilled jobs where the locals qualify.



Questions/Comments	Responses
Will we have a choice on what mode of compensation we prefer?	Compensation will be as per the choice of the individual PAHs. It may be in money form or as an asset equivalent.

#### **8) Minutes of Meeting held with elected leaders from Kinango sub-county in Coast PMU offices on Friday, September 14, 2018**

The meeting was mutually arranged with the Kinango Constituency Member for National Assembly, Hon. Benjamin Dalu Tayari. He requested to come with the MCAs from the Mwache dam project area namely; Hon. Anthony Yama (Kasemeni Ward), and Hon. Joseph K. Ndeme (Mwavumbo Ward). During the Meeting an tentative Agenda was developed as follows: -

- 1). NLC visit to the area and the list of 206 PAPs.
- 2). Additional works areas.
- 3). Roads and other infrastructural developments.
- 4). Kwale County Projects.
- 5). Sacred/Cultural areas of Worship.
- 6). AOB.

##### **1. NLC visit.**

The Leaders were informed that the visit is scheduled for Monday, September 24, 2018.

The NLC Team is planned to meet with both Kwale County Leadership led by the Governor, and the National government officers led by the County Commissioner before proceeding to the dam site for a public meeting to officially kick off the engagements with PAPs.

The Honorable members were of the view that KWSCRCP and them to organize a similar exercise to get to identify the true PAPs. I explained that the 206 PAPs were identified through a similar exercise by the RAP Team in May - July 2018. I also informed them that the 206 is a starting point targeting the main dam PAPs first before moving to the other project PAPs. They observed that they are concerned that some of the PAPs sold their land but have not transferred it to the new owners, while others have passed on. I explained that a Conveyance Consultant hired by the project will handle succession issues; and GRMCs will handle complaints and other grievances. They observed that SGR promised to address all concerns, but left without paying all the PAPs.

##### **2. Additional Works Area.**

At Chigato area, they were informed that the additional land has been reduced by half. Hon Yama wondered if he will still be a PAP. Only the final report by the RAP Consultants will tell. For the main dam site all the land is required. They were of the view that both the Police Post and Health facility be relocated to other places so as to allow some PAPs to settle near the area. They proposed that the Police Post be built on the West bank of the river at Miyani, while the funds for the Health facility be used to upgrade the current Dispensary at Mazeras into either a Health Centre or higher-level health facility.

##### **3. Roads and other Infrastructural developments.**

Roads in the project area have not been designed yet. The MP was however categorical that he has seen the dam axis - Miyani design. He did not disclose the source. For the Mazeras - Main Dam site road, he observed that the idea has generated alot of heat from the local community. He suggested that the project to use the Kwa Magongo - Kesemeni - Mazeras High School - dam site route. He will use CDF or equalization funds to put Cabro from the High school through the Mazeras Mission village to Mazeras Market. He was supported by the MCAs who said that an alternative route is preferred to avoid road traffic accidents along the road.

For other infrastructural projects they commented that they will make proposals to KWSCRIP for consideration.

#### 4 Kwale County Projects.

This issue is to be handled with the County government. They however, pointed out that their efforts to meet with Hon. Hemed Mwabudzo have failed.

They wondered how the CBOs for the Mwache grants were identified. I explained to them the screening process that took place and assured them that the selection was on merit and above board. The screening of CBOs will be carried again in future. It is up to the CBOs in the area to up their game.

#### 5. Sacred/Cultural areas of Worship.

It was explained that, the RAP Consultant moved around with elders identifying the sites for recording purposes. The areas are documented and are known. NLC will have the final criteria to sort out all cultural activities associated with trans - location of the same

The meeting was terse at the beginning but eased off towards the end with the Leaders promising to visit or call the office for clarification going forward. They observed that they will visit NPMU soon to get to know more from the project Management.

### **Key Government Institutions**

## **1) KICK OFF MEETING WITH MWACHE DAM PIU –14<sup>TH</sup> JUNE 2019**

### **INTRODUCTORY MEETING WITH THE MWACHE DAM/PMU, CDA AND THE COUNTY GOVERNMENTS ON THE 14-15 JUNE 2017-CDA OFFICES**

An introductory meeting was held on the 14-15<sup>th</sup> June between the Consultant and PMU, CDA and the County Government.

