

**REPUBLIC OF KENYA**



**MINISTRY OF WATER & IRRIGATION**

**COAST WATER SERVICES BOARD (CWSB)**



**RESETTLEMENT ACTION PLAN REPORT**

**FOR**

**NYALANI-MWAKIJEMBE-VIGURUNGANI-BANG'A WATER PROJECT**

**PHASE I**

**Works carried out under**

**Contract No.: CWSB/WaSSIP-AF/C/25/2013**

**Report Prepared by:**



**Zamconsult Consulting Engineers**

**JULY 2016**

## RAP EXECUTIVE SUMMARY

### Background

The Coast Water Services Board (CWSB) is a Parastatal (Government Owned and Autonomous) created under Water Act, 2002 and established through a Gazette Notice No. 1328 of 27 February 2004.

CWSB (or the Board) is the agency charged with the responsibility for the effective and efficient provision of water and sanitation services within the Coast Province. The Board undertakes this by contracting Water Service Providers.

CWSB as part of its mandate intends to improve bulk water supply to Vigurungani, Puma and Ndavaya locations in Kinango Sub-County, Kwale County. This will be done through the following works:

- ❖ Construction of Nyalani Treatment Works
- ❖ Construction of 1.70 km - 8" diameter G.I pipeline.
- ❖ Construction of 38.35 km - 4" diameter uPVC pipeline.
- ❖ Construction of 20 VIP Latrines.
- ❖ Construction of 20 Standard Water Kiosks.
- ❖ Supply and installation of 20, 10m<sup>3</sup> Plastic Tanks and appurtenances.
- ❖ Construction of 3 100m<sup>3</sup> Ground Masonry Tanks.
- ❖ Construction of 2 225m<sup>3</sup> Ground Masonry Tanks.
- ❖ Construction of 2 Pump houses.
- ❖ Supply, installation and testing of 2 Pumping sets.
- ❖ Fencing of the 2. Pumping stations.

The above activities will cost K.Shs. 198,758,788.80, however due to insufficient funds the project has been divided into phases. Phase I will be done in 4 (four) months and will cost K.Shs. 87,000,000 and includes the following works:

- ❖ Construction of Nyalani Treatment Works
- ❖ Construction of 1.70 km - 8" diameter G.I pipeline.
- ❖ Construction of 4" uPVC -10.1km Pipeline
- ❖ Construction of 5 V.I.P. Latrines
- ❖ Construction of 5 Standard Water Kiosks
- ❖ Supply and Installation of 5 No. 10 m<sup>3</sup> each Plastic Tanks
- ❖ Construction of 3No. 225 M<sup>3</sup> Sump Masonry
- ❖ Construction of 1No. 150 M<sup>3</sup> Sump Masonry
- ❖ Construction of 1No. Pump house.
- ❖ Supply, Install & test pump 2 No. (for duty and standby) Pumping Units
- ❖ Fencing 1no. Pump house and 2 Storage tank compounds.

Zamconsult Consulting Engineers has been contracted to undertake the ESIA and RAP for phase I of the proposed project as part of the WaSSIP projects with funding from the World Bank.

An ESIA has been carried out on the proposed project and observations made that the project will displace some land, structures, trees, crops and businesses in the project area, hence the need for this report.

### Study Methods

The methodology for carrying out the RAP included data collection and analysis of data from various sources. These Included:

- ❖ Primary Data Sources including household questionnaires, key informant interviews, site visits and observations.
- ❖ Secondary Data Sources including design report, World Bank Policies and Kenyan Policies on Resettlement.

The data collected in the field was analysed to obtain the socio-economic background of the PAPs, inventory of affected assets and cost the RAP implementation.

### **Legislative Framework for this Study**

The main laws in the Country governing resettlement are the Land Act, No 6 of 2012 which identifies steps required for land acquisition, establishment of way leaves and land registration. The Constitution of Kenya also highlights matters of resettlement and land ownership.

In addition to the local legislation, the Consultant also reviewed the relevant World Bank Operational Policies on Resettlement, Indigenous people, physical and cultural resources and access to information, which would cover the gaps in the local laws concerning resettlement.

### **Expected impacts**

The proposed water supply system cause several resettlement impacts. These will include:

- ❖ Impacts on Land
- ❖ Impacts on Structures (permanent, semi-permanent, temporary, wells and sheds)
- ❖ Impacts on trees and Crops
- ❖ Impacts on businesses/livelihood

### **Eligibility Criteria and Entitlement Employed for the RAP**

The main criteria employed for establishing the Eligibility of PAPs included:

- ❖ A PAP was defined as one having a structure(s), tree(s), crop(s), fence(s) and business (es) within the proposed project way leave.
- ❖ Setting of the Cutoff date: the PAPs identified during the data collection exercise were eligible for compensation for the aforementioned assets. The cutoff date was established as 14<sup>th</sup> July 2015. Any developments after this date are not eligible for compensation.

The Entitlement for the project is summarised in the table below:

<b>Affected Asset</b>	<b>Eligibility Conditions</b>	<b>Entitlements</b>
Land within the proposed treatment site and 1.7Km 8" pipeline	If them and a witness can prove ownership of the structure.	Full replacement Cost of the land
Structures on the way leave on private land	If them and a witness can prove ownership of the structure.	Replacement Cost of Structure
Structures on the way leave within the road reserve	If them and a witness can prove ownership of the structure.	Replacement Cost of Structure

Trees and Crops along the on private land	If them and a witness can prove ownership of the trees and crops.	Replacement Cost of the trees and crops.
Trees and Crops along the on the way leave within the road reserve	If them and a witness can prove ownership of the trees and crops.	Allowance to cut tree and harvest crops.
Fences along the proposed way leave on private land	If them and a witness can prove ownership of the fence	Replacement Cost of fence and replacement cost for the gate
Fences along the proposed way leave within the road reserve	If them and a witness can prove ownership of the fence	Replacement Cost of fence and an allowance to move the gate
Businesses on the way leave and within the road reserve also on private land	If them and a witness can prove ownership of the trees and crops.	Livelihood compensation comprising of 3 months business income

In addition to the entitlements mentioned in the table, each of the PAPs was entitled to a 15% disturbance allowance.

### Cost of Entitlements

The following tables present the various entitlements for assets for the proposed works.

#### Entitlement for loss of Land

PAHs with Land				Total Entitlement (K.Shs.)
6				530,977.61
F=2	M=3	U = 0	I = 1	

Where: F – Female headed household

M – Male headed household

U – Unknown Owner

I – Institution

#### Entitlement for loss of Structures

PAHs with Structures				Total Entitlement (K.Shs.)
3				379,500.00
F= 0	M= 2	U = 1	I = 0	

Where: F – Female headed household

M – Male headed household

U – Unknown Owner

I – Institution

*Entitlement for loss of Trees and Crops*

PAHs with Trees & Crops				Total Entitlement (K.Shs.)
6				65,850.00
F= 1	M= 5	U = 0	I = 0	

Where: *F* – Female headed household

*M* – Male headed household

*U* – Unknown Owner

*I* – Institution

*Entitlement for loss of Business*

PAHs with Businesses				Total Entitlement (K.Shs.)
1				67,500.00
F= 0	M= 1	U = 0	I = 0	

Where: *F* – Female headed household

*M* – Male headed household

*U* – Unknown Owner

*I* – Institution

*Entitlement for Disturbance*

PAHs				Total Entitlement (K.Shs.)
11				156,574.14
F= 2	M= 7	U = 1	I = 1	

Where: *F* – Female headed household

*M* – Male headed household

*U* – Unknown Owner

*I* – Institution

Thus the total entitlement for the project is as indicated in the table below:

*Total Entitlement for each of the Pipelines*

PAHs				Total Entitlement (K.Shs.)
11				1,200,401.75
F= 2	M= 7	U = 1	I = 1	

## RAP Implementation Cost

The RAP implementation cost was also computed taking into account administration costs and an allowance for inflation and contingencies. Bringing the total cost of the RAP to **K.Shs. 1,452,487.00 (one million four hundred and fifty two thousand, four hundred and eighty seven only)** broken down in the table below.

No.	RAP Item	Cost
1	Total Entitlement Costs (including 15% Disturbance)	1,200,401.75
2	RAP Administration Cost (10)% of Entitlement Cost)	120,040.18
3	Allowance for Inflation and Contingencies	132,044.19
<b>TOTAL RAP IMPLEMENTATION COST</b>		<b>1,452,486.12</b>

## Conclusion

The Resettlement Action Plan identified 199 PAPs would be affected by the proposed project. In order to mitigate the impact of the project on the PAPs a budget of K.Shs. 1,452,487.00 (one million four hundred and fifty two thousand, four hundred and eighty seven only) should be set aside to implement the RAP. If implemented in accordance with the laid down laws, guidelines and procedures and any arising grievances addressed as stipulated, this RAP is adequate to clear the way leave for the proposed project. This RAP recommends that:

- ❖ Any planned displacement of the project affected persons be undertaken after compensation payments have been made before any construction activities are done and in accordance with the prevailing law.
- ❖ Compensation should not only follow the prevailing market rates, but should also be associated with comprehensive consultations and negotiations with PAPs so as to minimize grievances
- ❖ The project affected persons to be given adequate notice to relocate their assets.

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## **ACRONYMS AND ABBREVIATIONS**

AIDS	Acquired Immunodeficiency Syndrome
CBO	Community Based Organization
EMCA	Environment Management Coordination ACT
RAP	Resettlement Action Plan
PAP	Project Affected Person
PAH	Project Affected Household
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
GoK	Government of Kenya
HIV	Human Immunodeficiency Virus
ID No.	Identity Card Number
KAPP	Kenya Agricultural Productivity
K.Shs.	Kenya Shillings
KFS	Kenya Forestry Service
KWS	Kenya Wildlife Service
MDG	Millennium Development Goals
CWSB	Coast Water Services Board
MWI	Ministry of Water and Irrigation
NEMA	National Environment Management Authority
NGO	Non-Governmental Organization
NMK	National Museums of Kenya
NPEP	National Poverty Eradication Plan
O&M	Operation and Maintenance
PEC	Poverty Eradication Commission
WSB	Water Services Board
WSP	Water Services Provider
WSS	Water Supply and Sanitation Services
m <sup>3</sup>	cubic metres
RC	RAP Committee
GRC	Grievance Redress Committee

## 1 INTRODUCTION

The Coast Water Services Board (CWSB) is a Parastatal (Government Owned and Autonomous) created under Water Act, 2002 and established through a Gazette Notice No. 1328 of 27 February 2004.

CWSB (or the Board) is the agency charged with the responsibility for the effective and efficient provision of water and sanitation services within the Coast Province. The Board undertakes this by contracting Water Service Providers.

Seven Water Services Providers (WSPs) whose areas of jurisdiction correspond with the seven initial districts of Coast Province, namely, Mombasa, Malindi, Kilifi, Kwale, Taita and Taveta, Lamu and Tana River have been appointed by the Board to provide water and sanitation services in their respective jurisdictions. The WSPs are Mombasa Water and Sanitation Company (MOWASCO), Malindi Water and Sanitation Company (MAWASCO), Kilifi Water and Sanitation Company (KIMAWASCO), Kwale Water and Sanitation Company (KWAWASCO), Taita and Taveta Water and Sanitation Company (TAVEVO), Lamu Water and Sanitation Company (LAWASCO) and Tana River respectively.

Unlike in other parts of the country, CWSB is also the water undertaker for the Coastal Bulk Water Supply System. Additionally, the Board is the asset holder of all public water and sanitation facilities within its area of jurisdiction.

CWSB as part of its mandate intends to improve bulk water supply to Vigurungani, Puma and Ndavaya locations in Kinango Sub-County, Kwale County. This will be done through the following works:

- ❖ Construction of Nyalani Treatment Works
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- ❖ Construction of 1No. Pump house.
- ❖ Supply, Install & test pump 2 No. (for duty and standby) Pumping Units
- ❖ Fencing 1no. Pump house and 2 Storage tank compounds.

Phase 2 will include the rest of the works under the entire contract.

This report covers the activities of Phase I of the project which will be funded by the World Bank under Contract CWSB/WaSSIP-AF/C/25/2013, for which Zamconsult Consulting Engineers has been contracted to undertake the ESIA and RAP.

## **1.1 JUSTIFICATION FOR THE RAP**

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An environmental and social impact assessment (ESIA) has been undertaken for the proposed project and has identified some of the social impacts associated with the project as being involuntary resettlement in the treatment works and along the pipeline route. The type of resettlement to be experienced will be site specific for the treatment works and linear along the pipeline routes. There will be land acquisition at the treatment works as well as the 8" pipeline from the treatment works to the E941 road. The 4" pipelines will be located along the road E941 road reserve and will affect a few crops, trees, fences and structures. Hence the need for a RAP.

The Resettlement Action Plan helps to define the resettlement and compensation necessary as a result of implementing the water supply project. This will be in accordance with the Laws of Kenya.

## **1.2 OBJECTIVES OF THE RAP**

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The overall objective of the RAP is to ensure that affected individuals, households and, affected and/or displaced communities are meaningfully consulted, have actively participated in the planning process and, are adequately compensated to the extent that at least their pre-displacement incomes or livelihoods have been restored or improved and, that the process is considered fair and transparent. The objective of the RAP is achieved through collections of key indicative information on the Project Affected Persons (PAPs) pre-impact status so as to enable develop an entitlement matrix geared at restoring the livelihoods to the pre-impact status or making their livelihoods better.

The Specific Objectives and activities of the RAP include:

- ❖ Conduct public consultation with PAPs, county governments, and other stakeholders not only to ensure that their concerns and suggestions are taken in to account, but also to promote the participation of the stakeholders in the planning, implementation and evaluation of the RAP;
- ❖ Conducting census and socio-economic surveys of project affected areas and populations as a basis for identifying and measuring the types and magnitude of impact of the project, and the associated displacement and loss of household and community assets, in order to determine the required amounts of compensation and other resettlement measures and assistances for the restoration of income and livelihoods;
- ❖ Design mechanisms and procedures for the resolution of conflict and redress of grievances arising from the implementation of the RAP and the project;

- ❖ Design the organizational and institutional arrangements necessary for the implementation of the RAP, including detailed allocation of responsibilities and coordination issues;
- ❖ Formulate a system for the monitoring, review and evaluation of the process and outcome of the implementation of the RAP;
- ❖ Formulate criteria for eligibility and entitlement as well as methods and mechanisms for the valuation of various categories of household and community assets for compensation, design appropriate strategies for restoration of the income and livelihood of PAPs, special support measures for vulnerable groups, and social and community development projects;
- ❖ Identify and assess the impacts of the project on PAPs and communities in the project area, identify different options and alternatives to avoid or reduce displacement, of population and dislocation of livelihoods;
- ❖ Prepare a timetable for the implementation of the RAP with detailed time-bound schedules for its various components and activities.
- ❖ Prepare cost estimates and budget for the implementation of the RAP and its various components and activities;
- ❖ Undertaking a review of the relevant national and international policy, legal, and institutional frameworks and guidelines pertaining to involuntary resettlement, eminent domain and land tenure, expropriation and compensation, restoration and improvement of the income and livelihood of PAPs, etc.

