



**COAST WATER WORKS DEVELOPMENT AGENCY  
WATER AND SANITATION DEVELOPMENT PROJECT**



**FINAL REPORT**

**RESETTLEMENT ACTION PLAN (RAP) FOR THE PROPOSED  
MWACHE/NORTH MAINLAND TRANSMISSION PIPELINE PROJECT -  
KWALE, KILIFI AND MOMBASA COUNTIES, KENYA**

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**Prepared By:**



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## GENERAL INFORMATION

|                     |   |
|---------------------|---|
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## ACRONYMS

|          |   |
|----------|---|
| AFD      | French Development Agency                             |
| AIDS     | Acquired Immunodeficiency Syndrome                    |
| CIT      | Contract Implementation Team                          |
| DCC      | Deputy County Commissioner                            |
| DMS      | Detailed Measurement Survey                           |
| EIB      | European Investment Bank                              |
| ESF      | Environmental and Social Framework for IPF Operations |
| ESIA     | Environmental and Social Impact                       |
| FGDs     | Focus Group Discussions                               |
| GPS      | Global Positioning System                             |
| GRMC     | Grievance Redress Management Committees               |
| HIV      | Human Immunodeficiency Virus                          |
| KFS      | Kenya Forest Service                                  |
| KII      | Key Informant Interviews                              |
| KWAWASCO | Kwale Water and Sewerage Company Limited              |
| LPG      | Liquefied Petroleum Gas                               |
| MOWASSCO | Mombasa Water Supply and Sanitation Company           |
| MWS&I    | Ministry of Water, Sanitation and Irrigation          |
| NEMA     | National Environment Management Authority             |
| NLC      | National Land Commission                              |
| NML      | North Mainland  |
| PAH      | Project Affected Households                           |
| PAPs     | Project-Affected Persons                              |
| RAP      | Resettlement Action Plan                              |
| ROW      | Right of Way  |
| RPF      | Resettlement Policy Framework                         |
| SML      | South Mainland  |
| WB       | World Bank  |
| WSDP     | Water and Sanitation Development Project              |
| WTP      | Water Treatment Plant                                 |



## EXECUTIVE SUMMARY

This is a Resettlement Action Plan (RAP) for Mwache North Mainland Pipeline which will run from the Mwache Water Treatment Plant (WTP) located next to Mwache Dam in Kwale County and terminating at the Nguu Tatu reservoirs in Mombasa County. The RAP has been prepared by **EMC Consultants Limited** (Consultant) for Coast Water Works Development Agency (CWWD) (the proponent).

The overall objective of the RAP is to provide necessary details for compensation, resettlement and rehabilitation by identifying (i) the extent of losses; (ii) the policy framework for compensation payments, income restoration, relocation and rehabilitation; (iii) mechanisms for timely disclosure of information to the PAPs and other stakeholders (iv) institutional arrangement for RAP preparation, implementation and monitoring; (v) grievance redress mechanism and (vi) itemized resettlement budget and staggered implementation schedule to ensure timely implementation of RAP provisions in compliance with World Bank's safeguard requirements and before commencement of civil works.

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

### Project Description and Location

The proposed Mwache/North Mainland water transmission pipeline line traverses three counties i.e., Kwale, Mombasa and Kilifi Counties. The proposed North Mainland Pipeline will transmit the Mwache Project water allocation for the Mombasa North Mainland from its start point at Ch. 4+800 of the Trunk Main, just before the West Mainland Reservoir site, to the Nguu Tatu Reservoir site. The proposed Mwache/North Mainland water transmission pipeline line traverses three counties i.e., Kwale, Mombasa and Kilifi Counties. The North Mainland Transmission Pipeline is proposed from its start point at CH4+800 just before the West Mainland Reservoir site to be laid along the alignment of the proposed West Mainland and Changamwe Transmission Pipeline, along the Nairobi-Mombasa highway, for 2.2km to the Mombasa Southern By-pass interchange at Bonje, then turning to traverse along the alignment of the proposed Mombasa Northern By-Pass Road from the start point at the Southern By-Pass interchange on the Nairobi-Mombasa Highway to Mwakirunge. From Mwakirunge, the North Mainland Transmission pipeline will be laid along the proposed Bamburi Link Road for approx. 3.8km, then along the existing Kiembeni Road for approx. 3.1km up to the existing Nguu Tatu reservoir site. (see figure 1.1). The total length of the proposed North Mainland Transmission Pipeline based on pipeline route is approximately 21.7km.

**Table 0-1: Administrative boundaries traversed by the Project in Kwale County**

| County | Sub County | Location | Village  |
|--------|------------|----------|----------|
| Kwale  | Samburu    | Kasemeni | Mwamdudu |

**Table 0-2: Administrative boundaries traversed by the Project in Kilifi County**

| County | Sub County | Location  | Villages                                     |
|--------|------------|-----------|--|
| Kilifi | Rabai      | Rabai     | Bonje<br>Lamwajoha<br>Mwatsama<br>Chisirwani |
|        |            | Bwagamoyo | Imela<br>Mwarendo<br>Bwagamoyo<br>Mwalewa    |
|        |            | Mwawesa   | Kanyimbuni                                   |

**Table 0-3: Administrative boundaries traversed by the Project in Mombasa County**

| County  | Sub County | Location   | Village   |
|---------|------------|------------|---|
| Mombasa | Kisauni    | Mwakirunge | Nguu Tatu<br>Marimani<br>Mkomani<br>Mworoni<br>Mwakirunge |

Construction works for the pipeline will involve land acquisition (easement) for the proposed transmission pipeline, excavation, laying of a DN800 diameter water transmission pipeline, backfilling and rehabilitation of disturbed vegetation. The total acreage to be acquired for laying of the transmission line is **82.29 acres**. Further acquisition may be required during the construction i.e., for material sourcing e.g., borrow pits or quarry sites. However, this will be confirmed during the construction stage and separate site-specific RAP studies will be prepared where land acquisition will be deemed necessary.

### **Project Financier**

The project's RAP preparation is funded by World Bank under the Water and Sanitation Development Project (WSDP) while the construction works are expected to be financed by the Government of Kenya and the European Investment Bank (EIB). The funding is processed through CWWDA which is the implementing agency for the Project.

### **Project Proponent**

The CWWDA constituted under Water Act 2016 is mandated to undertake the development, maintenance and management of the national public water works in its area of jurisdiction i.e. Coast Region (Mombasa, Kilifi, Kwale, Lamu, Taita Taveta and Tana River Counties). CWWDA is bestowed with the responsibility of developing sources and infrastructure for bulk water supply to the above Counties. As such, CWWDA is the responsible agency for implementing the proposed construction of the Mwache North

Mainland Transmission Line Project and consequent transmission of bulk water to Nguu Tatu reservoirs in Mombasa County. Mombasa Water Supply and Sanitation Company Limited (MOWASSCO) is the WSP for Mombasa City and is responsible for distribution of the resource to the consumers within the county of Mombasa. It is mandated to:

- Provide quality and economical water and sanitation services to consumers.
- Billing for water and sanitation services and ensure timely collection of dues.
- Routinely maintain water and sanitation services and infrastructure.
- Ensure that standards and licensing requirements are complied with as stipulated by the Bulk Water Supply Agreement signed with Coast Water Works Development Authority.