The Consultants presented their work plan and then a discussion on the same took place. The meeting came up with the following action plans:

1. CDA team (Eng. Wainaina, Millicent and Fauzia) to do direct supervision of the consultant.
2. The consultant to provide updates every month with the CDA contacts and every two weeks in the field.
3. The hiring of RA's to be carried out locally, in an open and transparent manner and to be coordinated by CDA in association with their social staff and chiefs.
4. Update questionnaires to include the following:
  1. Data on polygamous families
  2. Capture preferred methods of compensation (Land for land or Money for land)
  3. The Consultant to conduct 100% PAP visits
    - The consultant to break down the work plan into weekly activities for clarity, indicating largely the activities to be conducted every week.
    - Ride on the CDA and Livelihoods project already on the ground to conduct the public meetings
    - A representative from TTR to attend a meeting to be introduced to the Deputy Commissioner who will in turn introduce him to the chiefs before commencement of work.
    - For Kwale County, Dr. Pakia to share the general Entitlement Matrix with the valuer

- County staff (Surveyor and GIS experts) requested to be involved in the process for knowledge transfer
- When updating the chiefs, the Ward Administrators to be involved so that both levels of government are on the know.

## 2) KINANGO LANDS OFFICE

### **CONSULTATION AT LANDS OFFICE KINANGO 13 JULY 2017 WITH LANDS OFFICER**

#### **Agenda**

- **Agenda 01:** The meeting began at 10:38 am at Kinango lands office.
- **Agenda 02:** Introductions.
- **Agenda 03:** The team leader Mr. Obiero called the meeting to order and then gave a brief of the purpose of the meeting. He took the chance to explain to land adjudication officer Mrs. Kache on the importance of the dam to the locals and the process of RAP and compensation issues.
- **Agenda 04:** The land adjudication officer Mrs. Kache welcomed the consultants and gave a brief knowledge of Mwache Dam project. She also gave approximate price of land at the project area, but the cadastral maps were not available. She also emphasized that in Mwache area the sale of land mostly is willing buyer willing seller. There is no standard set price.

#### **Issues and Response –Lands Office Meeting**

<b>Questions/Comments</b>	<b>Responses</b>
How will the consultants know exactly the real PAHs?	There is a design and a map that has been developed. We will therefore use the maps that have been developed to identify the PAHs.
What is the process of census survey, asset identification and valuation?	The RAP consultants have prepared survey questionnaires that will be used to enumerate the PAHs, undertake census survey and conduct valuation of assets.
How will you handle land disputes? Because in the area there are a lot of cases in regard to land disputes.	The RAP will propose an alternative dispute resolution mechanism for land disputes as well as other disputes as a first step instead of seeking judicial recourse. The RAP will require establishment of GRRC to handle land disputes. Finally, for disputes associated with land related successions, the RAP has required that KWSCRCP engage a legal consulting firm to resolve succession issues before compensation.
How will the compensation be undertaken because in previous projects, locals have been complaining over low compensation	The compensation will be determined by the local current market rate. Also the NLC will also check what the consultant has proposed as compensation to the PAHs.

## 3) DAM COMMITTEE AT KASEMENI DO's OFFICE

**CONSULTATION MEETING WITH THE DAM COMMITTEE AT KASEMENI DO's  
OFFICE ON THE 4<sup>th</sup> OCTOBER 2017 AT 2:00PM**

**Agenda Items (Meeting with Mwache Dam Committee)**

- The meeting commenced at 2:00 pm with a word of prayer from Mr. Mangale.
- The Chairman then introduced the Dam committee team there after the consultants.
- The Consultants individually introduced themselves each explaining their role in the larger team.
- The stakeholder engagement expert explained the purpose of the meeting by giving a project brief and explaining the key activities of the RAP.