### **1.3 METHODOLOGY FOR CARRYING OUT THE RAP**

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The methodology for carrying out the RAP included data collection and analysis and is presented in the chapters of this report. The key steps are outlined below.

#### **1.3.1 Primary Data Collection**

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##### **1) Household Survey and Enumeration**

This was used to identify the affected households and to take an inventory of their assets and livelihood as well as their socio-economic characteristics. A structured questionnaire was administered to the identified households by trained enumerators recruited from the local community. A copy of the questionnaire is provided in the appendices.

##### **2) Site Visits and Observations**

A number of site visits were conducted to locate the proposed pipeline routes as per the Engineering designs. These visits were also used to identify the people affected by the design to who were enumerated for the survey. This was done by conducting actual field measurements for the proposed way leave of 9m for the main 8" pipeline and 4m for the 4" pipelines.

#### **1.3.2 Secondary Data Collection**

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This involved conducting a review of existing documents, reports, laws and policies relating to resettlement and other issues of the project and the project area. Key documents reviewed include but were not limited to:

- Kenyan Policies and Laws on Land and resettlement
- World Bank Policies Land and Resettlement

- 
- The Design Report

### **1.3.3 Public Consultation**

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This was done at two levels:

- Interviews with individual affected persons
- Key informant interviews with selected community leaders

### **1.3.4 Data Analysis and Processing**

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The collected information was analyzed thematically to reflect the components included in this RAP report.



## 2 PROPOSED PROJECT DESCRIPTION

### 2.1 LOCATION

The proposed project area is located in Nyalani, in Ndavaya and Vigurungani Locations within Kinango Sub-County as shown on the map below:

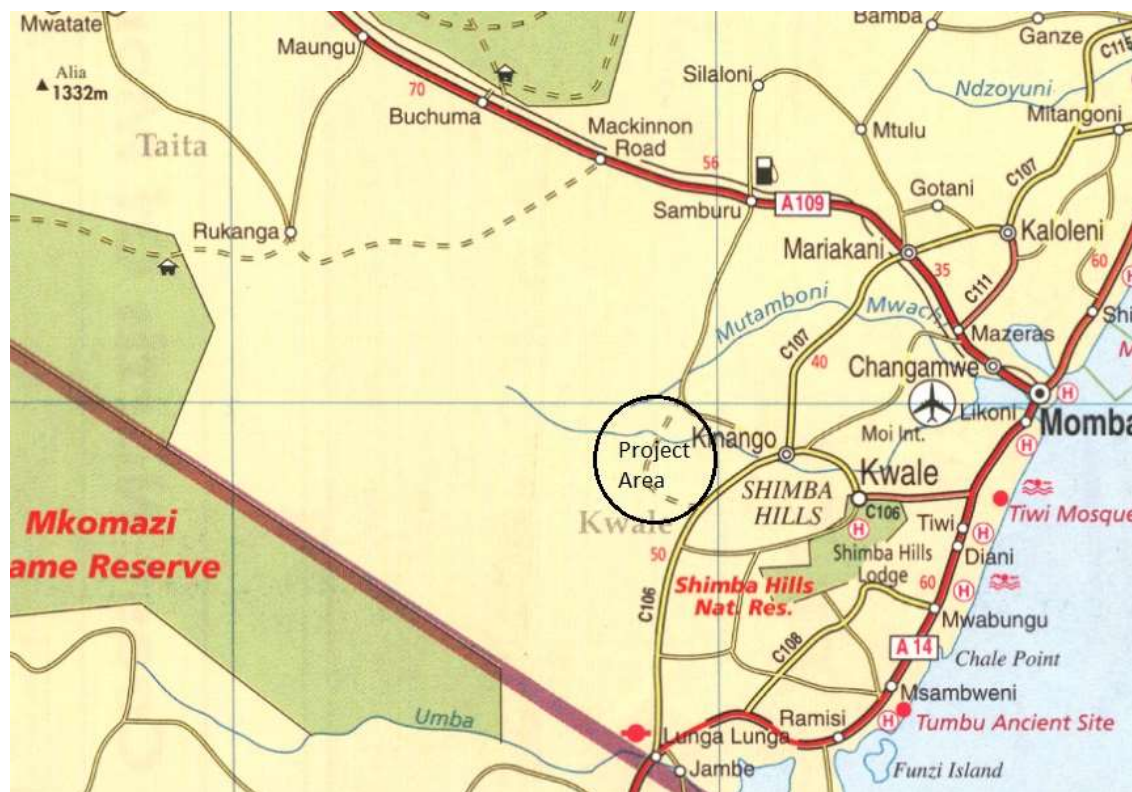


Figure 2-1: Map Showing the Location of the Project Area

### 2.2 THE BACKGROUND OF PROPOSED PROJECT

The Nyalani and Mwakijembe areas are arid and communities are forced to travel long distances in search of water. The project intends to draw water from the newly rehabilitated Nyalani Dam which was rehabilitated through the combined effort of the Red Cross and M-pesa Foundation. The dam intends to improve the food security in the area by providing water for irrigation. CWSB intends to also use the water from the dam for human and domestic animal consumption.

The residents of Nyalani currently rely on surface water for their source of water, and considering that the area is arid, makes water scarcity common in the area forcing residents, particularly women and children, to travel up to 15Km in search of water.

The residents of Vigurungani are currently served by the 44Km long Samburu – Vigurungani Pipeline, however this water is not adequate to serve the people of Nyalani, Mwakijembe and Mafundani.

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## 2.3 OBJECTIVES OF THE PROJECT

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The proposed project will have the following objectives:

- a) To provide adequate, reliable and safe water supply to the community and institutions in the area.
- b) Reduce time and distance taken in search for water from 15 km to 2 km.
- c) To improve the socio-economic of the community thereby reducing the high poverty index in the area.
- d) Improved education index to schools in the area as children will be able to concentrate to studies.
- e) To minimize human-wildlife conflict competing for water in the few earth pans in the project area.
- f) To improve the sanitation and the general hygiene standards of the community through construction of V.I.P. latrines and Participatory Hygiene and Sanitation Transformation.
- g) To transfer operation, maintenance and management skills to the water managing committees.

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## 2.4 DESIGN COMPONENTS

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The project will be made up of the following components:

- ❖ A fully functional Water Treatment Works
- ❖ A 1.70 km - 8" diameter G.I pipeline.
- ❖ A 4" uPVC -10.1km Pipeline
- ❖ 5 V.I.P. Latrines
- ❖ 5 Standard Water Kiosks
- ❖ 5 No. 10 m<sup>3</sup> each Plastic Tanks
- ❖ 3No. 225 m<sup>3</sup> Sump Masonry
- ❖ 1No. 150 m<sup>3</sup> Sump Masonry
- ❖ 1 Pump house and pumping units
- ❖ Fencing around the pump house and storage tanks

The Schematic of the proposed works is shown in the figure below:

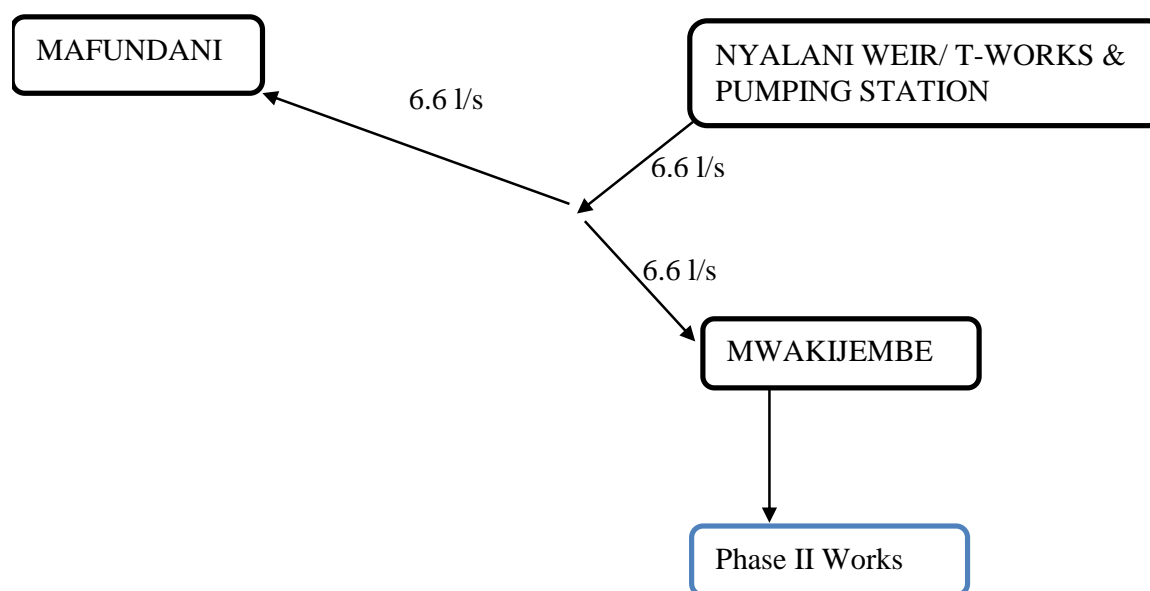


Figure 2-2: Schematic of proposed Project

## 2.5 PROJECT COST

Phase 1 of the project will cost K.Shs. 86,919,901.95 distributed amongst the works as follows:

Table 2-1: Proposed Project Cost

No.	Description	Total Cost (K.Shs)
1	Preliminaries and General Items	8,400,000.00
2	Supply and Construction of 4" uPVC -10.1km Pipeline	28,182,100.00
3	Construction of 5No.V.I.P. Latrines cum Bath Facility	2,500,000.00
4	Construction of 5No. Standard Water Kiosks	1,500,000.00
5	Supply and Installation of 5 No. 10 M <sup>3</sup> each Plastic Tanks	750,000.00
6	Construction of 3No. 225 M <sup>3</sup> Sump Masonry	6,847,740.00
7	Construction of 1No. 150 M <sup>3</sup> Sump Masonry	3,174,500.00
8	Construction of 1No. Pump house.	1,600,000.00
9	Supply, Install & test pump 2no. for duty and standby Pumping Units	6,000,000.00
10	Fencing 1no. Pump house and 2no. Storage tank compounds.	2,010,000.00

11	Nyalani dam pump attendant House	2,300,000.00
12	Nyalani dam treatment works	14,516,519.00
13	Training community & Production of operation and management manual	3,000,000.00
	Staff Capacity Building	2,000,000.00
	Sub- Total	<b>82,780,859</b>
	5% Contingencies	4,139,042.95
	<b>Grand Total</b>	<b>86,919,901.95</b>

## 2.6 METHODS OF MINIMISING RESETTLEMENT

In order to avoid excessive displacement and land acquisition along the various pipelines, the proposed pipeline routes will be located along existing road reserves.

### **3 RELEVANT LEGISLATIVE/ REGULATORY FRAMEWORK**

This Chapter highlights the various laws, both national and international, that handle the issue of land, development of water systems and valuation of assets for the purpose of compensation. They are as follows:

#### **3.1 THE LAND ACT, NO. 6 OF 2012**

Under section 19. (1) The Commission shall make rules and regulations for the sustainable conservation of land based natural resources.

(2) Without limiting what the Commission may prescribe under subsection (1), the rules and regulations may contain;

- (a) Measures to protect critical ecosystems and habitats;
- (b) Incentives for communities and individuals to invest in income generating natural resource conservation programmes;
- (c) Measures to facilitate the access, use and co- management of forests, water and other resources by communities who have customary rights to these resources;
- (d) Procedures for the registration of natural resources in an appropriate register;
- (e) Procedures on the involvement of stakeholders in the management and utilization of land-based natural resources; and
- (f) Measures to ensure benefit sharing to the affected communities.

##### **3.1.1 Land registration under land act, 2012**

Under section 5 (1) of the land act, 2012 there shall be the following forms of land tenure-

- (a) Freehold;
  - (b) Leasehold;
  - (c) Such forms of partial interest as may be defined under this Act and other law, including but not limited to easements; and
  - (d) Customary land rights, where consistent with the Constitution.
- (2) There shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems.

Title to land may be acquired through;

- (a) Allocation;
- (b) Land adjudication process;
- (c) Compulsory acquisition;
- (d) Prescription;
- (e) Settlement programs;

- (f) Transmissions;
- (g) Transfers;
- (h) long term leases exceeding twenty one years created out of private land; or
- (i) Any other manner prescribed in an Act of Parliament.

Under section 8 (a), the Land Commission shall identify public land, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey;

- (d) May require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument.

Section 9 (1) states that any land may be converted from one category to another in accordance with the provisions of this Act or any other written law.

- (2) Without prejudice to the generality of subsection (1);

- (a) Public land may be converted to private land by alienation;
- (b) Subject to public needs or in the interest of defense, public safety, public order, public morality, public health, or land use planning, public land may be converted to community land;
- (c) Private land may be converted to public land by;
  - (i) Compulsory acquisition;
  - (ii) Reversion of leasehold interest to Government after the expiry of a lease; and
  - (iii) Transfers; or
  - (iv) Surrender.

- (d) Community land may be converted to either private or public land in accordance with the law relating to community land enacted pursuant to Article 63(5) of the Constitution.

- (3) Any substantial transaction involving the conversion of public land to private land shall require approval by the National Assembly or county assembly as the case may be.

### **3.1.2 Way leaves under land act, 2012**

Subject to and in accordance with section 143 (1) and section 146, the Commission may, create a right of way which shall be known as public right of way.

144.(1) Unless the Commission is proposing on its own motion to create a way leave, an application, for the creation of a way leave, shall be made by any State department, or the county government, or public authority or corporate body, to the Commission.

- (2) An application shall be made in the prescribed form and shall be accompanied by any prescribed information or other information that the Commission may, in writing require the applicant to supply and the Commission shall not begin the process of creating a way leave until all prescribed or required information has been submitted to it.

- (3) In order to enable a proposed way leave to be created by the Commission of its own motion to comply with the provisions of this section, the Commission shall complete an application form as

if it were applying to create a way leave and references to "the applicant" in this Sub-part in relation to an application to create a way leave shall be taken to apply as well to the Commission.

(4) The applicant shall serve a notice on: - (a) all persons occupying land over which the proposed way leave is to be created, including persons occupying land in accordance with customary pastoral rights;

(b) The county government in whose area of jurisdiction land over which the proposed way leave is to be created is located;

(c) All persons in actual occupation of land in an urban and per-urban area over which the proposed way leave is to be created; and

(d) Any other interested person.

(5) The Commission shall publish the application along the route of the proposed way leave calculated to bring the application clearly and in a comprehensible manner to the notice of all persons using land over which the proposed way leave is likely to be created.