### **RAP Justification**

The development of this RAP has been informed by the findings of the Environmental and Social Impact (ESIA) for the project including the recommendation for minimizing adverse impacts related to land acquisition. During the ESIA preparation, as part of scoping and impact identification, it was determined that the project would lead to displacement (due to the need for land acquisition for the project RoW/ Easement) and thereby requiring preparation of RAP as a mitigation measure. The laying of water transmission pipeline requires at least 6 metres of land in width and 21.7km in length for laying of the pipeline. This required land for RoW is what has triggered the need for preparation of a RAP due to the displacement impacts. The implementation of the project is going to lead to economic displacement of Project Affected Households (PAHs) who own or occupy the land.

The RAP preparation process included a census of PAPs and inventory of affected assets. The total number of PAPs in the project RoW is **182** and acreage to be acquired is **82.26 acres**. All the PAPs are land owners with title to the land and use the land for residential purposes and subsistence farming.

In line with World Bank's OP. 4.12, all physically and economically displaced PAHs are entitled to compensation for:

- (a) Loss of residential structures.
- (b) Loss of crops and trees
- (c) Loss of land. All the PAPs are private landowners who legally own land where part of the project traverses and are categorized as landowners and entitled to compensation for loss of land and any other assets on such land.

This RAP has been designed to integrate the requirements of Kenyan legislation and the World Bank OP. 4.12 with the aim of:

- Mitigating adverse effects of resettlement
- Providing compensation for loss of assets at full replacement costs
- Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
- Improving or, at a minimum, restoring the livelihoods and standards of living of displaced persons to pre-project levels, so as to facilitate sustainable improvements to socio-economic status; and

- Paying particular attention to the needs of vulnerable groups
- Providing differentiated and specialized measures to mitigate transitional hardships for vulnerable groups

## **Methodology and Approach**

To conduct the RAP study, the approaches used are summarized below.

- A review of secondary sources and legislations related to the project.
- Specific review of Kenya's legal statutes reviewed including Land Act (2012) and its amendments (2016), Land Registration Act (2012), National Land Commission Act (2012), Community Land Act (2016), Land Value (Amendment) Act 2019 as well as the World Bank OP 4.12. Other relevant Acts include (i) Valuers Act (1985); Constitution of Kenya (2010), Matrimonial Property Act No 14 of 2013 among others.
- Household socio-economic survey—individual household interviews were conducted targeting 100% of the PAHs in the ROW.
- Census survey – A complete census including enumeration of assets was done for 100% of the PAHs.
- Asset inventory and valuation-site visits were conducted by travelling along the proposed alignment to physically measure the size of affected land and structures for the preparation of the asset inventory.
- Consultations including Focus Group Discussions (FGDs), Key Informant Interviews (KIIs), public meetings (barazas) were conducted with PAPs, CWWDA staff, national and county government institutions among other relevant institutions.

## **Stakeholder Participation and Consultation**

This RAP has been prepared in consultation with the PAHs. Several meetings were held with the PAHs between 15<sup>th</sup> October and 15<sup>th</sup> November 2022. Eight meetings were held in Kwale County with relevant institutions, eleven meetings were held in Mombasa County, nine meetings were held in Kilifi County. One meeting was held with PAHs in Kwale County while other two meetings were held with PAHs in Mombasa County and three meetings were held with PAHs in Kilifi County. PAHs meetings covered the following issues: description of the project, objectives, components, and implementation activities; property and livelihood impacts associated with project implementation; the resettlement/compensation alternatives and strategies available for PAHs; the rights of PAHs; grievance redress process; valuation principles and procedures; RAP disclosure; and the approval process. PAHs were mainly concerned about the likely impact of the Project activities on their businesses with respect to displacement on the proposed ROW and damage to their structures and the form of compensation that they would be entitled to. Table 0-4 to table 0-8 below indicate meeting venues, number of participants segregated by gender and dates of meetings and a summary of responses to the concerns raised.

**Table 0-4: Institutional Consultation-Kwale County**

| Date       | Venue                        | Participants | Males | Females |
|------------|------------------------------|--------------|-------|---------|
| 25/10/2022 | Chief Officer's Office       | 5            | 3     | 2       |
| 25/10/2022 | County Commissioner's Office | 3            | 2     | 1       |

## Resettlement Action Plan- Mwache North Mainland Transmission Pipeline

|              |   |           |           |           |
|--------------|---|-----------|-----------|-----------|
| 25/10/2022   | Governor's Office, Kwale                    | 3         | 2         | 1         |
| 25/10/2022   | Department of Lands - Kwale                 | 3         | 2         | 1         |
| 25/10/2022   | Department of Environment                   | 3         | 2         | 1         |
| 25/10/2022   | Kwale Water and Sewerage Company            | 3         | 3         | 0         |
| 25/10/2022   | NEMA-Kwale                                  | 4         | 2         | 2         |
| 26/10/2022   | Deputy County Commissioner's Office-Samburu | 5         | 4         | 1         |
| <b>Total</b> |   | <b>29</b> | <b>20</b> | <b>09</b> |

**Table 0-5: Institutional Consultation-Kilifi County**

| Date         | Venue   | Participants | Males     | Female    |
|--------------|---|--------------|-----------|-----------|
| 25/11/2022   | Kilifi County Governor's Office               | 4            | 4         | 0         |
| 3/11/2022    | County Commissioner's Office                  | 3            | 3         | 0         |
| 3/10/2022    | DCCs Office Rabai                             | 5            | 3         | 2         |
| 2/11/2022    | Department of Water and Environment           | 3            | 3         | 0         |
| 26/10/2022   | Department of Lands                           | 3            | 3         | 0         |
| 26/10/2022   | NEMA-Kilifi                                   | 3            | 3         | 0         |
| 7/11/2022    | Department of Public Works & Infrastructure   | 3            | 3         | 0         |
| 26/10/2022   | Kilifi Mariakani Water and Sanitation Company | 3            | 3         | 0         |
| 9/11/2022    | KeNHA-Office                                  | 4            | 4         | 0         |
| <b>Total</b> |   | <b>31</b>    | <b>29</b> | <b>02</b> |

**Table 0-6: PAPs Consultation Kilifi County**

| Date         | Venue                     | Participants | Males     | Females   |
|--------------|---------------------------|--------------|-----------|-----------|
| 10/11/2022   | Mwawesa- Chief's Office   | 21           | 18        | 3         |
| 10/11/2022   | Forodhani- Chief's Office | 39           | 28        | 11        |
| 04/11/2022   | Mwatsama- Chief's Office  | 43           | 35        | 8         |
| <b>Total</b> |                           | <b>103</b>   | <b>81</b> | <b>22</b> |

**Table 0-7: Institutional Consultation-Mombasa County**

| Date         | Venue  | Participants | Males     | Females  |
|--------------|--|--------------|-----------|----------|
| 25/10/2022   | CWWDA Offices  | 4            | 4         | 0        |
| 7/11/2022    | County Commissioner-Mombasa                              | 3            | 2         | 1        |
| 8/11/2022    | Deputy County Commissioner's Office-Changamwe Sub County | 3            | 3         | 0        |
| 9/11/2022    | Deputy County Commissioner's Office-Jomvu Sub County     | 3            | 3         | 0        |
| 2/11/2022    | MOWASCO Offices  | 3            | 3         | 0        |
| 7/11/2022    | Chief Officer Public Works-Mombasa                       | 3            | 3         | 0        |
| 9/11/2022    | Regional Director's Office-KeNHA                         | 2            | 2         | 0        |
| 9/11/2022    | Deputy Regional Director's Office                        | 2            | 2         | 0        |
| 10/11/2022   | Kenya Railways-Mombasa Regional Office                   | 2            | 2         | 0        |
| <b>Total</b> |  | <b>25</b>    | <b>24</b> | <b>1</b> |