**Issues and Response Mwache Dam Committee**

<b>Questions/Comments</b>	<b>Responses</b>
This is the second time this exercise is being carried out. How sure we are that it will be implemented this time round?	This is one of the major projects being done by the current government and they have given an assurance through the Ministry of Water and Irrigation that the project will be implemented this time round.
Will the Dam not change our lives to the worst instead?	The Dam will result into improved infrastructure in the area, it will create massive job opportunities especially during the construction stage, it will attract tourist. All these will benefit the locals.
We have our sacred places like the shrines where we perform our traditions and these will be affected by the project. Will we be compensated?	The Dam design has taken cognizance of this and has tried to avoid impacting on such cultural areas. However, where there will be impact, this will be compensated in line with traditions and culture of the community.
It has been noted that some of the PAHs identified in the previous RAP have been left out of this current one, how is this explained?	The Dam design has undergone review and changes have been made to it. We cannot ascertain that some of those appearing in the previous RAP have been left out until we complete the exercise.
We would like to have a cultural center in our area.	This request is noted and will be passed to the implementing authority for further advice
What will be our role as the Dam Committee?	The Dam committee will play a very critical role from the onset. First, we will request that the committee appoints one of the members to be walking with the RAP team daily to help identify rightful owners of Assets that will be affected.  Secondly, the committee will also assist during implementation in case of any grievances.
Since the first RAP, there are structures that have been constructed and some	We will make use of the latest report i.e. the 2017 one as it will reflect the current situation

demolished. Which report will you use for compensation?	on the ground.
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#### 4) KAYA ELDERS AT KASAMENI CHIEF'S CAMP

##### **CONSULTATION MEETING WITH KAYA ELDERS AT KASAMENI CHIEF'S CAMP ON THE 17 JULY 2017.**

###### **Agenda Items (Meeting with Kaya Elders)**

- The meeting began at 11:00 am by a word of prayer from one of the Kaya elders Mr. Shaban Ndegwa.
- The assistant chief of Mwamdudu sub-location, Kasameni location Mr. Msambala Mumba introduced the Kaya elders.
- Mr. Mkalla then gave the Kaya elders an overview of the project and then introduced the consultant.
- The chairman of the Kaya elders Mr. Shaban Ndegwa explained to the consultants their traditions and how the project might affect some of their historical site and how they would like to be compensated in line with tradition.
- The consultant explained to the gathering the whole process of RAP from Consultation to project implementation.
- The consultant also explained to the gathering the reason as to why the process was being redone. The consultant then urged the gathering to be open and candid in the discussions.

###### **Issues and Response Kaya Elders Meeting**

Questions/Comments	Responses
In your explanation, you said the project will be implemented this time round, How sure are we that it will not be like last time?	We have gotten assurance from the government that the funds have been set aside and what is remaining is just the RAP report. So the process of implementation will commence immediately the RAP report has been approved and PAHs compensated.
Will the Dam not change our lives to the worst instead?	The Dam will be a major developmental infrastructure feature to the people of Kwale county and Mombasa county as well. It will provide water for irrigation and domestic consumption as well as provide job opportunities.
We have our secret places like the shrines where we perform our traditions and these will be affected by the project. Will we be compensated?	The dam design has taken cognizance of this and has tried to avoid impacting on such cultural shrines. However, where there will be impact, this will be compensated in line with traditions and culture of the community through the Kaya elders.
It has been noted that some of the PAHs identified in the previous RAP have been left out of this current one, how is this explained?	The dam design has undergone review and changes. We cannot ascertain that some of those appearing in the previous RAP have been left out until we complete the exercise.

We would like to have a cultural center in our area.	This request is noted and will be passed to the implementing authority for action.
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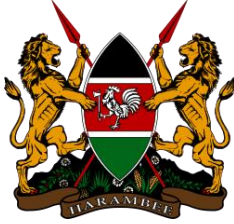
## **Annex 2: Consultation Meetings Attendance Lists**

### **Annex 3: RAP Asset Register**



#### **Annex 4: RAP Cadastral Map**

## **Annex 5: Templates of Census and Socioeconomic Survey Tools**



**RESETTLEMENT ACTION PLAN (RAP) FOR  
MWACHE MULTIPURPOSE DAM PROJECT**



**ASSET INSPECTION AND CENSUS SHEET**

Household ..... No

.....

Name ..... of ..... the  
owner/Administrator.....

.....

Identity  
number.....

.....

Phone  
number.....

.....

Village.....

.....

Location.....

.....

County.....

.....

Type ..... of ..... structure ..... affected ..... (Business, ..... Residential,  
Institution).....