A county government, an association, or any group of persons may make an application to the commission for a communal right of way on accordance to section 145 (1).

### **3.1.3 Land acquisition under land acts 2012**

Under section 110 (1) of Land Acts 2012 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.

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

Section 111 (1) states 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 commission shall make rules to regulate the assessment of just compensation.

Likewise where land is acquired compulsorily, full compensation shall be paid promptly to all persons affected in accordance to section 113 (1). (2) Subject to Article 40 (2) of the Constitution and section 122 and 128 of this Act, an award-

(a) Shall be final and conclusive evidence of-

- ❖ The size of the land to be acquired;
- ❖ The value, in the opinion of the Commission, of the land;
- ❖ The amount of the compensation payable, whether the persons interested in the land have or have not appeared at the inquiry; and

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

Section 124 of the Act allows for the temporary acquisition of land for public purpose or public interest; or for, the possession of the land is necessary in the interests of defense, public safety, public order, public morality, public health, urban planning, or the development or utilization of



any property in such manner as to promote the public benefit; for utilization in promotion of the public good for periods not exceeding 5 years. At the expiry of the period, the Commissioner of Land shall vacate the land and undertake to restore the land to the conditions it was before as per section 125. The compensation to be paid under section 120 shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of that use.

148. (1) Subject to the provisions of this section, compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a way leave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified valuer.

(2) Compensation relating to a way leave or communal right of way shall not be paid to a public body unless there is a demonstrable interference of the use of the land by that public body.

(3) Damage caused as a result of the creation of a way leave shall include any preliminary work undertaken in connection with surveying or determining the route of that way leave, and whether the trees, crops or buildings so damaged were included in the route of the way leave as delineated in the order of the Cabinet Secretary.

(4) The duty to pay compensation payable under this section shall lie with the State Department, county government, public authority or corporate body that applied for the public right of way and that duty shall be complied with promptly.

(5) If the person entitled to compensation under this section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken to pay compensation, to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation

(5) The Commission shall make Regulations prescribing the criteria to be applied in the payment of compensation under this section and to give effect to this section.

## **3.2 LEGAL FRAMEWORK OF THE GOK IN REGARD TO LAND OWNERSHIP AND TRANSACTIONS**

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### **3.2.1 Land Ownership in Kenya**

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Kenyan law recognises three categories of land in Kenya subsequent to which, basic or radical title vests either in the Government for Government land, registered owners in the case of titles granted by the Government; and in the County councils for both Trust land and registered titles derived from Trust land.

#### **1) Government Owned Land**

Land that previously vested in the Regions was relocated to the Government of Kenya in 1964 and this situation continues to this date. Government land includes all un-alienated government land held and occupied by government agencies, territorial sea and sea bed, all public roads whether gazetted or not and land that remained un-adjudicated under the Land Titles Act (Cap.282).



## 2) Trust Lands

The Kenya Independence Order Council in 1963 provided that all land that was vested in Her Majesty or in the Governor shall be deemed to have vested in the Regions or the Government of Kenya on 12th December 1963. All trust lands are vested in County councils, to hold such land for the benefit of the persons ordinarily resident on that land. Under section 117 of the Constitution, an Act of Parliament may empower a County Council to set apart an area of trust land vested in it for public use and occupation. Thus Local Government Act (Cap. 265) provides for the establishment of local authorities and defines their functions. Local Authorities exist for the purposes of planning for and providing basic social amenities and services including education, health care, roads, sanitation, housing, markets, open spaces, parks etc. The local Authorities as such are vested with authority over trust land for the benefit of their residents. Such land can thus be allocated for occupation as follows:

- ❖ For the purposes of prospecting for or the extraction of minerals or mineral oils; or
- ❖ By any person or persons who in the opinion of the County council will benefit area residents.

This latter clause is important because it provides for access to land by schemes meant to benefit the public. Transfer of such land either to individuals, institutions or other group is through letters of allotment which must cite the minutes of a full Council meeting which approved the transaction.

## 3) Private land

Private land is all land with registered title in accordance with any registration statute. Under the National Constitution, all land is vested with the Government and occupants of private land only enjoy usage rights either under lease or freehold arrangements. Section 70 of the Constitution of Kenya recognizes and protects the right to private property including land.

### **3.2.2 Legal Provision Governing Voluntary Land Transactions in Kenya**

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Towards safeguarding this unalienable constitutional right, legal provisions on land registration and ownership have been put in place as follows:

#### 1) State-owned land

State owned land is governed by diverse laws depending on the purpose for reservation.

#### 2) The Government Lands Act (Cap.280)

The Act governs the allocation and administration of all Government land both urban and agricultural. State owned land may be allocated free or sold on a commercial basis to individuals or communities by the Minister responsible for land administration. For cases where the state-owned land is being used by the public (for instance as settlements, for farming, for grazing or any other productive activity) the individual or the community would be expected to pay compensation.

#### 3) Forests Act 2005

All state forests in Kenya were gazetted under Cap 383 but are now protected under the Forest Act 2005. The Forest Act allows for several avenues towards accessing and use of forestland:

- ❖ Under the Forest Act, a piece of forest land can be de-gazetted and converted to other uses. Forest Act however requires all de-Gazettement of forest land to be discussed and approved by Parliament. All de-gazetted land then reverts to the Commissioner of Lands who then proceeds to allocate in line with the Land Control Act.
- ❖ Under the Forest Act 2005, forestland can also be leased for use for other purposes provided that such use does not contradict the purpose for land reservation.
- ❖ The same Act also allows for Participatory Management of Forests and thus guarantees communities (under auspices of Community Forest Associations) rights to access and utilize certain forest goods and services including siting of water supply intake works in forest areas. These intake works require that small infrastructure be placed in water courses to allow for abstraction.

#### 4) Wildlife Act Cap 376:

Nature Reserves and National Parks are controlled by the Kenya Wildlife Service under the Wildlife Management and Co-ordination Act of 1976. The common feature with all land reserved for use by wildlife is that its conversion to any other form must be approved by parliament.

#### 5) Museums and National Monuments:

Quite often, sites of historical and cultural importance are gazetted and reserved under the Museums and National Monuments Act. Such land is never available for alternative uses.

#### 6) Riparian Reserves and Water Courses:

All riparian reserves in Kenya governed by the Water Act of 2002 which empowers the Water Resources Management Authority (WRMA) to define, conserve and regulate activity in riparian areas.

#### 7) Road reserves

All road reserves are public land reserved under the Physical Planning Act Cap 286. Road Reserves are unique as public utility lands where all infrastructure lines such as for water supply, power and telecommunication will be found.

#### 8) Trust Lands

Trust land is defined as land held in trust in Part IX of the Constitution and the Trust Land Act (Cap.288). The Trust Lands Act (Cap.285) governs the administration of land as described in section 114 of the Constitution.

#### 9) Private Land:

Transactions in private land in Kenya is regulated under diverse laws namely:

1. Registration of Titles Act (R.T.A):
2. The Land Titles Act (L.T.A): Private land is all land with registered title in accordance with the Land Titles Act (Cap.282).
3. The Registered Land Act (R.L.A) governs registration of title to land, and for regulation of dealings in such land. It provides for private ownership of land by individuals. It should be noted that both individual and corporate persons can hold title under the RLA.
4. The Land Control Act Cap 406: This statute allows for all private land to be adjudicated and registered following which, a title deed is issued to the registered owner. Acquisition of private land is through transfer of the Title Deed either on account of inheritance,

purchase or free gift but in all cases, transfers must be registered with the Sub-County Land Registrars following approval by the Land Control Boards

### **3.2.3 Legal Provision for Involuntary Land Acquisition in Kenya**

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The Kenyan law has an explicit provision for expropriation of land under any of three categories.

In Kenya, expropriation is provided for in the Constitution under section 75 for private land and sections 117 and 118 for unregistered Trust Land. Section 75(1) provides that the Government can take possession of private land if this is necessary in the interest of town planning among other public interests, or if the development and utilization of the said land is to promote public benefit:

- a) The development and utilization of the property will promote public benefit among other things.
- b) The necessity for expropriation is great enough to justify any hardship caused to any persons
- c) Law for prompt payment of full compensation makes the provision

### **3.3 WATER ACT 2002**

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The Water Act makes provision for the conservation, control, apportionment and use of water resources in Kenya, and for incidental and connected purposes.

This Act, apart from its introductory part 1 on interpretations contains key issues on ownership and control of water in Kenya and water resources management through the creation, under powers vested in the Minister of Water. The Water Act (2002) aims at providing for harmonized and streamlined management of water resources, water supply and sewerage services. Responsibility for infrastructure development and the provision of services now lies with Water Services Boards (WSB), eight of which have been established countrywide. These Boards are required to contract out water delivery services to Water Services Providers (WSPs), which may be public, private entities or community managed entities dedicated to water services provision.

Coast Water Services Board (under whose jurisdiction this project falls) is one of the eight (8) state corporations created under the Ministry of Water and Irrigation pursuant to the Water Act 2002.

Due to the vastness of the CWSB's area of jurisdiction, the Board has representative offices at sub-county level that act as coordination centres between the Board and water service provision companies as well as representing the Board in the sub county's water related issues. The proposed water project is under Malindi Water and Sanitation Company (MAWASCO).

The Act also provides for public consultations where appropriate in the use of the resources notably where such use is likely to impact negatively on the quantity, quality of the water resources in any catchment area.

Section 94 (1) states that No person shall, without authority under this Act -

- ❖ Wilfully obstruct, interfere with, divert or obstruct water from any watercourse or any water resource, or negligently allow any such obstruction, interference, diversion or abstraction; or
- ❖ Throw or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any

water resource in such manner as to cause, or be likely to cause, pollution of the water resource.

Section 94 (2) states that a person who contravenes section 94 (1) shall be guilty of an offence.

### **3.4 THE CONSTITUTION OF KENYA 2010**

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#### **3.4.1 Access to Information**

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Article 35 of the constitution states that every citizen has the right to access:

- (a) Information held by the State; and
- (b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.

In addition the State shall publish and publicise any important information affecting the nation.

#### **3.4.2 Classification of land**

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Under Article 61 (1) all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.

(2) Land in Kenya is classified as public, community or private.

62. (1) Public land is (a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;

(b) Land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;

(c) Land transferred to the State by way of sale, reversion or surrender;

(d) Land in respect of which no individual or community ownership can be established by any legal process;

(e) Land in respect of which no heir can be identified by any legal process

(f) All minerals and mineral oils as defined by law;

(g) government forests other than forests to which Article 63 (2)(d) (i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;

(h) All roads and thoroughfares provided for by an Act of Parliament;

(i) All rivers, lakes and other water bodies as defined by an act of parliament;

(j) The territorial sea, the exclusive economic zone and the sea bed;

(k) The continental shelf;

(l) All land between the high and low water marks;

(m) Any land not classified as private or community land under this Constitution; and

(n) Any other land declared to be public land by an Act of Parliament; (i) in force at the effective date; or (ii) enacted after the effective date.

(4) Public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.

Section 63 (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

(3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.

(4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

64. Private land consists of; (a) registered land held by any person under any freehold tenure;

(b) Land held by any person under leasehold tenure; and

(c) Any other land declared private land under an Act of Parliament.

### **3.5 THE COUNTY GOVERNMENTS ACT, 2012**

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This is an act of Parliament to give effect to Chapter Eleven of the Constitution; to provide for county governments powers, functions and responsibilities to deliver services and for connected purposes

According to section 103 the objectives of county planning shall be to;

(g) Protect the historical and cultural heritage, artefacts and sites within the county; and

(h) Make reservations for public security and other critical national infrastructure and other utilities and services;

(i) work towards the achievement and maintenance of a tree cover of at least ten per cent of the land area of Kenya as provided in Article 69 of the Constitution; and

(j) Develop the human resource capacity of the county.

Under section 104, (1) A county government shall plan for the county and no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly.

(2) The county planning framework shall integrate economic, physical, social, environmental and spatial planning.

(3) The county government shall designate county departments, cities and urban areas, sub-counties and Wards as planning authorities of the county.

(4) To promote public participation, non-state actors shall be incorporated in the planning processes by all authorities.

Under section 111, (1) For each city and municipality there shall be; the

(a) City or municipal land use plans;

- (b) City or municipal building and zoning plans;
  - (c) City or urban area building and zoning plans;
  - (d) Location of recreational areas and public facilities.
- (2) A city or municipal plans shall be the instrument for development facilitation and development control within the respective city or municipality.
- (3) A city or municipal plan shall, within a particular city or municipality, provide for;
- (a) Functions and principles of land use and building plans;
  - (b) Location of various types of infrastructure within the city or municipality;
  - (c) Development control in the city or municipality within the national housing and building code framework.
- (4) City or municipal land use and building plans shall be binding on all public entities and private citizens operating within the particular city or municipality.
- (5) City or municipal land use and building plans shall be the regulatory instruments for guiding and facilitating development within the particular city or municipality.
- (6) Each city or municipal land use and building plan shall be reviewed every five years and the revisions approved by the respective county assemblies.
- Under section 115, (1) Public participation in the county planning processes shall be mandatory and be facilitated through;
- (b) Provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including;
    - (i) clear strategic environmental assessments;
    - (ii) Clear environmental impact assessment reports;
    - (iii) Expected development outcomes; and
    - (iv) Development options and their cost implications.
- (2) Each county assembly shall develop laws and regulations giving effect to the requirement for effective citizen participation in development planning and performance management within the county and such laws and guidelines shall adhere to minimum national requirements.

### **3.5.1 The Physical Planning Act (CAP 286) 2010**

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Under the Physical Planning Act, physical development activities are supposed to be carried out according to the physical plans. The Act provides for the preparation and implementation of physical development plans and for related purposes. It gives provisions for the development of local physical development plan for guiding and coordinating development of infrastructure facilities and services within the area of authority of County, municipal and town council and for specific control of the use and development of land.

Accordingly the processes of physical planning involve two stages; the plan making stage and the development control stage. The former involves drawing up the actual plan to indicate the various activities and zones whereas the latter involves the process of determining applications by



developers to carry out specific development activities. Section 36 states “if in connection with a development application a local authority is of the opinion that proposals for industrial location, dumping site, sewerage treatment, quarries or any other development activity will have injurious impact on the environment, the applicant shall be required to submit together with the application an environment impact assessment report”.

The site layout plan appended to this report shows the route of the entire project route. The proponent shall secure all mandatory approvals and permits as required by the law.

### **3.6 WORLD BANK SAFEGUARD POLICIES**

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#### ***3.6.1 The Bank's Operational Policy 4.12: Involuntary Resettlement***

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This is triggered in situations involving involuntary taking of land and involuntary restrictions of access to legally designated parks and protected areas. The policy aims to avoid involuntary resettlement to the extent feasible, or to minimize and mitigate its adverse social and economic impacts.