**Table 0-8: PAPs Consultation Mombasa County**

| Date         | Venue                      | Participants | Male      | Female   |
|--------------|----------------------------|--------------|-----------|----------|
| 10/11/2022   | Mwakirunge- Chief's Office | 21           | 18        | 3        |
| <b>Total</b> |                            | <b>21</b>    | <b>18</b> | <b>3</b> |

**Table 0-9: Summary of Consultations with Stakeholders**

| Questions/Comments   | Responses  |
|--|--|
| How will valuation be done?  | Valuation of assets will be done using the full replacement cost approach.   |
| Will the project purchase our land where the proposed water transmission pipeline will traverse?   | Land on the ROW is owned by GOK and will not be purchased instead PAPs with assets on the ROW will be compensated for loss of assets only. Land owned privately, will be purchased by the project.   |
| Is there a grievance redress mechanism system in place and will it be effective?   | A grievance redress mechanism will be established and is expected to handle all the grievances.  |
| Apart from compensation for loss of property, are there any other measures the project will take to mitigate this involuntary displacement?  | <p>The project will not only compensate PAPs at replacement cost for improvements and on easement, but it will also give the PAPs opportunity to salvage their property at no cost as well add a disturbance allowance of 15% to the compensation package.</p> <p>PAPs with requests for assistance during relocation will be catered for as well.</p> <p>Finally, to minimize displacement impacts, the route selected is within the ROW.</p> |
| Will enumeration be done to only landowners or it will include structures owners as well?  | All assets on the ROW of way will be enumerated including land, structures, crops, trees, graves etc.  |
| What about the graves, will they be compensated?   | All assets on the ROW of way will be enumerated including land, structures, crops, trees, graves etc.  |
| We have some vulnerable people among us who may be adversely affected by the project. What measures will the project take to alleviate this? | The RAP team will note all vulnerable PAPs and the form of vulnerability during the census and include this data in the RAP with a recommendation to the project to ensure these vulnerable PAPs receive special and prompt attention during compensation and implementation.  |
| What will be the form of compensation for lost assets? We would prefer to be compensated in cash and before we vacate the site.              | Compensation is normally in cash and in-kind. Your preference to be compensated in cash is noted and will be adopted as the form of compensation subject to decision by NLC.   |
| Will PAPs owning structures along the RoW be allowed to re-build on the RoW?   | It is not advisable to re-build on the RoW when construction is complete. The pipeline will require regular routine maintenance and emergency works. Re-building on the RoW will hinder these actions and lead to recurrence of disruption of business. It is therefore advised that re-building be done away from the RoW.  |

### Cut-off Date

All the identified PAPs are eligible for some form of compensation if they occupied the land, owned property, or operated a livelihood activity within areas earmarked for project activity implementation at the 'cut-off date' which has been taken as 2<sup>nd</sup> December 2022. The cut-off date is the respective date of completion of census survey in the affected project area. To ensure adequate census and entitlement to compensation, the cut-off date was communicated to the affected individuals during the field activities and consultations. If there is a significant delay (more than three years) between the time of the census and project implementation a repeat census and inventory and asset valuation



shall be undertaken as guided by ESF-Guidance Note5 and this report updated accordingly.

## Impacts on Land

The bulk water transmission pipeline Project will acquire a total of **82.29 acres**. A total of **182** PAPs owning and/or occupying the land to be acquired will be affected by the Project. Currently, the parcels of land are used by the PAPs to establish residential and public/communal structures as well as growing of trees and crops.

**Table 0-10: PAPs Losing Land including assets therein.**

| Type of loss  | No. of PAPs |
|---|-------------|
| Loss of land only                                       | 45          |
| Loss of land and residential structures                 | 39          |
| Loss of land, crops, and trees                          | 44          |
| Public and Community Institutions                       | 03          |
| Loss of residential and non-residential structures only | 41          |
| Loss crops and trees (on other persons land)            | 07          |
| Public and community institutions                       | 03          |
| <b>Total</b>  | <b>182</b>  |

## PAPs Land Loss (Numbers and Acreage)

The project will acquire via easement, **82.29** acres of privately owned land. The individually owned land is used by the PAPs for farming, grazing and residential purposes. A summary of project impacts in terms of number of PAPs owning land affected by location is presented in Table 0-11. The average land size owned by the PAPs is 2.12 acres (0.86Ha). The PAPs will lose an average of 0.0175Ha approximately 2.04% for those with land only and 0.15Ha, approximately 8.46% for those PAPs with land and structures.

**Table 0-11: Number of Affected Land Parcels in Project Route**

| County  | Location     | Land PAPs  | Acreage      |
|---------|--------------|------------|--------------|
| Mombasa | Mwakirunge   | 62         | 29.25        |
| Kwale   | Mwamdudu     | 1          | 8.65         |
| Kilifi  | Rabai        | 54         | 25.53        |
|         | Bagamoyo     | 07         | 11.80        |
|         | Mwawesa      | 05         | 7.06         |
|         | <b>Total</b> | <b>128</b> | <b>82.29</b> |

## Impact on Residential and Non-Residential Structures

The total number of residential and non-residential structures affected by the project is shown in table below.

**Table 0-12: Residential and non-residential structures**

| Type of loss                            | No. of PAPs |
|---|-------------|
| Loss of land and residential structures | 39          |

| Type of loss  | No. of PAPs |
|---|-------------|
| Loss of primary residential structures on other people's land | 22          |
| Loss of fence   | 20          |
| Loss of graves  | 1           |
| <b>Total</b>  | <b>82</b>   |

### Impact on Community Structures

There is one community institution (Masjid Qubaa Mosque) that will be partially affected and two (Marcas School and Kanyumbuni Dispensary) that will be fully affected by the project. The construction activities may also have adverse impacts or disruption of public utilities e.g., existing electricity lines, as well as traffic disruption. An ESIA study has been conducted for the Project and mitigation measures for the disruptions included.

### Impact on Crops and Trees

There are trees and crops that will be affected as a result of the project, and they include:

- Beans
- Pumpkins
- Sisal
- Mango
- Cashew nut
- Lemon
- Coconut
- Neem
- Baobab

### Impacts on Cultural Assets

There is a single grave that will be affected by the project and will require relocation. An Environmental and Social Impact Assessment (ESIA) report has been prepared and highlights mitigation measures associated other cultural heritage resources.

### Impact on Community Access to Infrastructure and Social Services

The project will have impact on community access to infrastructure and social services in terms of economic and/or physical displacement even though the design has made all efforts to ensure proposed routes and alignments are not located in areas with community or social infrastructures. Project impacts will affect 2 schools and a mosque. The construction activities may also have adverse impacts or disruption of public utilities e.g., existing electricity lines, internet lines etc. as well as traffic disruption. The ESIA has been prepared for this project and highlights mitigation measures associated with disruption of public utilities. The contractor procured by the Project will be advised to consult and collaborate with utility providers during construction process to minimize disruption of these utilities during the process.