**A. Structure**

TYPE OF STRUCTURE affected	NATURE MATERIAL OF			Size in sq ft	GPS coordinate s	PHOTO NUMBER.	Indicate wether fully/Partial y affected
	Wall	Roof	Floor				
A1.Main house							
A2.House 2							
A3.House 3							
A4.Kitchen							
A5.Store							
A4. Bathroom							
A5.Toilet							
A6 .Water tank							
A7.Borehole							
A8.Goat shed, Cow shed/Poultry House							
A9.Gate/Fence							
A10. Grave (S)							
A11.Shops eg Kiosks, Mpesa, stalls (Indicate by ticking)							
A12. Mobile business shed							
Institution-Indicate whether School,Church,Mosque etc							

Others (Specify)							
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A 1	A2	A3	A4	A5	A6
Gender of respondent	Relationship to Household head	Type of wall	Type of roof	Floor	Size in meters
1. Male 2. female	1.Head 2. Spouse 3.Son/Daughter 4.Brother/Sister 5. Parent. 6. other indicate	1. Stone not plastered. 2.stone and plastered 3.Bricksand plastered 4.Bricks not plastered 5. Iron sheets. 6.Wooden 7. Mud 8.Mud +plastered 9. Other	1.Iron Sheets 2. Grass thatched. 3.Plastic paper 4.Other	1.Plain concrete 2.Tiled 3.Mud 4.Other	Length Width Radius

### C. CROPS GROWN

TYPE OF CROP	AREA IN SQUARE FEET	

### See codes below

1-Tea 2-Coffee 3-Maize 4 Sweet potato 5- Sugarcane 6- Beans 7- Nippier grass 8- Peas 9- Cassava 10-arrowroots 11- kales 12- Bananas 13- Irish potatoes 14-Pumkins 15-Passion fruits 16-Other (s) (please specify)

### D. TREES GROWN

TYPE OF TREE	AGE OF TREES		
	YOUNG	MEDIUM	MATURE

### See codes below

1. Mango 2 Orange 3 Guava 4 Avocado 5 Eucalyptus 6 Cypruss 7 Bamboo 8 Pawpaw 9Pine 10 Gravellia11 Other(s) (please specify)

### E) LOSS OF LIVELIHOOD

S/ NO	Type of Business	Average Daily Income	Affected		Owner of the business
.		Ksh.	Total / Partial	Type	Name (ID and address if not member of the household)

--	--	--	--	--	--

**Codification**

**Business**

**type**

- ☐ 1- grocery / shop     
 ☐ 2- Beauty shop/ salon / barber     
 ☐ 3- retail shop kiosk     
 ☐ 4- cereals kiosk .....  
☐ 5- cloth stall   
 ☐ 6- food kiosk / hotel   
 ☐ 7- mpesa shed   
 ☐ 8 shoe vendors stand   
 ☐ 9- local chemist  
☐ 10- hardware shop     
 ☐ 11- domestic bakery .....☐ 12- movie shop .....☐ 13- Other (s) (please specify).....

**Type**

**of**

**ownership:**

- ☐ 1- Head of household     
 ☐ 2- Spouse     
 ☐ 3- Other member of the household   
 ☐ 4- Tenant  
☐ 5- Other (please specify).....



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## RESETTLEMENT ACTION PLAN (RAP) FOR MWACHE MULTIPURPOSE DAM PROJECT SOCIAL ECONOMIC SURVEY

### IN DEPTH HOUSEHOLD QUESTIONNAIRE –Questionnaire A PLUS

#### General Information

					Respondent : _____
					Relationship with the Head of the household : _____
<b>Country</b>	<b>County</b>	<b>Settlement</b>		✓	
1. Kenya		1.	GPS Coordinates:		
		2.	Easting's : _____		
		3.			
		4.	Northings : _____		
					Household Number : _____
					ID number of HH _____ Phone No. _____
					Interview date : _____
					Enumerators : 1. _____

	No. _____	Photo/s : _____	Verified _____	by :
			Verification _____	date :
			Entered _____	electronically _____