It promotes participation of displaced people in resettlement planning and implementation, and its key economic objective is to assist displaced persons in their efforts to improve or at least restore their incomes and standards of living after displacement.

The policy prescribes compensation and other resettlement measures to achieve its objectives and requires that borrowers prepare adequate resettlement planning instruments prior to Bank appraisal of proposed projects.

#### ***3.6.2 Operational Policy (OP) 4.10 - Indigenous Peoples***

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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 provide financing only where free, prior, and informed consultation results in broad community support to the project by the affected Indigenous Peoples. Such Bank-financed projects include measures to (a) avoid potentially adverse effects on the Indigenous Peoples' communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects. Bank-financed projects are also designed to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive.

#### ***3.6.3 Operational Policy (OP/BP) 4.11: Physical Cultural Resources***

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The objective of this policy is to assist countries in preserving physical cultural resources and avoiding their destruction or damage. PCR are defined as movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious (including graveyards and burial sites), aesthetic, or other cultural significance. PCR may be located in urban or rural settings, and may be above ground, underground, or under water. The cultural interest may be at the local, provincial

or national level, or within the international community. This policy applies to all projects requiring a category A or B environmental assessment, project located in, or in the vicinity of recognized cultural heritage sites. Physical cultural resources are important as sources of valuable scientific and historical information, as assets for economic and social development, and as integral parts of a people's cultural identity and practices

### **3.6.4 World Bank Policy on Access to Information, 2010**

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The World Bank policy on access to information sets out the policy of the World Bank on public access to information in its possession. This Policy supersedes the World Bank Policy on Disclosure of Information, and took effect on July 1, 2010.

This Policy is based on five principles:

- ❖ Maximizing access to information.
- ❖ Setting out a clear list of exceptions.
- ❖ Safeguarding the deliberative process.
- ❖ Providing clear procedures for making information available.
- ❖ Recognizing requesters' right to an appeals process.

In disclosing information related to member countries/borrower in the case of documents prepared or commissioned by a member country/borrower (in this instance, safeguards assessments and plans related to environment, resettlement, and indigenous peoples, OP/BP 4.01, Environmental Assessments, OP/BP 4.10, Indigenous Peoples, and OP/BP 4.12 Involuntary Resettlement); the bank takes the approach that the country/borrower provides such documents to the Bank with the understanding that the Bank will make them available to the public.

### **3.7 GAPS BETWEEN KENYAN POLICIES AND WORLD BANK POLICIES ON RESETTLEMENT**

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Both the Kenyan and World Bank Policies on land acquisition related impacts allow for land acquisition. However, operational differences exist between both documents as follows:-

- While the GoK Policy legally allows for land acquisition and thus causes displacement, the World Bank Safeguards favour a policy of avoidance or minimization of involuntary resettlement and design appropriate mitigation provision in case avoidance or minimization is not possible.
- While the Kenyan system has no provision for resettlement and actually allows for compensation for land at market rates, the World Bank's Operational Policy- OP 4.12 emphasizes that affected people be provided with compensation at replacement cost and supported during the transitional period to improve or at least restore their living standards to pre-displacement levels.
- The Kenya system recognizes only title holders as bonafide property owners while under OP 4.12, lack of legal title is no bar in extending assistance and support to those affected by the investments.

#### **3.7.1 Recommendations for bridging the Gaps**

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This RAP recognizes both provisions of the GoK on land acquisition as stated in the constitution and its legal provisions and the policy provisions of the World Bank (as provided in OP 4.12).



Where there are gaps between the World Bank Policies and Kenyan Laws, those of the Bank shall take precedence. The compensation package was derived from summation of the costs to affected land, fences, buildings, trees and crops to which was added a 15% mark-up to cater for involuntary acquisition in line with OP 4.12.

## 4 CENSUS AND SOCIO-ECONOMIC SURVEYS

A socio-economic sample survey and census enumeration was conducted in the project area. The primary objectives of the surveys are, among others, to understand the scale and nature of project impacts on local communities, identify Project Affected Persons (PAPs) and map out their social and economic characteristics, obtain information necessary for the preparation of this Resettlement Action Plan (RAP), establish indicators for the implementation of the RAP, and provide baseline data for monitoring and evaluation of livelihoods and income restoration and other sustainable development components of the RAP. Besides, in order to obtain information needed for entitlement and compensation payments for lost assets, a detailed inventory of all assets affected by the project was undertaken. In this Chapter, findings of the census and socioeconomic sample surveys are presented.

### 4.1 POPULATION DYNAMICS AND HOUSEHOLD CHARACTERISTICS OF PAPs

#### 4.1.1 Sex of Household Heads

The PAH population is made up of predominantly male headed households accounting for 64% of the total population. The distribution is shown in the figure below:

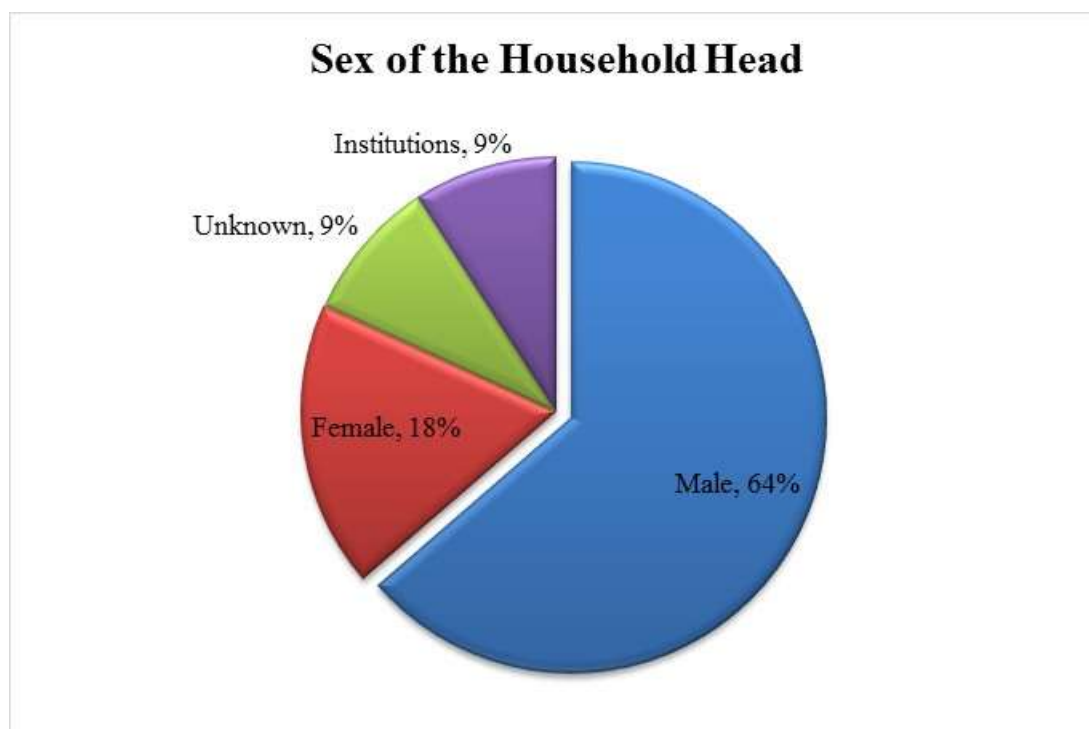


Figure 4-1: Sex of PAH Household Heads

#### 4.1.2 Marital Status of the Household Head

64% of the PAH population is married 18% is widowed and single, finally the marital status of the rest of the population is unknown as shown figuratively below.

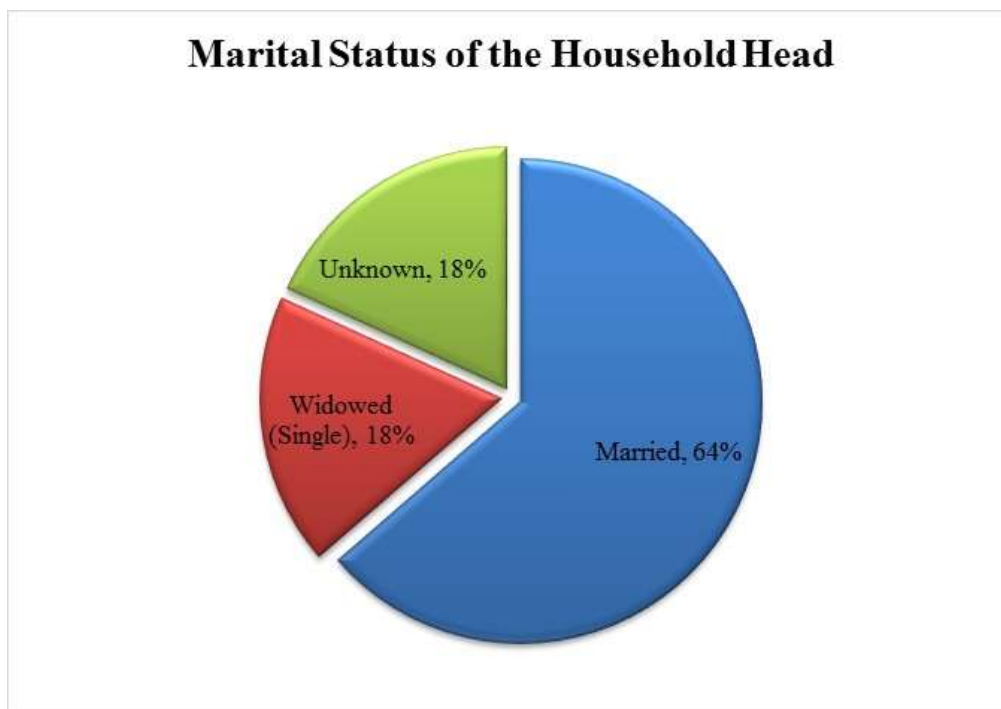


Figure 4-2: PAHs Marital Status

#### 4.1.3 PAP Gender Ratio

The PAPs in the project area are generally evenly split between males and females. These results are shown in the chart below:

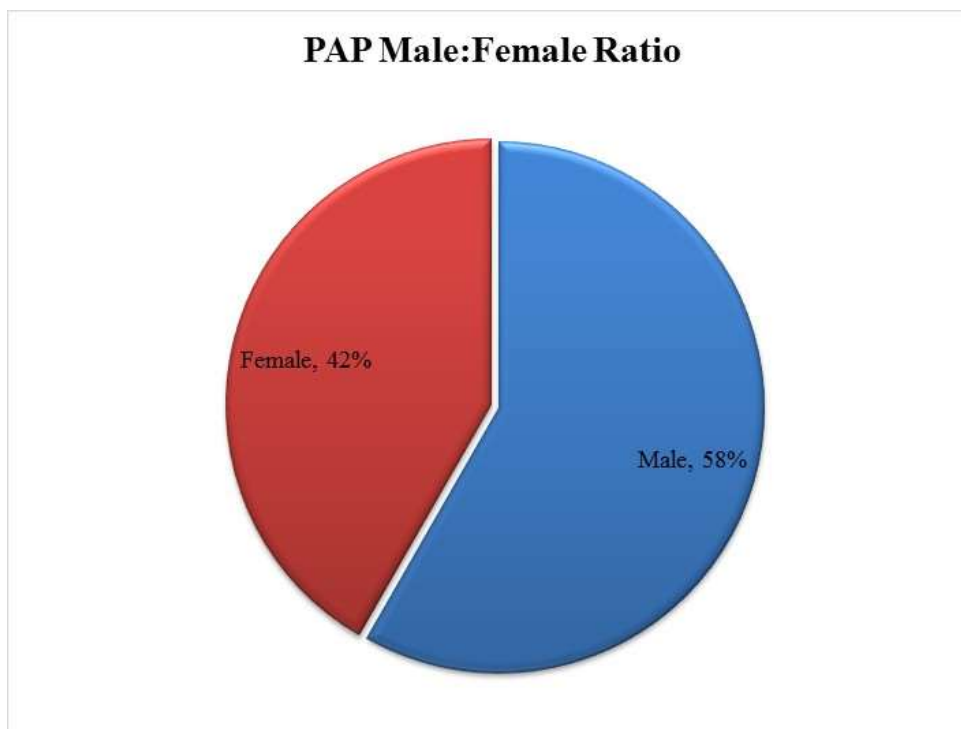


Figure 4-3: Male: Female ratio of PAPs in the project area

#### 4.1.4 PAP Literacy Levels

Majority of the PAP population is literate with only about 28% having not received any education. The literacy levels of the project PAPs are shown in the charts below:

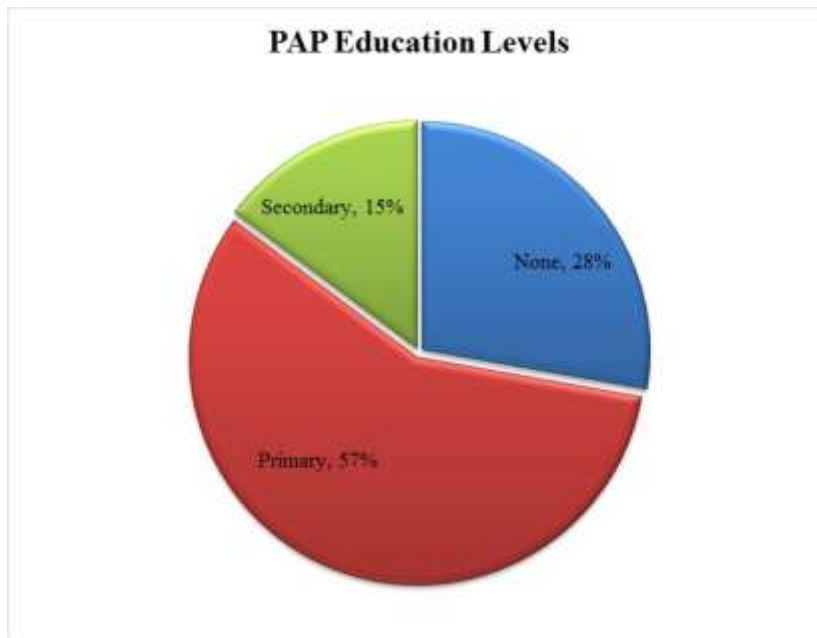


Figure 4-4: PAP literacy levels

#### 4.1.5 Economic Activity of the Household Head

The project area is mainly agricultural with most of the household heads being crop farmers. Other economic activities in the project area are indicated in the chart below:

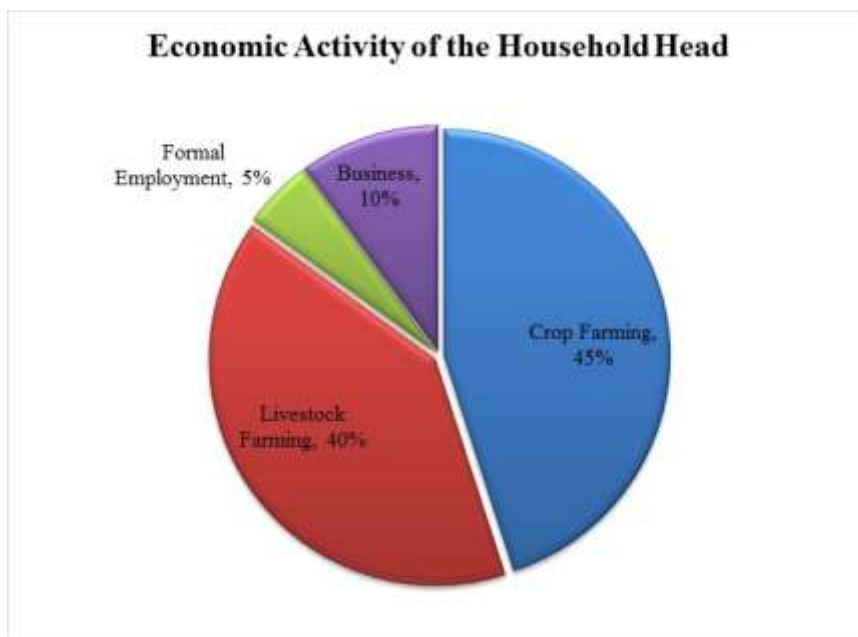
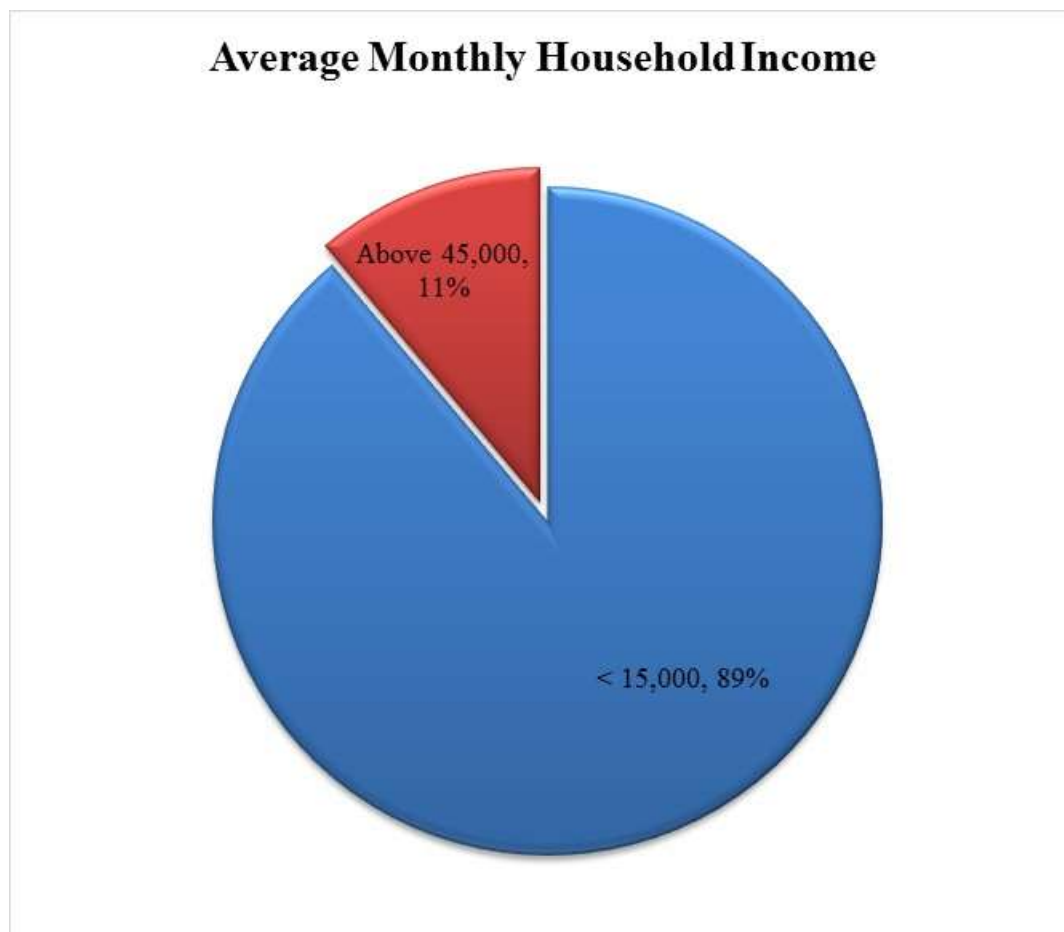


Figure 4-5: Economic Activity of the Household Head

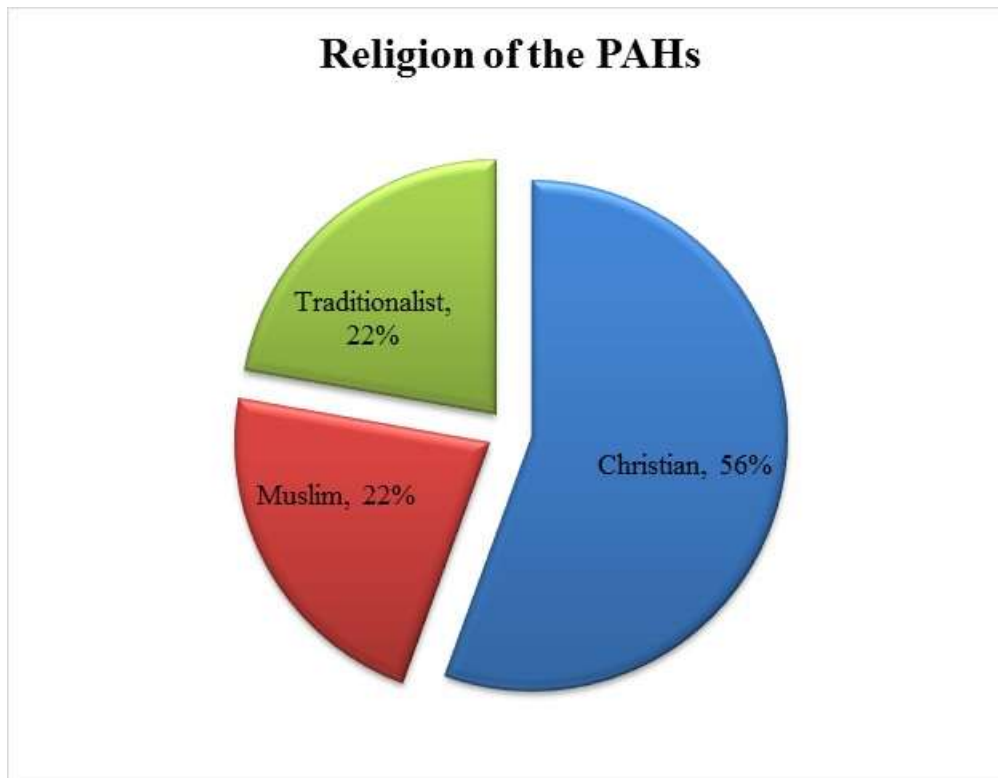
Based on the above economic activities, the income levels of the households are as follows:



*Figure 4-6: PAP Income Levels*

#### **4.1.6 Religion**

The PAPs in the project area are predominantly Christian. The other religions are Islam and traditionalism as shown in the chart below:



**Figure 4-7: PAP Religion**

## 5 IMPACTS ON PROJECT AFFECTED PERSONS

The impacts of the project particularly on the PAPs of the project are highlighted in this chapter. Apart from showing the nature, magnitude and types of impact, the description and analysis presented in this chapter serve other purposes: first it serves as the basis on which the valuation and compensation of assets lost by the PAPs is undertaken. Second, various income restoration and improvement strategies formulated in this RAP are partly based on the assessment of the severity of the impact and loss of assets by different categories of PAPs. In addition to individual households, the project also affects the assets of few public institutions and community-group assets. These are summarized in the table below:

*Table 5-1: Summary of Affected PAPs*

Identified Institutional PAPs	Identified Household PAPs	Unknown PAPs	Total PAPs	Total PAHs
145	54	0	199	11

The number of households and the types and amount of household assets affected: land, housing and related structures, and perennial crops and trees is as follows;

### 5.1 IMPACT ON LAND

The proposed project will displace farmland, particularly at the proposed treatment works and on the main 8" pipeline to the E941. About 3 acres of land belonging to 6 PAPs. Details on the affected land are shown in the entitlement matrices provided.

### 5.2 IMPACT ON STRUCTURES

The project area is generally sparsely populated with minimal encroachment of the road reserve and minimal structures at the proposed treatment works. The major structures identified during the RAP include:

- ❖ Permanent buildings – residential/commercial
- ❖ Temporary buildings – mainly small-scale business premises (stalls, kiosks, food kiosks etc.).

A summary of the PAPs with structures is shown below:

*Table 5-2: Affected Households with Structures*

PAHs with Permanent Structures	PAHs with Semi Permanent Structures	PAHs with Temporary structures	PAHs with other structures
2	0	1	0

### 5.3 IMPACT ON TREES AND CROPS

The project area is arid and semi-arid characterized by shrub type vegetation. The RAP did not encounter any trees, about 6 PAHs with maize will be affected by the proposed project.

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#### **5.4 IMPACT ON BUSINESS AND LIVELIHOOD**

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The proposed project is in a sparsely populated area. The two centres encountered are Mwakijembe, Mwandimu and Mafundani. The shops in the centre were located out of the road reserve and away from the pipeline way leave. Only one PAH with a business was encountered.

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#### **5.5 IMPACTS ON FENCES AND BOUNDARIES**

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No fences and gates were encountered in the RAP.

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#### **5.6 IMPACTS ON PUBLIC ASSETS AND COMMUNITY INSTITUTIONS**

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The project will affect minimal institutions. The few institutions that will be affected by the project include:

- ❖ Schools (1)



## 6 CONSULTATIONS – PERSONS, AGENCIES & PUBLIC

### 6.1 LEGAL REQUIREMENTS

#### 6.1.1 Government Policy on Public Consultation

The overall objective of the Government is to involve communities in policy formulation and implementation at the local level. More specifically, the Community Action Planning Programme objective is to put in place a durable system of intra-community co-operation through collective action, which creates communal discussion forums for the implementation of development activities.

#### 6.1.2 EIA and Audit Regulations

Section 17 of the Environmental (Impact Assessment and Audit) Regulations 2003 states that an EIA Study should “seek the views of persons who may be affected by the project.”

### 6.2 PERSONS OR AGENCIES CONSULTED

The key issues associated with the establishment of a treatment works, pump houses, water tanks and placement of pipelines will often relate to land-take, biodiversity, pollution, disruption of livelihoods, community safety, traffic management, communicable diseases and employment and trade opportunities.

Effort was not spared to contact all with information on the following issues:

- Assessment of the baseline environmental and social conditions
- Consideration of feasible and environmentally & socially preferable alternatives
- Requirements under Kenya country laws and regulations, applicable international treaties and agreements
- Protection of human rights and community health, safety and security (including risks, impacts and management of project’s use of security personnel)
- Protection of cultural property and heritage
- Protection and conservation of biodiversity, including endangered species and sensitive ecosystems in modified, natural and critical habitats, and identification of legally protected areas
- Sustainable management and use of renewable natural resources (including sustainable resource management through appropriate independent certification systems)
- Use and management of dangerous substances and major hazards assessment
- Labour issues (including the four core labour standards), and occupational health and safety
- Socio-economic impacts & fire prevention and life safety
- Land acquisition and involuntary resettlement
- Impacts on affected communities, and disadvantaged or vulnerable groups
- Impacts on indigenous peoples, and their unique cultural systems and values
- Cumulative impacts of existing projects, the proposed project, and anticipated future projects

- Consultation and participation of affected parties in the design, review and implementation of the project
- Efficient production, delivery and use of energy
- Pollution prevention and waste minimization, pollution controls (liquid effluents and air emissions) and solid and chemical waste management.

As such a cross-section of persons were consulted in Mombasa and Kwale Counties as indicated by the following consultation registers in tables 5-1.

**Table 6-1: Persons met during the ESIA study in planning the Proposed Water Supply Project**

No.	Name	Office	Designation	Contacts
1	Haji Masa	Coast Waters Service Board Mombasa	Environmental Manager Coast Water Board	+254722379703
2	Mr. Mwarimo Salim	Vigurungani location Public Health Office.	Public Health Office	+254721282863
3	Eng. Mukulia	Coast Water Services Board Kinango.	Sub County Manager. CWSB.	+254726979571
4	Mr Michael Kilonzo	Nyalani Sub-County Hospital.	Hospital Administrator.	+254715504321

### **6.2.1 Overview from the Environmental Manager (CWSB)**

The Environmental Manager of CWSB gave the team an overview of the project as well as provide a key informant interview on the environmental and social issues affecting the community, what is and can be done to mitigate the issues.

#### **Current Sources of Water**

The project area is currently being supplied by the Nyalani dam. Water distribution, however is not adequate hence some reaches of the project area are not adequately supplied thus resulting to the use of water pans for water.

#### **Environmental and Social Issues in the Project Area**

The main environmental issues experienced in the area include:

- Water shortage. Kwale County is generally a dry area and despite the presence of the Nyalani Dam in the area, water distribution is not adequate to feed the available population. This has led to more than half the population within the project area to depend on water pans for water.
- Solid Waste Disposal: Nyalani and its environs do not have a proper solid waste collection mechanism, thus the project area experiences solid waste generation, particularly in the trading centres.
- Deforestation is a major problem experienced in the area with most of the trees cut being used for charcoal burning purposes.

- Drought: this is experienced all along the project area and has an adverse effect especially on the crops being grown in the area as they do not receive adequate rainfall.
- Overgrazing is another significant problem experienced in the area. Since goats are a major livestock in Nyalani, they have led to most of the land being left bare after scraping off all the available grass.

### **What is being done to mitigate the Environmental Impacts**

The environmental Manager of CWSB stated that there were initiatives which were being carried out by community health organizations as well as the County Council to preserve the environment. Some of these initiatives include tree planting, public awareness, cleaning of mosquito breeding sites as well as garbage collection exercises by the youth within the locality. Although this is the case, a little motivation could help in order to promote the mitigation activities.

The Environmental Manager of CWSB concluded by stating that the water was adequate for expansion of the line, however the distribution network was lacking. He was also of the opinion that the project would impact positively on the area since it would reduce the overdependence on the unreliable and unhygienic water pans.

#### ***6.2.2 Overview from the Public Health Officer.***

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The Public Health Officer welcomed the Consultants to their County offices and was pleased about the project. The Consultants proceeded to ask health based questions about the project area.

The public health officer stated that there were isolated cases of diarrhoea diseases but in very few occurrences. He also pointed out that the water obtained from water pans by the residents was untreated but most people had to treat or boil it before use.

Despite the poor sanitation in the area, there was a low prevalence of water borne diseases in the project area.