### Project Affected Households by Location

The displacement impacts will occur in 5 locations in the affected counties as shown below.

**Table 0-13: Project Affected Persons by Location**

| County  | Location   | PAPs |
|---------|------------|------|
| Mombasa | Mwakirunge | 76   |
| Kwale   | Mwamdudu   | 01   |
| Kilifi  | Rabai      | 92   |
|         | Bwagamoyo  | 08   |
|         | Mwawesa    | 05   |

### Vulnerable Groups

Vulnerable PAHs are defined as individuals, groups, households, or communities who by virtue of gender, marital status (widows), age (child headed households and orphans), physical or mentally challenged, elderly PAPs living alone, chronically sick, economic disadvantage (living below poverty line) who may require additional support or assistance and will need help adjusting to changes introduced by the Project. Assistance will take the following forms, depending on vulnerable people's requests and needs:

- Assistance in moving i.e., providing vehicle, driver, and facilitation at the moving stage, providing ambulance services for disabled or inform persons during moving,
- Priority in processing disbursement of compensation packages
- Materials from the affected structure may be salvaged after compensation is received. Salvage will be at the expense of the salvaging person within the notice period to vacate defined by the project schedule and prior to demolition.
- In kind Replacement structure of equivalent size (measured floor area) with consideration of functional spatial use at location of owner's own choice but within a defined project area.

### Total PAHs

The project will affect a total of **182** PAHs. The number and type of loss is shown in **table 0-14. Annex A** contains the register of PAHs.

**Table 0-14: Summary of Displacement Impacts**

| Type of loss  | No. of PAPs |
|---|-------------|
| Loss of land only                                       | 45          |
| Loss of land and residential structures                 | 39          |
| Loss of land, crops, and trees                          | 44          |
| Public and Community Institutions                       | 03          |
| Loss of residential and non-residential structures only | 41          |
| Loss crops and trees (on other persons land)            | 07          |
| Public and community institutions                       | 03          |
| <b>Total</b>  | <b>182</b>  |

## Valuation Method

To establish the replacement costs, the coordinates, type of structure, construction details, built up areas, accommodation details and occupancy, status of the different structures were recorded during the data collection phase. This was aimed at establishing the replacement cost of the different structures for compensation purposes. Due to limited reliable market information within and near the Project Area, a Sales Comparison approach could not be applied in the valuation of the affected structures. As a result, the structures have been valued based on the 'reproduction cost' i.e. the cost of reconstructing an identical structure by using the same materials and design at the time of appraisal, without depreciation. This full replacement approach incorporates fundamental valuation provisions including the Land Act 2012, Land Value (Amendment) Act 2019 and Land Value Index Laws (2018). The valuation method for loss of land, structures, crops and trees used in this RAP is the full replacement cost approach.

## Compensation Principles and Strategy

The key compensation principles of this RAP are: -

- The PAHs are defined as those who stand to lose land, structures, income, and other assets due to the implementation of the Project.
- Compensation and resettlement of project-affected people will be carried out in compliance with applicable Kenyan legislation and WB OP 4.12.
- Compensation will be as per the Land Act 2012 of Kenya. Where Kenyan legislation is deemed inadequate to PAHs then WB OP 4.12 requirements shall be recommended and will apply.
- PAHs losing assets, livelihood or other resources will be fully compensated and/or assisted so that they improve or at least restore their former economic and social conditions.
- Compensation will be provided at full replacement cost, free of depreciation, transfer costs or eventual salvaged materials.
- All displaced persons will be offered an option between either a full resettlement package, including the provision of in-kind compensation (land) or cash compensation.
- The Project will provide for measures to support sustainable use of cash compensation (money management training) and for mechanisms within the overall monitoring framework to follow up the use of cash compensation.
- The RAP implementation and outcomes will be monitored and evaluated as part of a transparent process. An external qualified provider (firm) be engaged by CWWDA to monitor the RAP implementation (external monitoring) and conduct RAP completion audit.
- Attention will be paid to vulnerable groups and appropriate assistance provided to help them to improve their status and other compensation/rehabilitation provisions will equally apply across gender line.
- PAHs will be systematically informed and consulted about the project, and the RAP will be disclosed to the affected persons.

Table below presents the entitlement matrix. Entitlements have been determined based on Kenyan law and required top-ups to meet OP. 4.12 policies.

**Table 0-15: Entitlement Matrix**

| Impact                             | Description of affected property   | Entitled person   | Compensation measure  |
|------------------------------------|--|---|---|
| Loss of residential structures     | Residential Structure  | Structure Owner   | <ul style="list-style-type: none"> <li>• Cash compensation (replacement cost) for loss of structures</li> <li>• Right to salvage assets and materials</li> <li>• Financial training for the sustainable and prudent use of cash compensation</li> </ul> |
| Loss of non-residential structures | Non-Residential Structure (graves wall, fences, community, and public infrastructures) | Structure Owner   | <ul style="list-style-type: none"> <li>• Cash compensation (replacement cost) for loss of structures</li> <li>• Right to salvage assets and materials</li> <li>• Financial training for the sustainable and prudent use of cash compensation</li> </ul> |
| Loss of private land               | Land   | Landowner: Registered owner or claimants of customary held land | <ul style="list-style-type: none"> <li>• Compensation for loss of land</li> <li>• Financial training for the sustainable and prudent use of cash compensation</li> </ul>  |
| Loss of grave(s)                   | Grave  | Grave owner   | <ul style="list-style-type: none"> <li>• Compensation for loss of grave(s)</li> <li>• Relocation of grave(s) through cultural norms</li> </ul>  |
| Loss of crops and trees            | Crops and trees  | Crop and tree owner   | <ul style="list-style-type: none"> <li>• Compensation for loss of crops and trees</li> <li>• Financial training for the sustainable and prudent use of cash compensation</li> </ul>   |

## Grievance Management

This RAP provides an accessible, extra-judicial mechanism for managing grievances and disputes based on explanation and mediation by third parties. Each of the affected persons will be able to trigger this mechanism, while still being able to resort to the judicial system. Grievance management proposed in this RAP referred to as Grievance Redress Management Committees (GRMC) will provide three tiers of amicable review and settlement, with the first tier to be located at the project site levels/areas.

### First Level: Site/Location Level Grievance Redress Management Committees

This RAP prefers the first level of grievance or conflict redress on RAP related issues as a result of this project to be handled by the GRMC in the project site and handle all forms of grievances in an amicable manner and as an alternative dispute resolution to formal

process, which is normally lengthy and costly. Grievances not resolved by this committee will be taken to the second level. In the affected location there will be a Location Resettlement and Compensation Committees and the membership will include:

- The location chief
- The sub locational chief,
- One project affected youth,
- One project affected woman,
- One project affected male,
- A representative of vulnerable PAHs.
- CWWDA representative
- Contractor representative (Works and Supervising Engineer)

### **Second Level: Sub County Mediation Committee**

There will be a mediation committee at each Sub County level to handle grievances that cannot be resolved by the site level committees and membership will include:

- One representative of the Administration; - National Government
- One representative of County Administration; -County Government
- One representative of the CWWDA acting as an observer.
- One representative of the construction contractor, acting as an observer
- Three representatives of the affected people, amongst them at least one woman, chosen i.e., from community-based organizations, elders, traders.