### 1. Head of Household

1.1 Name of the Head of household:.....1.2 Gender: ☐ 1- M ☐ 2- F 1.3  
Age: .....

### 2 Occupation of the Head of the household

2.1 Primary occupation: ..... 2.2 Secondary occupation: ..... 2.3 Tertiary occupation:  
.....

#### Primary, secondary and tertiary occupation (2.1, 2.2 & 2.3): *(multiple responses possible)*

- ☐ 1- subsistent trader ☐ 2- farmer ☐ 3- Farmer-Breeder ☐ 4- Fisherman or Fish farmer ☐ 5- Builder ☐ 6- Agricultural worker ☐ 7- Animal breeding labor ☐ 8- Fishing/Fish farming labor ☐ 9- Building labor ☐ 10- Self-employed craftsman/woman ☐ 11- Employed craftsman/woman ☐ 12- Non-employed home helper ☐ 13- Shop assistant ☐ 14- Civil servant ☐ 15- Student
- ☐ 16- Housewife ☐ 17- Employed on Farm ☐ 18- Employed on Business ☐ 19- List Other Family Members employed on farm or Business..... ☐ 20- Without occupation/employment ☐ 21- Other .....

### 3 Education level of the household head: .....

☐ 1- Without education      ☐ 2- Did not complete primary education      ☐ 3- Completed primary education      ☐ 4- Did not complete secondary education  
☐ 5- Completed secondary education      ☐ 6- Completed technical training      ☐ 7- Completed vocational training  
☐ 8-University graduate      ☐ 9- Other: .....

**3.1 Can read and/or write:** ☐ 1- Yes ☐ 2-No

**3.2 Language spoken at home:** ..... ☐ 1-Swahili ☐ 3-English ☐ 4-Other (specify).....

**3.2.1 Other Language spoken at home:** ..... ☐ 1-Swahili ☐ 3-English ☐ 4-Other (specify).....

**3.3 Other household members:** Provide information on other household members specifying their relationship with the Head of the household

No.	Name of Household Member	Relationship with the Head of the household	Gender		Age	Occupation			Education	Can read and/or write
			1-M	2-F		Primary	Secondary	Tertiary		1 – Yes 2 – No

**Relationship with the household head:**

☐ 1- Spouse      ☐ 2- Son/Daughter      ☐ 3- Parent (Father/Mother)      ☐ 4- In-laws      ☐ 5- Brother/Sister      ☐ 6- Brother/Sister-in-law  
☐ 7- Nephew/Niece      ☐ 8- Grand-son/daughter      ☐ 9- Cousin      ☐ 10- Other parent      ☐ 11- Other (specify) .....

**Primary occupation, Secondary and Tertiary:**

☐ Refer to codification question 2.1, 2.2 & 2.3



**Education:**

☐ Refer to codification question 3

**3.3 For all household members**

No.	Categories of people in the household	1- Number of Males	2- Number of Females
3.1	School age persons (6-15 years old) :		
3.2	School age persons (6-15 years old) attending school:		
3.3	Household members with a paid job:		
3.4	Household members who cannot have a paid job for health reasons:		

**4 Household's Living Conditions**

4.1 Access to drinking water (more than one possible answer): .....

☐ 1- Traditional well at home      ☐ 2- Borehole at home      ☐ 3- House with a water tap      ☐ 4- Access to public water taps outside the house  
☐ 5- Access to water sources or boreholes outside the house      ☐ 6- Access to surface water  
☐ 7- Rainwater      ☐ 8- Other (specify).....

4.2 Are you connected to the Water Supply from Water Service Provider/Company? 1 Yes 2 No

4.3 What type of connection do you have?

1 Individual metered house connection 2 Shared metered connection 3 Non –metered connection

4.4 Is the water supply reliable 1 YES /NO

4.5 How is the frequency of water supply 1 Daily 2 Once a week 3 Occasionally

4.6 If supply is unreliable, what are the alternative sources of water supply?

1 Kiosk 2 Public stand pipe 3 Street vendor 4 others

4.7 Are you able to pay for the water service?

4.8 Sanitary facilities (more than one possible answer): .....

☐ 1- Flush toilet in the house ☐ 2- Latrine with septic tank ☐ 3- Latrine without septic tank ☐ 4- Public toilets outside the house ☐ 5- None

4.9 Energy - Type of lighting (more than one possible answer): .....

☐ 1- Electricity (public utility) ☐ 2- Electricity (power generator) ☐ 3- Oil lamp/lantern ☐ 4- Kerosene lamp/lantern ☐ 5- Wood ☐ 6- Candle ☐ 7- None ☐ 8- Other .....