#### ***6.2.3 Overview from the Coast Water Services Board Head of Kinango Sub-County.***

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The CWSB Head at Kinango Sub-County stated that the project area would greatly benefit from the project.

He proceeded to explain to the consultants the exact location of the proposed project since the area did not have any existing pipelines save for an old tank that had been vandalized that had been used in the past to supply residents with clean water.

He pointed out that the main beneficiaries of the project would be the local schools that have been greatly affected by the lack of water as some students had to miss school while traveling long distances in search for water.

#### ***6.2.4 Overview from the Sub-County Hospital Administrator.***

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The sub-county hospital administrator welcomed the consultants and proceeded to give them the information they were seeking. He went ahead to state that waterborne diseases in the area were rare. He said that the main cases prevalent in the hospital were malaria, anaemia and respiratory diseases.

He stated that the hospital received piped water from Marere. In instances where this water was not adequate, the alternative source of water would be from boozers provided by the county. Present in the hospital was a reservoir tank and plastic tanks to harvest rain water. There was also an uncompleted borehole whose water was too salty and could only be used for cleaning purposes.

The hospital administrator pinpointed that the main problem with the Marere pipeline supply was leaks that occurred along the pipeline hence cutting off water supply for even a week. On top of that, the Marere supply was inadequate in itself as sometimes the hospital could go for even a full month without water.

Some of the recommendations that he gave was the construction of a tank at Baraza Park to prevent the problem of pipe leaks and low pressure due to people tapping water along the Marere pipeline, some of them being illegal.

### **6.3 PUBLIC CONSULTATIONS**

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The Consultant carried out public consultation in the form of a consultative meeting where, the Consultant presented the project to the local community, comprised of stakeholders. The Consultant held a meeting on 9<sup>th</sup> June 2016 at the chief's office in Mwakijembe, minutes, photos and an attendance sheet of the meeting are presented in appendix 16.2.

#### **6.3.1 Findings of the meetings**

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The meetings included a presentation by the Consultant on the proposed works, the various environmental and social impacts that may arise from the project including temporary resettlement along the connection from the treatment plant and the road where the distribution lines will remain within the provided 9m road reserve as provided in the design report. The consultant however pointed out that the Designers had tried their very best to minimize resettlement and that the proposed distribution lines would not permanently displace any persons. She highlighted the mitigation measures for all the impacts in accordance to the RAP. She also disclosed the features of the RAP including cut off dates.

Being a public consultation meeting, feedback from the stakeholders was obtained with majority of the stakeholders approving of the project however requesting that their preference to seek local labor and local materials be met before the implementation of the project. The meeting was successful, with the public accepting the project.

## 7 ELIGIBILITY CRITERIA AND ENTITLEMENT MATRIX

This section of the report identifies the categories of the PAPs eligible for compensation for losses that will be incurred during the project construction and implementation.

### 7.1 CONDITIONS OF ELIGIBILITY FOR COMPENSATION

#### 7.1.1 Cutoff Date

The practical Cut-off Date for implementation of the RAP will be deemed to be the date at which the census of affected people and affected assets was completed, that is 14<sup>th</sup> of July 2015. No structure established or crops planted in the Project-Affected Area after 14<sup>th</sup> of July 2015 shall be eligible for compensation.

#### 7.1.2 Eligibility

Assets, including land, structures, fences, trees and crop fields, which were surveyed in the Project-Affected Area by the Cut-Off Date are eligible for compensation. People residing in the Project-Affected Area by the Cut-Off Date are eligible for compensation even if they have no legal tenure (encroachers).

#### 7.1.3 Entitlements Matrix

The table below highlights the different entitlements of the PAPs

*Figure 7-1: Eligibility Criteria*

Affected Asset	Eligibility Conditions	Entitlements
Land within the proposed treatment site and 1.7Km 8" pipeline	If them and a witness can prove ownership of the structure.	Full replacement Cost of the land
Structures on the way leave on private land	If them and a witness can prove ownership of the structure.	Replacement Cost of Structure
Structures on the way leave within the road reserve	If them and a witness can prove ownership of the structure.	Replacement Cost of Structure
Trees and Crops along the on private land	If them and a witness can prove ownership of the trees and crops.	Replacement Cost of the trees and crops.
Trees and Crops along the on the way leave within the road reserve	If them and a witness can prove ownership of the trees and crops.	Allowance to cut tree and harvest crops.

Fences along the proposed way leave on private land	If them and a witness can prove ownership of the fence	Replacement Cost of fence and replacement cost for the gate
Fences along the proposed way leave within the road reserve	If them and a witness can prove ownership of the fence	Replacement Cost of fence and an allowance to move the gate
Businesses on the way leave and within the road reserve also on private land	If them and a witness can prove ownership of the trees and crops.	Livelihood compensation comprising of 3 months business income

The witness that can be used include the area Chief, Area Assistant Chief and Village Elders

## **7.2 VALUATION OF AND COMPENSATION FOR LOSSES**

Various valuation techniques were used to ensure that various businesses, structures and buildings, trees and crops and fences were appropriately valued where necessary. This was done to help establish the compensation packages for PAPs. Valuation can simply be defined as the art or science of establishing the value (worth) of a particular interest in property for a specific purpose and at a particular moment in time; taking into considerations all the features of the property and also considering all the underlying factors of the market.

The following is therefore the valuation methods used on the different affected items.

### **7.2.1 Valuation for loss of Land**

The affected land for the proposed treatment works and 1.7Km 8" pipeline was measured by taking the length and width for each PAP. The area of land affected for each of the PAPs was measured and in order to value the land, local land rates were used to calculate the cost of the affected land. The total number of PAPs with land is 6 with a value of K.Shs. 530,977.61.

### **7.2.2 Valuation for loss of Structures**

The main structures identified include permanent, semi-permanent, temporary and other structures (which include wells etc.). All of these were valued at the full replacement cost. The areas of the various structures, number of floors and materials used were all employed in obtaining the values of structures. The total number of PAPs with structures are 3 with valued assets worth K.Shs. 379,500.00

### **7.2.3 Valuation for Loss of trees and crops**

This RAP is located both along the road reserve and on private land thus there will be two modes of valuation.

The trees and crops will be priced based on a replacement cost of the trees and crops. This will be done by identifying the type of tree, the age and valuation based on the market prices for full harvested trees. Concerning crops, the replacement cost for the crops was based on:

- ❖ The proportion of area harvested, along with the area covered by each crop types.
- ❖ Yield per unit area of land for each of the crops.
- ❖ Total crop production, calculated by multiplying yield per unit of land obtained and the area of land cropped by each crop types;

For the trees and crops affected that were within the road reserve, it was recommended that tree owners be issued with notices to cut them. Similarly, crop owners should be notified to harvest their crops. The Consultant has proposed an allowance to facilitate the cutting down of trees and harvesting of the crops. The crops and trees were valued based on the aforementioned allowance. For crops, the allowance was based on:

- ❖ The proportion of area harvested, along with the area covered by each crop types.
- ❖ Yield per unit area of land for each of the crops.
- ❖ Total crop production, calculated by multiplying yield per unit of land obtained and the area of land cropped by each crop types;

For trees the type of tree and its age was considered during the valuation process. The trees were valued based on a mature tree.

The total number of PAHs with trees and crops for both pipelines is 6 with a value of K.Shs. 65,850.00.

#### **7.2.4 Valuation of Fences**

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The project will affect some of the boundary fences along the road reserve. These fences were classified as: Live Fence (fence comprised fully or partly of some vegetation); permanent fence (including wall fences and barbed wire fence); corrugated iron sheet fences; and electric fences. The value of compensation was computed per unit area of fences based on possible cost of replacement of the fences. Gates were valued based on the cost of moving the gates and reinstallation away from the project area.

The RAP did not identify any PAPs with fences and gates.

#### **7.2.5 Valuation for Loss of Business/Livelihood**

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The project will affect several businesses along the pipeline route particularly at the various centres along the roads. The compensation for businesses was valued based on the income from the business, the monthly incomes were multiplied by 3 months to facilitate compensation. The business owners identified were 1 with a compensation value of K.Shs. 67,500.00.

#### **7.2.6 Valuation for Disturbance**

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The entitlement for disturbance was valued as percentage of the total entitlement for the different aspects of the project. The percentage employed in this RAP is 15% of the entitlement costs.

### **7.3 MODE OF PAYMENT OF PAPs**

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After the ownership and valuation of affected assets are determined, compensation of the PAPs will occur. The compensation should be done so as to ensure important members of the households (wives) are also aware of the compensation. This will be done so as to ensure that all PAPs benefit

from the compensation. Local administration i.e. chiefs and village elders will be used to ensure that all PAPs benefit from the compensation. The administration knows each of the affected PAPs and will be able to ensure that all decision making household members are aware and present during any payments.



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## **8 INCOME RESTORATION AND SOCIAL DEVELOPMENT MEASURES**

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This chapter highlights the various measures in place in order to ensure livelihoods are restored for all affected parties.

The project will displace one or two land owners at the treatment works. In order to restore their livelihoods the consultant proposes to provide the affected PAPs with an alternative piece of agricultural land located within the irrigation site, located nearby. This will ensure that the affected PAP benefits from the water from the dam.

Structures along the road reserve will be compensated at the full replacement cost. PAPs will not be allowed to build permanent structures on the pipeline way leave.

Tree and Crop Owners will be facilitated to harvest their trees and crops. After the laying of the Pipeline, local farmers will be allowed to continue farming but only annual crops with shallow roots that will not affect the pipeline will be allowed on the way leave, with the provision that when the Client needs to maintain the pipelines.

### **8.1 VULNERABLE GROUPS**

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These are made up of distinct groups of socially distressed people who might suffer disproportionately from the effects of resettlement. These may be ethnic minority/indigenous people, women headed households, the most poor (based on the poverty line), the disabled and elderly. The Consultant encountered only 2 households with vulnerable members, who will have their land affected by the project. These vulnerable group was identified as female headed households headed by elderly widows. Fortunately the displacement won't be permanent as the affected area is only used for subsistence farming. As such the two households will be able to continue their farming activities after the laying of the pipeline.

This group of people will be eligible for special assistance for example assistance by the Contractor in harvesting of the affected crops. The local chief can assist in this exercise by procuring the labour to carry out the harvesting process, and this activity being overseen by the Resident Engineer and CWSB. In addition to the harvesting, the Consultant also proposes that the vulnerable group have access to water via a connection from KWAASCO, after the Construction of the treatment works and pipeline.

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## **9 RAP IMPLEMENTATION SCHEDULE**

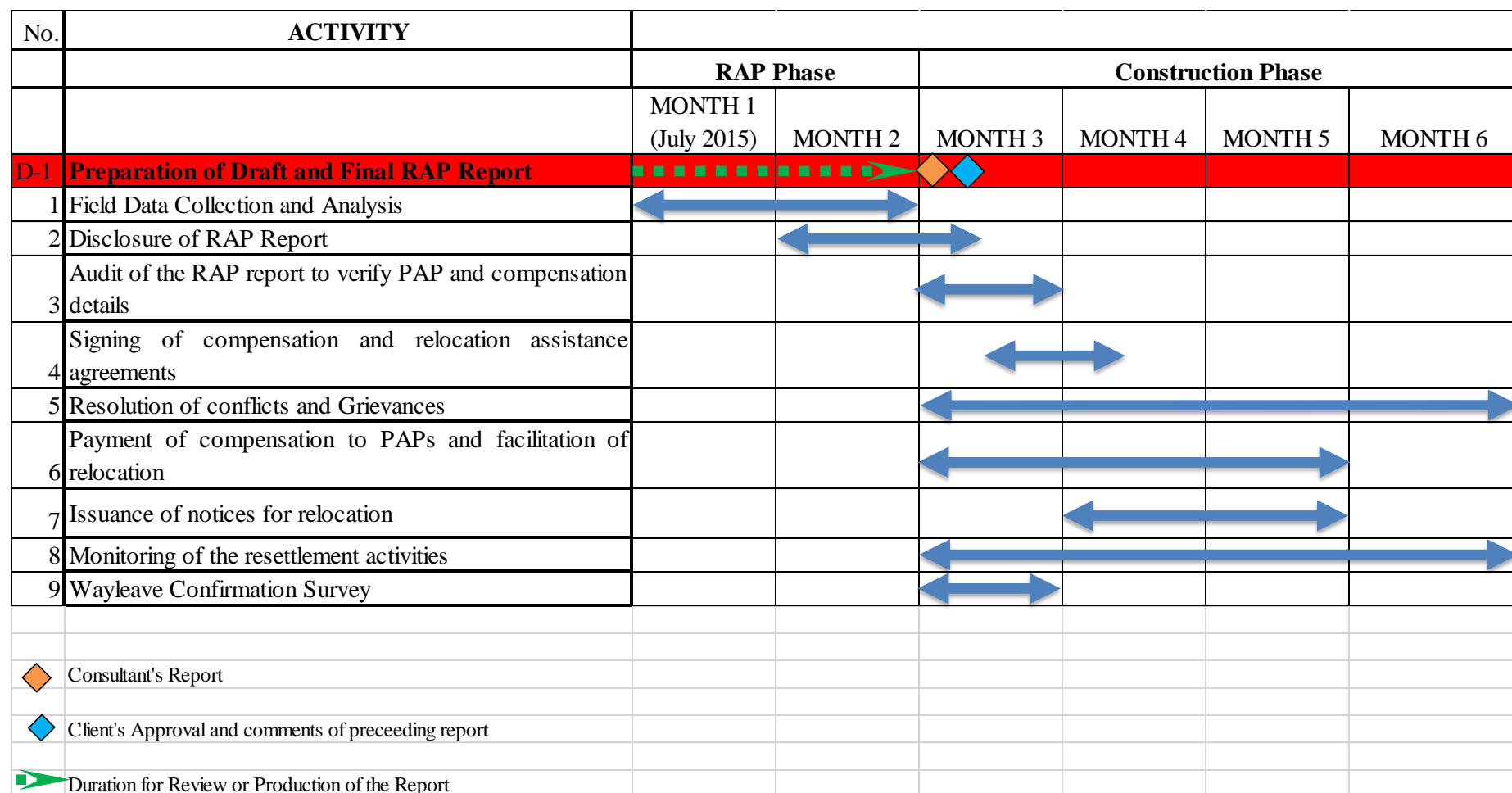
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The proposed time frame for the resettlement process is estimated to begin immediately after the completion of the design and last the duration of the project. This takes into account important variables such as creation of awareness on of the potential impacts and resolution of conflicts/grievance and cash flow from the financier. Time schedule and summary of activities is presented in the Table 9.1.

### **9.1 RAP IMPLEMENTATION DURATION**

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The Consultant has proposed that the RAP be implemented before the Construction process begins. However proposes that grievance redress and monitoring of the resettlement activities be continuous throughout the construction process.