### **Third Level: Resort to Justice**

In case this mechanism will not allow an amicable agreement to be reached, the complainant or the defendant can resort to the Kenya's justice specifically the Land Acquisition Tribunal (The Tribunal) established by the Land Value (Amendment) Act, 2019 and Environment and Land Court and could at any time even without going through the established committees.

## **RAP Implementation Arrangements**

### **Contract Implementation Team**

CWWDA through its already established project Contract Implementation Team (CIT) will implement this RAP. The CIT will be responsible for: -

- Validation of PAHs prior to compensation
- Appropriate coordination between the agencies and jurisdictions involved in the RAP implementation.
- Coordinate construction schedule of contractors
- Alert PAHs on when they would be needed to relocate.
- Plan, facilitate and coordinate GRMC trainings and subsequent meetings.

The CWWDA/CIT staffing includes a social specialist, surveyor, environmentalist, project engineer who will be dedicated to this project and who will be the focal points and coordinators with respect to the RAP implementation. The supervising consultant and the works contractor will also each have full time social specialists who will work jointly with CWWDA and other stakeholders in the implementation of the RAP.



### County Governments of Kwale, Mombasa and Kilifi

The County Executive Committee Members and staff from Kwale, Mombasa and Kilifi Counties shall contribute with their expertise, their capacity and competence to the implementation of the RAP; corresponding to the different technical areas they represent (i.e., roads and infrastructure, trade, social assistance, youth, and women).

### Monitoring, Evaluation and Reporting

The overall objective of the RAP is to ensure that the PAHs restore and preferably improve upon their pre-project living standards. To achieve this objective, the following monitoring mechanisms will be in place.

- Internal monitoring of process and output indicators
- External monitoring by an independent monitoring agency or an independent consultant to check the extent to which resettlement and rehabilitation objectives have been met.

In addition to routine monitoring reports CWWDA will also submit project completion reports to World Bank when compensation has been paid and RAP implementation is completed.

### RAP Cost Estimate

The total budget for resettlement compensation is Kshs. **264,680,606.81**. PAPs will be paid their resettlement and compensation entitlements prior to the project works being carried out in the affected project sites.

**Table 0-16: Cost Budget**

| Aspect                      | Replacement Value (Kshs) |
|-----------------------------|--------------------------|
| Structures                  | 25,997,437.00            |
| Crops and Trees             | 4,738,202.00             |
| Land                        | 179,328,334.66           |
| <b>Total</b>                | <b>210,063,973.66</b>    |
| Disturbance Allowance (15%) | 31,509,596.05            |

**Table 0-17: RAP Implementation Costs**

| Aspect   | Value (Ksh)          |
|--|----------------------|
| Financial/Money Management Training/ Meetings of Resettlement Committees/Administrative Costs (5%) | 10,503,198.68        |
| External Monitoring and External Coordination for RAP Implementation (5%).                         | 10,503,198.68        |
| Contingency (1%)   | 2,100,639.74         |
| <b>Grand Total</b>   | <b>23,107,037.10</b> |

**Table 0-18: RAP Budget**

| Aspect | Value (Ksh)    |
|--------|----------------|
| Land   | 179,328,334.66 |

|   |                       |
|---|-----------------------|
| Structures  | 25,997,437.00         |
| Crops and Trees   | 4,738,202.00          |
| <b>Sub Total</b>  | <b>210,063,973.66</b> |
| Disturbance Allowance (15%)                                   | 31,509,596.05         |
| Financial/Money Management Training &RAP Administration Costs | 10,503,198.68         |
| Monitoring  | 10,503,198.68         |
| Contingency (1%)  | 2,100,639.74          |
| <b>Grand Total</b>  | <b>264,680,606.81</b> |

### **RAP Implementation Schedule**

The activities related to construction are expected to commence in the course of the year 2025 by which time the PAPs are expected to have moved their affected property i.e., structures from their site after having been fully compensated in line with the findings of the RAP study.

### **Public Disclosure**

The RAP report will be disclosed on the website of CWWDA and World Bank and AFD's external affairs website. Hard copies of the RAP report will be availed at the County Headquarters, Sub County Headquarters, Chief's office at location level and each GRM Committee will also have a copy of the RAP report.

# I PROJECT DESCRIPTION

## I.1 Project Background

The proposed construction of the Mwache/North Mainland Pipeline (the “Project”) is to be financed under the Water and Sanitation Development Project (WSDP) which is a World Bank project. The Project Development Objective (PDO) of WSDP is to improve water supply and sanitation services in select coastal and north-eastern regions in Kenya. This water will emanate from the Mwache Dam also financed by the World Bank and including a Water Treatment Plant (WTP) for the dam that will be financed by the European Investment Bank (EIB). This RAP was developed for the Mwache/North Mainland Pipeline Project with focus on the transmission lines only. The project entails approximately 21.7 km long treated water transmission pipeline along a 6-meter-wide corridor. Other components of the Project include construction of ancillary infrastructures mainly 2Nr. reservoirs, staff and guard houses and access roads to the ancillary infrastructures that are not in this RAP’s scope. A separate RAP has been prepared for Mache Dam and WTP

## I.2 Project Proponent

CWWDA which is bestowed with the responsibility of developing sources and infrastructure for bulk water supply in Coast Region is the Implementing Agency for the Mwache North Mainland Water Transmission Pipeline Project. CWWDA is mandated to undertake the development, maintenance and management of the national public water works in its area of jurisdiction i.e., Coast Region (Mombasa, Kilifi, Kwale, Lamu, Taita Taveta and Tana River Counties) while the direct service provision is done through the appointed WSPs under the county governments.

## Project Financiers

The project’s safeguards (RAP) preparation is funded by the World Bank under the Water and Sanitation Development Project (WSDP) which is a World Bank project while the construction works are expected to be financed by the Government of Kenya (GoK) and European Investment Bank (EIB). The funding is processed through CWWDA which is the implementing agency for the Project. The project beneficiaries will be the residents of Mombasa city.

## I.3 Project Justification

At present, Mombasa City is served by the following bulk water sources, which also supply other towns in the neighbouring counties; data based on the Mombasa Water Distribution Network Master Plan (MIBP & Nippon Koei, 2017) is presented below.

### Box 1-1: Mombasa County Bulk Water Sources

- 1) Baricho wellfield: capacity is estimated at 96,000 m<sup>3</sup>/d, supply to Mombasa is 27,000 m<sup>3</sup>/d
- 2) Mzima springs: capacity is estimated at 35,000 m<sup>3</sup>/d, supply to Mombasa is 15,000 m<sup>3</sup>/d
- 3) Marere springs: capacity is estimated at 12,000 m<sup>3</sup>/d, supply to Mombasa is 2,500 m<sup>3</sup>/d
- 4) Tiwi Wellfield: capacity is estimated at 10,000 m<sup>3</sup>/d, supply

Source: MIBP & Nippon Koei

The total average current supply to Mombasa County is approximately 46,500 m<sup>3</sup>/d. Updated water demand projections in the review report (*ARTELIA/MIBP-July 2021*) indicated (year 2020) water demand of 194,699 m<sup>3</sup>/day, projected to increase to 317,534 m<sup>3</sup>/day in year 2035 and largely correlate with the projected water demands under the Water Supply Master Plan (Tahal, 2013).