Energies– Cooking combustible (more than one possible answer): .....

☐ 1- Electricity ☐ 2- kerosene ☐ 3- Coal ☐ 4- LPG Gas ☐ 5- Biogas ☐ 6- dry plants (wood) ☐ 7- Other

5.0 Do you have Access to Public Services with 1 km from residence ☐ 1- Health ☐ 2- Education ☐ 3- Transport ☐ Other

5.1 Are you registered in any of the Government benefits program? If yes which one.....? If not why.....

#### **Household Head falling in vulnerable group categories**

5.2 is the Household Head falling in vulnerable group categories

☐ 1-widow..... ☐ 2-orphan ..... ☐ 3 Household headed by children under 18yrs ..... ☐ 4-sick ..... ☐ 5-disabled ..... ☐ 6-elderly over 60yrs 7- (others) specify .....

**6 Livelihood – (multiple responses expected)**

**4.8 Sources of CASH income for the household head**

No.	Source of income	Sector	Average Distance (km)	Activity performed on affected territory If yes, please indicate location	Monthly Income of the Household		
					Nb.	Member of the Household	Amount
1.	Main source :					Head of the household	
						Spouse	
						Adult child	
						Other: .....	
2.	Secondary source :					Head of the household	
						Spouse	
						Adult child	
						Other: .....	
3.	Others source(s) :					Head of the household	
						Spouse	
						Adult child	
						Other: .....	

**Sector:**

- ☐ 1- Agriculture
 ☐ 2- Animal husbandry
 ☐ 3- Fishing and/ or fish-farming
 ☐ 4- Handicraft  
☐ 5- Construction
 ☐ 6- Property rental
 ☐ 7- Commerce
 ☐ 8- Civil service
 ☐ 9- Pension

☐ 10- Economic support: Family or friends  
☐ 12- Other (specify).....

☐ 11- Economic support: Government or NGO

**6.1 Main expenses of the household –( *Multiple response expected* )**

(Specify amounts based on the reference period of your choice–Week, Month OR Year- in each category)

No.	Main expenses of the household	Amount		
	Choose the reference period :	Week	Month	Year
1.	House rental			
2.	Rental of agricultural land			
3.	Agricultural input			
4.	Food			
5.	Drinking water			
6.	Health			
7.	Transport			
8.	Education			
9.	Other (specify): .....			
10.	Other (specify): .....			
11.	Other (specify): .....			

**5 Household's perceptions in relation to the project and to available compensation and resettlement options**

5.5 Are you aware of the proposed pipeline? ☐1- Yes☐2-No

5.6 What is your main source of information about this project? .....

☐ 1- Members of your family    ☐ 2- Neighbors ☐ 3- National Government    ☐ 4- County government  
☐ 5- public meeting    ☐ 6 - other.....

5.7 Are you aware that your structures or livelihood sources could be affected by this project? ☐ 1- Yes ☐ 2-No

5.8 If there might be any form of compensation how would you want to be paid?

- ☐ 1- Provision of alternative structures for business in an alternative County government approved site / markets  
☐ 2- Reconstruction of the same structures within the plot in appropriate sections away from the road reserves  
☐ 3- Cash compensation for loss of assets or livelihood

5.9 In the event that you would be affected, what other type of assistance would you need during resettlement? **(More than one possible answer)**

- ☐ 1- Assistance for the transportation of the affected assets.  
☐ 2- The authorities to allow for salvage of materials  
☐ 3- Compensation to include 15% disturbance allowance  
☐ 4- No assistance                      ☐ 5- Other (specify): .....

5.10 How do you think this project could affect your household?

No.	Theme	Impact	
		Type	Explanation
1.	Household incomes		
2.	Household expenses		
3.	Household 'food		

4.	Employment of members of the household		
5.	Household children's education		
6.	Household members' health		
7.	Household's access to electricity services		
8.	Household's social network		
9.	Road and/or pedestrian network frequently used by members of the household		
10.	Other (specify): .....		
11.	Other (specify): .....		
12.	Other (specify): .....		