**Figure 9-1: Proposed Activity for RAP Implementation for the Project**

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## **10 GRIEVANCE REDRESS MECHANISMS**

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### **10.1 INTRODUCTION**

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The proposed project will slightly infringe on peoples' right to property and/or livelihood and readjustment to new life conditions as such the resettlement process is bound to elicit grievances from the PAPs or from other interested parties. It is therefore imperative to have a workable grievance redress mechanism to take care of any such disputes arising from the resettlement so that they do not have an adverse effect on the project. This chapter briefly outlines a mechanism for settling the anticipated disputes.

### **10.2 POSSIBLE SOURCES OF GRIEVANCES**

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Some of the issues that may elicit disputes in the resettlement process include:

- Failure to understand the essence of the project and the need for the proposed resettlement
- Clerical errors in data entry that leads to delays in processing of compensation for the PAP
- Emerging issues such change in estate administration of affected properties causing delays to payment of compensation
- Disputed ownership of an affected asset particularly where documentation is not reliable
- Rejection of a compensation award considered not adequate and representative of market value
- Handling of cultural issues where there are no clearly agreed precedents such as relocation of graves or payment for compensation in a polygamous marriage

### **10.3 ROLE OF THE GRIEVANCE REDRESS COMMITTEE (GRC)**

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The main function of the Grievance Redress Committee is to provide a forum for the PAPs to air their dissatisfaction arising from the compensation or implementation process of the project. This is an informal forum within the Resettlement Committee to fast-track addressing of emerging issues in a project that can derail a smooth implementation of a project. The Committee will be receiving complaints from the PAPs through the project office either verbally or in writing and will then endeavour to address the issue to the satisfaction of the complainant. If the matter cannot be addressed to the satisfaction of the complainant within the prescribed period, the complainant then may have recourse to the Resettlement Committee. Failure to be satisfied, the complainant reserves the right to seek redress from the Court of law that is lengthy and costly in most cases.

The redress committee will compile registers of all complaints received from the PAPs at the project office, the actions taken and the decisions arrived at. Initially, the Resident Engineer and

his staff with secretariat of the GRC will handle the complaint. Failure to arrive at a satisfactory answer, then the RE will refer the matter to the GRC that meets periodically. Whereas the GRC is constituted of people outside the Project Office of the Resident Engineer, the latter will be a co-opted member together with the Contractors representative for expeditious resolution of the complaints regarding the project.

#### 10.4 GRIEVANCE REDRESS SUB-COMMITTEE

A Grievance Redress Sub-Committee will be formed within the Project Resident Engineers Office. They shall address the issues in the following manner:

- Register the grievances raised by the PAPs; and
- Address the grievances forwarded by the RC/PAPs representatives.

The Grievance Redress Sub-Committee shall try as much as possible to arrive at a compromise on complaints raised. This may be obtained through a series of mediation and negotiation/arbitration exercises conducted with the individual PAP. If the PAP accepts the recommendations made by the committee, the committee along with a PAP who is willing to take part in these proceedings may hold mediations at the appointed places.

#### 10.5 DISPUTE PROCEDURE

The filing of grievances for accurate record keeping is important. If the complainant is not able to express his/her complaint in writing, he/she can be assisted by a local leader (preferably who is also a member of the Committee) to file the complaint at the complaints desk in the project office. To ease follow-up, each complaint will be registered and assigned a unique reference number. The Office will then evaluate the application and determine whether the issue can be handled administratively or the Committee has to meet over the matter. The figure below shows a sample of a complaint form:

*Table 10-1: Table Showing a Sample Grievance Form*

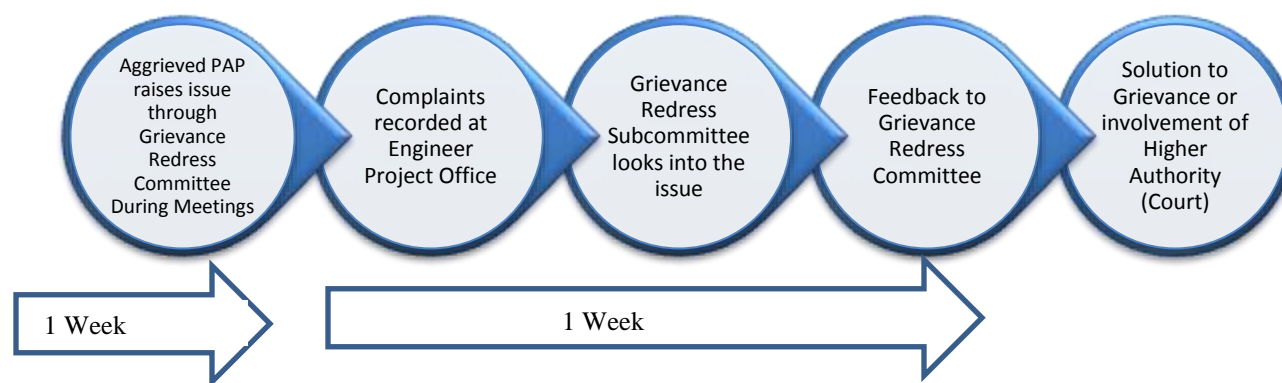
<b>Grievance Form</b>					
<b>Ref. No.</b>	<b>PAP Name</b>	<b>Date</b>	<b>Description of Grievance</b>	<b>Proposed Redress Measure</b>	<b>Issue Resolved (Y/N)</b>

Where the Committee has to be convened, all its proceedings are recorded and minutes prepared of the deliberations. The minutes have to be confirmed at the next meetings and authenticated by the full sitting. All the signed minutes and the resolutions of the GRC are implemented as agreed and without delay so as not to impact negatively on the project implementation plan. Some issues that arise in-course of the project implementation are dealt with as they arise.

Initially, it is proposed that the Grievance Redress Committee should meet on scheduled days per week that the public is aware of to receive and address any complaints that are filed by the community and the PAPs. The Committee should also receive reports on any matters that have been dealt with administratively, having been considered not necessary to receive their participation. The frequency of the meetings will diminish as the issues to be addressed decrease and the meetings may now be scheduled on periodic basis until the project is completed.

### ***10.5.1 Failure to Resolve Disputes***

If the Grievance Redress Sub-Committee fails to resolve the disputes with the PAPs. An independent third party will be sought so as to resolve the issue. This party may be an arbitrator. If the matter is still not resolved, the aggrieved parties may move to court to settle the matter. However all legal fees for each party must be met by the party members.



***Figure 10-1: Figure Showing the Dispute Resolution Procedure***

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## **10.6 ROLE OF PAP'S REPRESENTATIVES IN GRIEVANCE REDRESS COMMITTEE**

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The PAPs officials headed by a Chairman elected by the PAPs shall carry out the following responsibilities as regards redressing grievances:

- Hear the grievances of the PAPs and provide an early solution to those they are able to;
- Immediately bring any serious matters to the attention of the RC; and
- Inform the aggrieved parties about the progress of their grievances and the decisions made by the RC.

## 11 ORGANISATIONAL RESPONSIBILITIES

The organizational structure elaborates on the role of various stakeholders in administering the RAP. It further clarifies the role of PAPs and their responsibility in the exercise in relation to the stakeholders. Table 11.1 shows the various institutions and their role in the implementation of the RAP.

*Table 11-1: Institutional Roles in RAP Implementation*

Name of Institution	Role of Institution
Environmental Department, CWSB & KWAWASCO	<p>Provide both the financial input into the resettlement process as well as significant additional managerial and technical expertise.</p> <p>Responsible for day to day coordination and implementation of the RAP</p> <p>Ensure that the procedures and requirement of Kenya laws are enforced.</p> <p>Review the RAP to ensure that all procedures have been adhered to and there is consistency in approach between subprojects.</p> <p>Oversee the implementation of the RAP.</p> <p>Oversee the formation of Resettlement Committees</p> <p>Ensure maximum participation of the affected people in the planning of their own resettlement and post resettlement circumstances.</p> <p>Accept financial responsibility for payment or compensation and other designated resettlement related costs.</p> <p>Ensure detailed valuation of the structures in order to determine the case to case value of each component of the project and agree upon a value for compensation.</p> <p>Pay the affected people compensation to the amounts agreed.</p> <p>Ensure monitoring and evaluation of the PAPs and the undertaking of appropriate remedial action to deal with grievances and to ensure that income restoration are satisfactorily implemented.</p> <p>Ensure initial baseline data is collected for the purposes of monitoring and evaluation report as per the indicators provided by the RAP.</p> <p>Oversee formation of Resettlement Committees,</p>



The county Administration	<p>Review and monitoring of the RAP process.</p> <p>Provide political and administrative support for implementations of the RAPs</p> <p>Coordinate grievance mechanisms</p>
Resettlement Committees (made up of Village elders and selected PAPS representatives, Local Chief and Assistant Chief, Women Representatives, Local Political representative (MCA), Local sub County Office)	<p>Ensure a timely accomplishment of the whole process</p> <p>Set out the framework for policies, principles, institutional arrangements schedules, and other indicative budgets to facilitate the project resettlement process.</p> <p>Act as the voice of those affected</p> <p>Vetting of PAPs to be resettled,</p> <p>Validate inventories of PAPs and affected assets,</p> <p>Monitor disbursement of funds,</p> <p>Guide and monitor implementation of relocation,</p> <p>Facilitate conflict resolution and address grievances,</p> <p>Provide support and assistance to vulnerable groups.</p>
<p>KeNHA, KURA KeRRA, National Lands Commission, County Lands Office</p> <p>Non-Governmental Organizations (NGO's), Community based Organizations (CBOs)</p>	<p>Provision of technical support in resettlement, including land ownership issues</p>

## 12 MONITORING AND EVALUATION

A monitoring and evaluation (M&E) program is required to be developed to provide feedback to project management which will help keep the programs on schedule and successful. Monitoring provides both a working system for effective implementation of the RAP by the project managers, and an information channel for the PAPs to assess how their needs are being met. Monitoring shall be conducted in two ways: by advisory committee and internally by Resettlement Committee (RC).

### 12.1 ADVISORY COMMITTEE

An advisory committee will carry out monitoring and evaluation of RAP implementation. The committee shall begin the work right from the implementation of RAP and will meaningfully and realistically monitor and evaluate the resettlement programs on a periodic basis so that all the vital activities are successfully implemented. Monitoring and evaluation will be useful in information of corrective measures by identifying the problems and difficulties faced by the PAPs and bringing them to the notice of the RC. The Committee shall carry out the following:

- Verify results of internal monitoring by RC;
- Assess whether resettlement objectives have been met; specifically, whether livelihoods and living standards have been restored or enhanced;
- Assess the resettlement efficiency, effectiveness, impact and sustainability, drawing lessons for future resettlement activities and recommending corrections in implementation process; and
- Ascertain whether the resettlement entitlement were appropriate to meet the objectives and whether the objectives will suit the PAPs conditions

The objectives of the Monitoring and Evaluation programme are to:

- ❖ Ensure that the existing system of livelihood is not disturbed.
- ❖ Assess if compensation and rehabilitation measures are adequate.
- ❖ Monitor if the timelines are adhered to.
- ❖ Identify emerging or potential problems.
- ❖ Identify methods of responding efficiently to mitigate the problems.

The process will be monitored both internally and externally with the project field staff dealing with the day- to-day operational issues. This will include payment of compensation, physical identification of project affected persons and arrangement for their payments, relocation and resettlement.

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## **12.2 RESPONSIBILITY**

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This will be purely an administrative process with the project field office dealing with the establishment of resettlement unit, consultation with the project affected persons in the preparation of the resettlement plan, information dissemination on payment of entitlements, grievance redress, etc. The Client's Environmental department will be involved in handling of payment of compensation to the affected persons, delivery of entitlements, disbursing of income and livelihood restoration assistance, consultations and relocation among other activities.

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## **12.3 PERFORMANCE MONITORING**

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Once the PAPs have received their compensation or have been resettled, the focus of the CWSB Environmental Department will focus on programmes that promote income generation for the resettlers and ensuring that the programmes are acceptable to them, the new livelihood patterns are sustainable and assessing how the income generating interventions are impacting on the living standards of the re-settlers. To achieve compliance with the targets, it will be necessary to establish benchmarks upon which the success rate is measured.

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### ***12.3.1 Monitoring and Evaluation Indicators***

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These will include primarily the activities and the entitlements due to the displaced people. These include among others:

- i. The frequency and number of consultations held with various stakeholders; parties engaged in grievance redress and participating in the project such as Civil Society groups;
- ii. Grievances filed by the PAPs and nature of the grievances including the time it has taken to resolve them
- iii. Procedures in the operations such as asset verification and valuation procedures including effectiveness of compensation delivery system;
- iv. Number of assets compensated and the amounts paid out to the individuals and public facilities restored;
- v. Number and category of people paid their compensation and rehabilitated including vulnerable groups receiving assistance;
- vi. The growth in number of settlements, market areas and the change in standard of living of the displaced persons.

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### ***12.3.2 External Monitoring***

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It will be imperative to involve an external M&E specialist for the project to meet the accountability and transparency criteria. The external monitoring will purposely validate the work done by the CWSB Environmental department monitoring to ascertain that the targets are met and the objectives of the RAP are adhered to. It will be important for the exercise to be

carried out during and after the life of the project. However, it may require more frequency (maybe quarterly) to ensure there is no lapse in the follow-up on implementation of the resettlement goals and that no grievances are over-looked. The project will provide a budget to facilitate the external specialist and his team to carry out their assignment effectively.

The PAPs will be effectively involved and informed through participatory meetings in the evaluation exercise.

### ***12.3.3 Internal monitoring***

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This should be responsible of the RC, it will look into the conventional indicators verses the assistance provided to the affected families, number of affected families, families resettle, infrastructure facilities allocated etc. It will also monitor the financial aspect that include payment of compensation, grants, income restoration, etc. Regular progress reports shall be prepared and summated to the client.

## 13 RAP COSTS AND BUDGETS

This chapter highlights the various costs of entitlements for the various pipelines as well as the costs for monitoring and evaluation.

### 13.1 COST OF ENTITLEMENTS

#### 13.1.1 Entitlements for Land

The project will affect a few land owners at the treatment works and the 1.7Km 8" pipeline. The total entitlement for land is K.Shs. 530,977.61, as shown in the table below:

*Figure 13-1: Summary of Land Owners' Entitlement*

PAHs with Land				Total Entitlement (K.Shs.)
6				530,977.61
F=2	M=3	U = 0	I = 1	

Where: *F* – Female headed household

*M* – Male headed household

*U* – Unknown Owner

*I* - Institution

#### 13.1.2 Entitlement for Structures

The Total Entitlement for structures for all the pipelines is K.Shs. 379,500.00 and is distributed among the pipelines as follows.