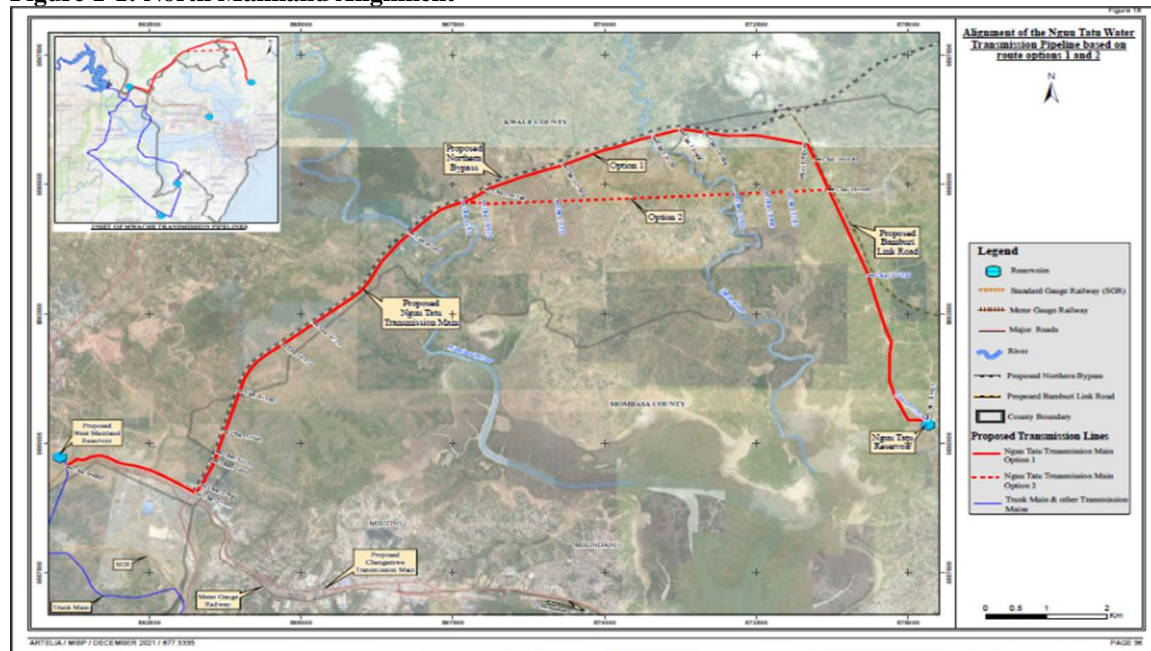
### 1.4 Project Routing

The proposed Mwache/North Mainland water transmission pipeline line traverses three counties i.e., Kwale, Mombasa and Kilifi Counties. The proposed North Mainland Pipeline will transmit the Mwache Project water allocation for the Mombasa North Mainland from its start point at Ch. 4+800 of the Trunk Main, just before the West Mainland Reservoir site, to the Nguu Tatu Reservoir site.

The North Mainland Transmission Pipeline is proposed to be laid along the alignment of the proposed West Mainland and Changamwe Transmission Pipeline, along the Nairobi-Mombasa highway, for 2.2km to the Mombasa Southern By-pass interchange at Bonje, then turning to traverse along the alignment of the proposed Mombasa Northern By-Pass Road from the start point at the Southern By-Pass interchange on the Nairobi-Mombasa Highway to Mwakirunge.

From Mwakirunge, the North Mainland Transmission pipeline under route option 1 will be laid along the proposed Bamburi Link Road for approx. 3.8km, then along the existing Kiembeni Road for approx. 3.1km up to the existing Nguu Tatu reservoir site. The total length of the proposed North Mainland Transmission Pipeline based on pipeline route option 1 is approximately 21.7km. A layout of the proposed Mwache Water Transmission Pipelines Project is given in **Figure 1-1 below** which shows the route alignment of the North Mainland transmission pipeline.

**Figure 1-1: North Mainland Alignment**



#### **1.4.1 Ancillary Infrastructures**

The scope of this RAP covers the area impacted upon by the proposed bulk water transmission pipeline. However, it is noted during the study that the Nguu Tatu Reservoir is proposed to be constructed within the site for the existing Nguu Tatu Reservoirs situated along the Kiembeni-Kaloleni road within Nguu Tatu area of the Mombasa North Mainland. UTM coordinates of the central point of the reservoir site are 570569 N & 9555345 E.

The proposed Nguu Tatu reservoir is a 14,000 m<sup>3</sup> reinforced concrete tank to be constructed in two compartments for maintenance purposes. The existing water storage facilities within the Nguu Tatu reservoir site comprise of 3Nr. reinforced concrete reservoirs which are above ground, with varying top water levels. The existing reservoirs seem to be in good condition, though some rehabilitation works will be required. A single storey administration building of 220m<sup>2</sup> floor area has been provided for at the Nguu Tatu reservoir site. These will be used by the Water Service Provider as local operations offices for the North Mainland supply area.

During construction, the offices will be temporarily used as the Resident Engineer's Offices for the respective construction lots. There is no RAP required for the ancillary facilities to be located within the proposed Nguu Tatu reservoir because there already exist reservoirs on the land owned by CWWDA hence the ancillary infrastructures will not require any additional land.

#### **1.5 RAP Justification**

The development of the RAP has been informed by the recommendations of the ESIA undertaken for this project. During the ESIA preparation, as part of scoping and impact identification, it was determined that the project would lead to displacement impacts (due to the need for land acquisition for RoW) hence requiring a RAP.

The purpose of the RAP is to minimise the project displacement impacts identified by:

- Providing compensation for loss of assets at full replacement cost
- Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected, and
- Improving or at least restoring the livelihoods and standards of living of affected persons.

#### **1.6 RAP Objectives**

The main objectives are:

- a) To identify PAHs and their assets and determine the extent of involuntary resettlement of the project and put in place measures to minimise and/or mitigate such impacts.
- b) To value PAHs assets (compensation costs, livelihood/disturbance allowances and other assistance values) and provide a strategy for the compensation of PAHs.
- c) To set out strategies for the implementation of the RAP, including the process through which to acquire the necessary land for the implementation of the project activities; and

- d) To carry out consultations with community members and other stakeholders, including PAHs, and make them aware of the project and to obtain their concerns regarding the economic and social impacts of the proposed project and mitigation measures.

### **1.7 Project Efforts to Minimise Displacement Impacts**

Efforts have been made using all appropriate options of engineering design in finalizing the water transmission pipeline alignment to minimize the resettlement impacts. As per World Bank OP. 4.12, to avoid, minimize and compensate the unavoidable impacts, an alternative analysis and assessment is required to arrive at the best option with minimum resettlement impacts.