**How**

☐ 1- Positive

☐ 2- Negative

☐ 3- Without impact

☐ 4- Don't know

**affected:**

8.0 Comments

SIGNATURE -----

## **Annex 6: Sample GRM Forms**

# Sample Public Grievance Registration Form

## Resettlement Action Plan Public Grievance Form

**Instructions:** Fill out and file the form (PAH/ project personnel)

<b>RAP Reference No.</b>	
Contact Information	Address:
Please mark how you wish to be contacted (mail, telephone, e-mail)	Telephone: -
	Email:
Preferred Language for Communication (Please mark how you wish to be contacted)	English
	Kiswahili
	Duruma
National Identity Number	
Description of Incident or Grievance: What happened? Where did it happen? Who did it happen to? What is the result of the problem?	
Date of Incident/ Grievance	
	One time incident/ grievance (date-----) Happened more than once (How many times-----) Ongoing (Currently experiencing problem.....)
What would you like see happen to resolve the problem?	

Signature: ..... Date: .....

*Did the complainant fill the form by self or assisted? Circle one*

Please return this form to: RAP COMMITTEE



## Sample Grievance and Resolution Form

Name(Filer of Complaint): \_\_\_\_\_  
ID Number: \_\_\_\_\_(PAPs ID number)  
Contact Information : \_\_\_\_\_(Village : mobile phone)

Nature of Grievance or Complaint:

\_\_\_\_\_

Date Individuals Contacted

### Summary of Discussion

\_\_\_\_\_  
\_\_\_\_\_

Signature\_\_\_\_\_ Date: \_\_\_\_\_

Signed (Filer of Complaint): \_\_\_\_\_

Name of Person Filing Complaint\_\_\_\_\_ ( if different from Filer)

Position or Relationship to Filer: \_\_\_\_\_

### **Review/Resolution/ Escalation**

Date of Conciliation Session: \_\_\_\_\_

Was Filer Present?: Yes No

Was field verification of complaint conducted? Yes No

Findings of field investigation:

\_\_\_\_\_

**Summary of Conciliation Session Discussion:**

\_\_\_\_\_

Issues\_\_\_\_\_

Was agreement reached on the issues? Yes No

If agreement was reached, detail the agreement below:

If agreement was not reached, specify the points of disagreement below:

Escalated to\_\_\_\_\_

Signed (Conciliator):\_\_\_\_\_

Signed (Filer):

Signed: \_\_\_\_\_Date: \_\_\_\_\_

Independent Observer

Follow up is required YES/ NO

If YES When (*Date*)\_\_\_\_\_ and Person Responsible\_\_\_\_\_

## Sample Complaints Log for RAP

**Record all complaints received from PAP and their representatives**

[illegible]

## **Annex 7: Selected Photographs**

## Consultation meetings and FGDs



FGD with women at Pemba



Public Consultation meeting Men, Women, & Youths



FGD with Women in Mnyenzi



One of the affected Woman participating in a

baraza



Public Consultation meeting Men, Women, Youth





**FGD with women in Bofu**



**FGD with Women in Kasemeni**



**An FGD session with the women**



**Eng. Wainaina explaining a point to the**

**PAPs**



**FGD with women in Mtaa**



**Public Consultation meeting**



**Public Consultation meeting**



**Public Consultation meeting**



**Public Consultation meeting**



**A participant in one of meetings**



**Consultation meeting with BMU**



**Consultation meeting with Kaya Elders**

## **Annex 8: ToR for Legal Services for Mwache Dam Project (Akide)**



**Annex 9: Draft ToR for Implementation of Mwache Dam RAP & VMGP**

*(Draft ToR as included in Request for Proposals and will be updated to reflect this RAP in its entirety at Contract Negotiations)*

**Annex 10: Photographs of the Newly Constructed Houses which are outside Cut-off Date**

Picture	Location
	<p>Fulugani Village</p>
	<p>Vikinduni Village</p>
	<p>Mpirani Village</p>
	<p>A man in the process of putting up a new structure in Vikinduni Village</p>

## **Annex 11: Safeguards PIU Organogram**

## **Annex 12: Integrated RAP Implementation and Construction Schedule**

**Annex 13: Minutes and Attendance Registers of Additional Consultation Meetings**

#### **Annex 14: TOR for RAP Implementation Steering Committee**

**Annex 15: Photo Database showing details of affected structures**



## **Annex 16: Mwache Dam RAP Implementation Schedule**