*Table 13-1: Summary of Structure Owners' Entitlement*

PAHs with Structures				Total Entitlement (K.Shs.)
3				379,500.00
F= 0	M= 2	U = 1	I = 0	

Where: *F* – Female headed household

*M* – Male headed household

*U* – Unknown Owner

*I* - Institution

#### 13.1.3 Entitlement for Trees and Crops

The total entitlement for tree and crop owners is K.Shs. 65,850.00 which is distributed in the as shown below:

**Table 13-2: Summary of Trees and Crops Owners' Entitlement**

PAHs with Trees & Crops				Total Entitlement (K.Shs.)
6				65,850.00
F= 1	M= 5	U = 0	I = 0	

Where: *F* – Female headed household

*M* – Male headed household

*U* – Unknown Owner

*I* - Institution

### 13.1.4 Entitlements for Businesses (Loss of Livelihood)

The total entitlement for business owners is K.Shs. 14,209,500.00 which is distributed in the pipelines as follows:

**Table 13-3: Summary of Business Owners' Entitlement**

PAHs with Businesses				Total Entitlement (K.Shs.)
1				67,500.00
F= 0	M= 1	U = 0	I = 0	

Where: *F* – Female headed household

*M* – Male headed household

*U* – Unknown Owner

*I* - Institution

### 13.1.5 Entitlement for Disturbance

15% of the entitlement for each PAP is provided for the disturbance that will be as a result of the pipelines. The total cost for disturbance is K.Shs. 156,574.14 and is distributed in the pipelines as follows.

**Table 13-4: Summary of Disturbance Entitlement**

PAHs				Total Entitlement (K.Shs.)
11				156,574.14
F= 2	M= 7	U = 1	I = 1	

Where: *F* – Female headed household

*M* – Male headed household

*U* – Unknown Owner

*I* - Institution

### 13.1.6 Total Entitlements

The total entitlement for the project is K.Shs. 184,811,565.93, which is illustrated in the table below for each of the pipelines:

*Table 13-5: Summary of Entitlement for each pipeline*

PAHs				Total Entitlement (K.Shs.)
11				1,200,401.75
F= 2	M= 7	U = 1	I = 1	

In addition the entitlement per type of asset is also summarized as shown below:

*Table 13-6: Summary of Entitlements per Asset Category*

No.	Asset Type	Total Entitlement
1	Land	530,977.61
2	Structures	379,500.00
3	Trees and Crops	65,850.00
4	Businesses/Livelihood	67,500.00
5	Disturbance Allowance	156,574.14
<b>TOTALS</b>		<b>1,200,401.75</b>

### 13.2 RAP IMPLEMENTATION BUDGET

The RAP implementation budget is a function of the total entitlement cost and requisite administrative costs required to implement the plan. These were estimated at 10% of the entitlement cost. A further 10% of the resulting amount was considered for contingencies in the budget and other factors such as inflation. This brings the total budget of this RAP to K.Shs. 1,452,486.12 as shown in Table 13.8 below:

*Table 13-7: Summary of RAP Implementation Budget*

No.	RAP Item	Cost
1	Total Entitlement Costs (including 15% Disturbance)	1,200,401.75
2	RAP Administration Cost (10)% of Entitlement Cost)	120,040.18
3	Allowance for Inflation and Contingencies	132,044.19
<b>TOTAL RAP IMPLEMENTATION COST</b>		<b>1,452,486.12</b>

## 14 CONCLUSIONS AND RECOMMENDATIONS

The proposed project will affect approximately 199 PAPs and 11 households, which will lose their assets. In order to mitigate the negative impacts of resettlement, the following recommendations are made:

- ❖ Any planned displacement of the project affected persons be undertaken after compensation payments have been made before any construction activities are done and in accordance with the prevailing law.
- ❖ Compensation should not only follow the prevailing market rates, but should also be associated with comprehensive consultations and negotiations with PAPs so as to minimize grievances
- ❖ The project affected persons to be given adequate notice to relocate their assets.



## **15 REFERENCES**

Republic of Kenya, Water Act (2002), Government Printer, Nairobi

The Constitution of Kenya 2010

The Land Act, No. 6 of 2012

World Bank Operational Policies

## 16 APPENDICES

### 16.1 RAP HOUSEHOLD QUESTIONNAIRE

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#### **RAP FOR PROPOSED WORKS CONTRACTS UNDER COAST WATER SERVICES BOARD RESETTLEMENT ACTION PLAN (RAP) HOUSEHOLD QUESTIONNAIRE**

A Resettlement Action Plan triggered by the proposed **NYALANI-MWAKIJEMBE-VIGURUNGANI-BANG'A WATER PROJECT PHASE I** under Coast Water Services Board is being carried out by Zamconsult Consulting Engineers. The aim of this exercise is to identify the Project Affected Persons (PAPs) by type of loss. We need your honest and accurate information during this discussion. Your inputs will assist in the understanding of your needs for improvement. The answers you provide will be kept confidential.

#### **1 SECTION 1 DETAILS**

- 1.1 Name of the Enumerator: ..... Sign .....
- 1.2 Name of the respondent ..... ID NO. .... Tel No. ....
- 1.3 Relationship of respondent to head of house (a) The Head ..... (b) Spouse .....  
(c) Offspring ..... (d) Others Specify .....
- 1.4 Date of Interview: ..... Time of Interview: .....
- 1.5 Respondents place of residence (a) Village ..... (b) Location .....  
(c) Sub-County ..... (d) County .....

#### **2 SECTION 2 BASIC HOUSEHOLD CHARECTERISTICS**

- 2.1 Name of the household head? .....
- 2.2 I.D number of household head ..... Telephone Number of Household head .....
- 2.3 Sex of Household head 1) Male ..... 2) Female .....
- 2.4 Marital Status of the Household Head? 1) Married ..... 2) Never Married .....  
3) Widowed (Single) ..... 4) Widowed Remarried ..... 5) Divorced (Single) ..... 6) Divorced Remarried .....
- What is the number of people in this household in these categories 1) All ..... 2) Spouse .....
- 3) Own offspring under 18 ..... 4) own offspring above 18 ..... 5) orphaned children .....
- 6) Kinsmen above 55 years ..... 7) others, specify .....
- 2.5 How many members does this household have? 1) All ..... 2) Males ..... 3) Females .....
- 2.6 How many of your household members have attained each of the following education levels?  
(1) None ..... (2) Primary ..... (3) Secondary ..... (4) College/university .....
- 2.7 What is the occupation /economic activities of the household head (tick)  
(1) Crop farming ..... (2) Livestock farming ..... (3) Formal employment .....  
(4) Business ..... (5) Others (specify) .....
- 2.8 Is this business affected by the proposed road project? (Tick as appropriate)  
(1) Yes ..... (2) No .....
- 2.9 If yes, what is the business type? (1) Shop ..... (2) Bodaboda (bicycle/motorbike) .....  
(3) M-pesa ..... (4) Jua kali ..... (5) Others specify .....
- 2.10 What is the average income from this business per month? (Tick as appropriate)  
(1) Less than 15,000 ..... (2) 15,000-30,000 ..... (3) 30,000-45,000 ..... (4) Above 45,000 .....  
(Exact Value) .....
- 2.11 What is the average combined household income per month? (Tick)  
(1) Less than 15,000 ..... (2) 15,000-30,000 ..... (3) 30,000-45,000 ..... (4) Above 45,000 .....

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2.12 What's the religion of the Household Head? (Tick)

(1) Christian..... (2) Muslim..... (3) Hindu..... (4) Traditionalist ..... (5) Others Specify .....

**3 SECTION 3 LAND OWNERSHIP DETAILS**

3.1 Do you own the land you currently reside on? (Tick)

1) Yes.....2) No.....

3.2 Who owns the land? Name of Registered Owner.....

3.3 Does the registered owner have any land ownership documents? (Tick) 1) Yes.....2) No.....

3.4 If yes, what documents do you have for the land? (Tick)

(1) Title deed..... (2) Allocation letter..... (3) None..... (4) Other, specify.....

3.5 What is the L.R/plot/parcel. No. of the Land.....

3.6 What is the total size of the land? .....Acres/Ha/ Plot size (specify)

3.7 What is the total size of the land affected by the proposed Project?

Length..... (m)... Width..... (m)

3.8 What is the ownership nature of this land? (Tick)

(1) Owned by extended family..... (2) Owned by individual..... (3) Owned by nuclear family.....

(4) Communal land ..... (5) Trust land..... (6) Others Specify .....

**4 SECTION 4 ASSETS, BUILDING STRUCTURES & OTHER PROPERTY DETAILS**

a) STRUCTURES measurements (In Meters)

**1) Permanent buildings**

Length	Width	Storeys	Sketch

**2) Semi-permanent buildings**

Length	Width	Storeys	Sketch

**3) Temporary Buildings**

Length	Width	Storeys	Sketch

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## b) Other Structures Sizes In Meters

TYPE	SIZE IN METRES
Well	
Bore Hole	
Animal Sheds	
Water Tanks	
Others	

## c) Fences in meters

TYPE	Length (m)	Height (m)	Strands
Live Fence			
Permanent (Masonry)			
Barbed Wire			
Corrugated Iron			
Chain-link			
Gate (iron, mabati, wooden, barbed wire)			

## d) No of Trees

Type	No
Indigenous Trees	
Commercial	Indian Ashoka
	Blue gum
	Casurina
	Sisal
Fruit trees	Coconut
	Cashew nut
	Pawpaw
	Mango
	Oranges
	Guavas
	Avocado
	Lemons
	Others
Medicinal	Muarubaine
	Aloe Vera
	others

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## e) CROPS

TYPE	Length	Width
Maize		
Beans		
Vegetables		
Sugarcane		
Pineapples		
Cassava		
Sweet Potatoes		
Others		

**5 SECTION 5 LIVESTOCK DETAILS**

5.1 What type of Animals Do You Have?

TYPE	No.
Indigenous cattle	
Dairy Cattle	
Goats	
Dairy goats	
Sheep	
Chicken	
Ducks	
Pigs	
Others, Specify	

**6 SECTION 6 EXPECTED MODE OF COMPENSATION**

6.1 What is your preferred mode of compensation? (Tick)

(1) In Kind..... (2) Monetary terms..... (3) Others Specify .....

## 16.2 PUBLIC CONSULTATION SUMMARY

### 16.2.1 Public Consultation Meeting Held at Chief's Office-Mwakijembe On 9<sup>th</sup> June 2016 at 12.30pm

The Consultant asked if the people were in support of the project. The locals, by a show of hands approved of the project, stating that their recommendations given in the meeting taken into account. The meeting ended at 1.35 pm with a word of prayer.

PUBLIC CONSULTATION ATTENDANCE LIST						
PROJECT	NYALANI WATER SUPPLY					
VENUE	MWANIBOMU SUB-LOCATION, ASSISTANT CHIEF'S OFFICE					
DATE	09/06/2016					
No.	Name	Designation	Village	Location	Phone No.	Signature
1	MWAGWILU GAMBARI	LEADER	MWAKIJEMBE	NDAVAYA	0707486425	[Signature]
2	MDOE CHAKA	LEADER	MWAKIJEMBE	NDAVAYA	0706818488	[Signature]
3	MWAKI MIMIKI	LEADER	MWAKIJEMBE	NDAVAYA	0722251006	[Signature]
4	MENZA N. MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0714265582	[Signature]
5	LIGO ISUMA	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA		[Signature]
6	JOHN BESA KALI	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0711452069	[Signature]
7	CHALE NYAMAU	"	MWAKIJEMBE	NDAVAYA		[Signature]
8	CHITI KATHANZA	"	MWAKIJEMBE	NDAVAYA	0702793816	[Signature]
9	MWAKIJEMBE CHIMAMBA	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	07044119639	[Signature]
10	KOMBO MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0718599300	[Signature]
11	MWAKIJEMBE MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0711162975	[Signature]
12	MWAKIJEMBE CHIMAMBA	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0717038865	[Signature]
13	MWAKIJEMBE MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	07226509429	[Signature]
14	BEN MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0718599313	[Signature]
15	MWAKIJEMBE MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	07229829596	[Signature]
16	MWAKIJEMBE MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	2706348400	[Signature]
17	MWAKIJEMBE MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0722162104	[Signature]
18	KOMBO MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0721548023	[Signature]
19	LENGA MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0700591157	[Signature]
20	DHAKA MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA		[Signature]
21	KOMBO MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	07155392570	[Signature]
22	LENGA MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0708601281	[Signature]
23	MWAKIJEMBE MIMUNDO	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	0728508791	[Signature]
24	YANE MALISA	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA	07	[Signature]
25	BESA KALI	MWAKIJEMBE	MWAKIJEMBE	NDAVAYA		[Signature]



PUBLIC CONSULTATION ATTENDANCE LIST						
PROJECT		NYALANI WATER SUPPLY				
VENUE		MWANDIMU SUB-LOCATION - ASSISTANT CHIEF'S OFFICE				
DATE		9/6/16				
No.	Name	Designation	Village	Location	Phone No.	Signature
1	Mwambi Mwangi	Community Rep.	Mwambi	Mwambi	0712357771	[Signature]
2	NDEGWA NIPARWA		Mwambi	Mwambi	072887771	[Signature]
3	LIKAZI CHAKO	CH	Mwambi	Mwambi	072887771	[Signature]
4	MWANGI MURGO		Mwambi	Mwambi	071318481	[Signature]
5	MWANGI MURGO		Mwambi	Mwambi	0718666088	[Signature]
6	SALIM MBOLA	FI	Mwambi	Mwambi		[Signature]
7	MWANGI MURGO		Mwambi	Mwambi		[Signature]
8	MWANGI MURGO		Mwambi	Mwambi		[Signature]
9	MWANGI MURGO		Mwambi	Mwambi		[Signature]
10	MWANGI MURGO		Mwambi	Mwambi	0712801661	[Signature]
11	MWANGI MURGO		Mwambi	Mwambi		[Signature]
12	MWANGI MURGO		Mwambi	Mwambi	0712327171	[Signature]
13	MWANGI MURGO		Mwambi	Mwambi	0719216496	[Signature]
14	MWANGI MURGO		Mwambi	Mwambi	0711208038	[Signature]
15	MWANGI MURGO		Mwambi	Mwambi	0711111716	[Signature]
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						

Figure 5-16-1: Public Consultation Meeting List of Attendance

## 16.2.2 Public Consultation Meeting Photos

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**Figure 16-2: The consultant's presentation during the meeting**



**Figure 16-3: CWSB representative addressing Participants**





*Figure 16-4: Stakeholder Feedback during Meeting*



*Figure 16-5: Stakeholder Feedback during Meeting*






**Figure 16-6: Stakeholder Feedback during Meeting**







**Figure 16-7: Stakeholders showing their support of the Project**

### 16.3 PAP PHOTOS

	
<p>Maize and land</p>	<p>Maize and land</p>
	
<p>Land</p>	<p>Maize and land</p>
	
<p>Maize</p>	<p>Structure</p>



 <p>Structure</p>	 <p>Road to Secondary School</p>
 <p>Maize</p>	 <p>Maize</p>
 <p>Structure</p>	