The area for transmission alignment was selected keeping in view the minimum settlements located in the proposed RoW. The design stage identified two options for the possible project routing. The options are as below;

- a) Under this route option, the North Mainland Transmission Pipeline is proposed to be laid along the alignment of the proposed West Mainland and Changanwe Transmission Pipeline, along the Nairobi-Mombasa highway, for 2.2km to the Mombasa Southern By-pass interchange at Bonje, then turning to traverse along the alignment of the proposed Mombasa Northern By-Pass Road from the start point at the Southern By-Pass interchange on the Nairobi-Mombasa Highway to Mwakirunge. From Mwakirunge, the North Mainland Transmission pipeline under route option 1 will be laid along the proposed Bamburi Link Road for approx. 3.8km, then along the existing Kiembeni Road for approx. 3.1km up to the existing Nguu Tatu reservoir site. The total length of the proposed North Mainland Transmission Pipeline based on pipeline route option 1 is approx. 21.7km.
- b) Under pipeline route option 2, the North Mainland transmission pipeline alignment on the initial 8.6km section from the offtake point at the Trunk Main to Kombeni river, and the final section along the Kiembeni – Kaloleni road is similar to that in route option one above. The section between Kombeni River and the Kiembeni – Kaloleni road under route option 2 is proposed to follow the alignment of an old disused DN 200 A.C. Pipeline along the Mwawesa – Mwakirunge access road. The total length of the proposed North Mainland Transmission Pipeline based on pipeline route option 2 is approx. 20.8km.

To this effect, the Project settled on Option 1 as the most viable. This was arrived at following discussions and deliberations with CWWDA, LTTA Consultant and MOWASCO during the Preliminary Design stage where it was agreed that avoidance of densely populated areas and future access of the Pipeline for operation and maintenance should be given high priority in the pipeline route selection. The Project as noted will however affect privately owned land parcels, structures and crops and trees.

A number of alternatives and mechanisms have also been considered to avoid or minimise resettlement/displacement and restricted access to socio-economic services



during the design and implementation of project activities. This is also in consideration of the concerns of community members and institutional stakeholders consulted.

- Use of manual excavation: The contracting firm will as much as possible use manual excavation in built-up areas. This will enable the project to minimise the extent of structural damage associated with machine excavation in such heavily built-up areas.
- Selection of non-residential sites. As much as possible, besides engineering design prerequisites, site selection has been guided by the desire to minimise the displacement of human settlements/residences.
- Social services access points such as schools, markets and health facilities along the project corridor will remain open or alternative entry points will be provided. One strategy is to work on the entry points of such service institutions during weekends or during breaks when the access points are not fully engaged.

## 2 RAP APPROACH AND METHODOLOGY

The chapter describes the approach and methodology used in preparing the RAP.

### 2.1 Literature Review

#### 2.1.1 Secondary Sources

Data from secondary sources were collected and reviewed including relevant policies, legislations, and statutes as well as development statistics of the project area. The documents that were reviewed include among others:

1. Resettlement Policy Framework (RPF) for WSDP
2. Feasibility Study report
3. Project layout maps (in pdf and AutoCAD Formats)
4. Project routing in Shapefile/Contours, AutoCAD DWG, DXF
5. Specific Kenya's relevant legal statutes

#### 2.1.2 Delineation of Study Area and Identification of PAHs

The process adopted in identifying the PAHs and affected assets was as follows:

- The consultant informed the 3 county governments, national government (county commissioner, chiefs and assistant chiefs, village heads) in the areas about the proposed RAP study in advance of the consultations, census and asset inventory.
- Using coordinates given by client, the asset surveyors prescribed the Project Area of Impact (ROW) using GPS instruments and identified land that would be affected within those boundaries.

#### 2.1.3 Data Primary Sources

##### 2.1.3.1 Field Surveys

The preparation of this RAP involved fieldwork in the project ROW and survey activities including the execution of: (i) PAH census survey, (ii) a socio-economic survey, and (iii) a valuation covering all affected assets. To conduct socio-economic baseline survey and assessment, a range of tools and data gathering techniques used in the field are summarized below.

##### 2.1.3.1.1 Household Socio-Economic Surveys

The objective of this task was to provide a detailed socio-economic profile of the PAHs. The socio-economic surveys were undertaken through the use of a structured questionnaire to identify the characteristics of the potentially affected population ensuring that all the different categories and groups of people to be affected by the proposed project are captured and consulted.

The findings of socioeconomic studies to be conducted in the early stages of project preparation and with the involvement of potentially displaced people, including (a) the results of a census survey covering (i) current occupants of the affected area to establish a basis for the design of the resettlement program and to exclude subsequent inflows of people from eligibility for compensation and resettlement assistance; (ii) standard characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (and standards of living (including health status) of the displaced population; (iii) the magnitude of the expected loss--total or partial--of assets, and the extent of displacement, physical or economic Para 6, Annex A, OP 4.12.

### 2.1.3.1.2 Census Survey

The census survey was carried out for 100% of the PAHs falling within the proposed project route. A structured questionnaire was administered to collect quantitative and qualitative information on PAHs. (See study tool in appendix I):

### 2.1.3.1.3 Detailed Measurement Survey

Detailed Measurement Survey (DMS) was conducted for each affected asset. Through DMS exact size, type, and quality of each asset with quantum of impacted/acquired part thereof with ownership title, type and use were determined and inventory of losses documented. The DMS was carried with participation of PAHs in identifying and measuring of the exact dimensions and quantities and valuation of all affected assets, including, as applicable, land and structures. All property information collected was recorded on a 'Compensation Assessment Record Sheet' specifically designed for this purpose and later transferred to a valuation roll submitted as part of a valuation report, **Annex A**.

### 2.1.3.1.4 Valuation of Affected Property and Assets

During the DMS, assessment of the value of existing structures and land affected by the project based on full replacement cost was undertaken by a registered valuer. The valuation of the inventoried affected assets has been computed and will be updated with official valuation to be done by the National Land Commission (NLC) as provided for by the NLC Act, 2012 during the RAP compensation process.

## 2.2 PAPs and Stakeholder Consultations

The RAP team undertook consultations with the PAPs to ensure that the project activities and the likely displacement impacts on them and their livelihoods were explained. Five meetings were held in Kwale County with relevant institutions, nine meetings with relevant institutions were held in Mombasa and nine meetings with relevant institutions in Kilifi Counties. One meeting was held with PAPs in Kwale County, two meetings held with PAPs in Mombasa County. These meetings were conducted between 25<sup>th</sup> October 2022 and 2<sup>nd</sup> December 2022. (See **Annex B and C**, List of stakeholders consulted and minutes of meetings). **Table 2-1** below shows the consultation methods uses by category of PAP and or stakeholders.

**Table 2—1: Census and Stakeholder Consultation Methods**

| Activity                                    | Target Groups /areas  | Methods/Techniques       |
|---|---|--------------------------|
| PAP census                                  | PAPs  | Household interviews     |
| Key institutional stakeholder consultations | Key stakeholder consultations held with National and County Government Agencies Quasi-Governmental Agencies | Key informant interviews |
| Community consultations                     | Community dialogues   | Community dialogues      |

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<sup>1</sup> Officials interviewed included county and deputy county commissioner of Mombasa, Kwale & Kilifi, Kenya Railways, MOSWASCO, KeNHA, KURA, KFS, NEMA, Chiefs, Department of Public Works

### 3 POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

This section provides the legal background and legislative process in Kenya with respect to land acquisition, resettlement and livelihood restoration, and a comparison with OP. 4.12.

#### 3.1 The Kenyan Constitution, 2010

The Constitution of Kenya, 2010, protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except in accordance with law. Article 40(3) states:

“The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter five; or is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that –

- i. Requires prompt payment in full of just compensation to the person; and
- ii. Allows any person who has an interest in or right over, that property a right of access to a court of law.

The Constitution empowers the state to exercise the authority of compulsory acquisition. Article 40 of the Constitution provides that the state may deprive owners of property only if the deprivation is “for a public purpose or in the public interest,” which includes public buildings, roads, way leaves, drainage, irrigation canals among others. Article 40(3) (a) refers to acquisition and conversion of all kinds of land in Kenya (private, public, community land and foreign interests in land). The Constitution further provides that payment of compensation shall be made to “occupants in good faith” of land acquired by the state who do not hold title for such land. An occupant in good faith is a “bona fide” occupant.

#### 3.2 The Land Act (2012), Revised 2019.

The Land Act 2012 is the Kenya’s framework legislation regulating compulsory acquisition of land (i.e., land, structures, crops, and trees etc.).

##### Relevant Sections

- Section 7 provides for the methods of acquisition of title to land including compulsory acquisition.
- Section 9 provides for conversion of land from one category to another in accordance with the provisions of the Land Act or any other written law.
- Section 49. (1) provides guidelines of land transfers including succession related due to death.

### **3.2.1 The Land Laws (Amendment) Act 2016**

The Land Laws (Amendment) Act, 2016 revises the Land Act, 2012, the Land Registration Act, 2012 and National Land Commission Act, 2012. It also sets out regulations to give effect to Articles 67 (2) (e) and 68 (c) (i) of The Constitution of Kenya which deal with the National Land Commission's function of initiating investigations into present or historical land injustices and reparation and, prescribed minimum and maximum land holding acreages for private land respectively. The following is a brief outline on the key changes introduced by Land Laws (Amendment) Act to the Land Act, No. 6 of 2012. The Cabinet Secretary has been granted the following additional powers:

- The power to provide policy direction regarding all classes of land in consultation with the National Land Commission where appropriate.
- The power to provide to coordinate the development and implementation of a National Land Information System in collaboration with the Commission, and
- The power to administer and undertake all dealings including registration of private land interests subject to the provisions on compulsory acquisition.

Unlawful occupation of private, community or public land is expressly prohibited. The Act also now sets out a procedure for eviction for any such unlawful occupants.

### **3.2.2 Land Value (Amendment) Act, 2019**

The Land Value (Amendment) Act, 2019 has amended various sections of the Land Act 2012, the Land Registration Act as well as the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act. The Act aims at standardizing the value of land in Kenya for the primary purpose of enhancing efficiency and expediting the compulsory land acquisition process. Below are the key highlights:

#### **Acquisition of land before Payment of Compensation**

Previously, the National Land Commission (NLC) was required to compensate a landowner prior to taking possession of the land. However, the Act now allows the NLC to take possession of the land and pay compensation at a later date within a reasonable amount of time (not later than one year).

#### **Establishment of the Land Acquisition Tribunal**

The Act establishes the Land Acquisition Tribunal (the Tribunal) which shall hear disputes related to the compulsory land acquisition process and in determining such disputes, confirm, vary, or quash the decision of the NLC. Previously, disputes were referred to the Environment and Land Court (ELC). However, following the passing of this Act, the Tribunal has first instance jurisdiction to hear such disputes with the ELC exercising appellate jurisdiction. Additionally, the Act also provides that where the NLC has taken possession of the land, no order stopping any development of the land may be issued by any court if public funds have already been committed to its development. In essence, this provision bars the Court from granting stay orders, including interim injunctions, once a government project is underway.

### **Criteria for assessing the value of compulsorily acquired land**

The Act provides that valuation of land for purposes of compensation shall be based on the Land Value Index. This is an analytical representation showing the spatial distribution of land values in a given geographical area at a specific time. In calculating the Land Value Index, the declared value of the land for purposes of payment of rates, rents or stamp duty shall be taken into account in addition to other factors provided in the Act such as the increase in the value of the land due to improvements made on it. This RAP applied this process during valuation of affected assets.

### **Additional forms of compensation**

Apart from monetary compensation, the following new forms of compensation have been introduced under the Act:

- Allocation of an alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired.
- Issuance of government bond.
- Grant or transfer of development rights as may be prescribed.
- Equity shares in a government-owned entity; and
- Any other lawful compensation.

### **3.2.3 National Land Commission Act 2012**

NLC is an independent government commission whose establishment was provided for by the Constitution of Kenya, 2010 to, amongst other things, manage public land on behalf of the national and county governments, initiate investigations into present or historical land injustices and recommend appropriate redress, and monitor and have oversight responsibilities over land use planning throughout the country. [1] It was officially established under The National Land Commission Act, 2012. Article 67(2) of the Constitution, the functions of the Commission are to —

- Manage public land on behalf of the national and county governments.
- Compulsorily acquire land for national and county governments
- Compensate acquired land on behalf of national and County government.

Under the National Land Commission Act 2012, the Commission shall:

- On behalf of, and with the consent of the national and county governments, alienate public land.
- Monitor the registration of all rights and interests in land.
- Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.
- Approve compulsory acquisitions, way leaves, easements, and analogous rights.

### **3.2.4 The Valuers Act, 1985**

Valuation of land is a critical aspect of compulsory acquisition practice and compensation. The National Land Commission based on land valuation determined by registered valuers will make compensation awards. Besides, the Valuers Act establishes the Valuers Registration Board, which regulates the activities and practice of registered valuers. All valuers must be registered with the Board to practice in Kenya. The preparation of this RAP followed the provisions set out in the Valuers Act.



### **3.2.5 Matrimonial Property Act No 49 of 2013**

#### **Ownership of Matrimonial Property**

Part III (clause 7) States that: - Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved. This also includes assets like land. The Act (section 4) further provides that a married woman has the same rights as a married man: to acquire, administer, hold, control, use and dispose of property whether movable or immovable; to enter into a contract; and to sue and be sued in her own name. The Act (section 7) states that where there is no prenuptial agreement, matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition and shall be divided (not equally) between the spouses. The Act (section 12) states that matrimonial property cannot be sold, leased, or mortgaged during a monogamous marriage without the consent of both spouses (See section 12(1)).

### **3.2.6 Environment and Land Court Act 2012**

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

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

## **3.3 Land Tenure and Rights in Kenya**

### **3.3.1 Customary Land Tenure**

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

### **3.3.2 Freehold Tenure**

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. The Land

Registration Act, 2012, governs freehold land. The Act provides that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights, privileges relating thereto.

### **3.3.3 Leasehold Tenure**

Leasehold is an interest in land for a definite term of years and may be granted by a freeholder usually subject to the payment of a fee or rent and is subject also to certain conditions which must be observed e.g., relating to developments and usage. The maximum term of government leases granted in Kenya is 99 years for agricultural land and urban plots.

### **3.3.4 Public Tenure**

This is where land owned by the Government for her own purpose, and which includes unutilized or un-alienated government land reserved for future use by the Government itself or may be available to the general public for various uses. The land is administered under the Land Act 2012. Categories of government land include forest reserves, other government reserves, alienated and un-alienated government land, national parks, townships and other urban centers and open water bodies.

## **3.4 Land Acquisition Process in Kenya**

### **Step 1. Proof that Compulsory Possession is for Public Good**

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

### **Step 2. Publication of Notice of Intention to Acquire**

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

### **Step 3. Inspection of Land to be acquired.**

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

#### **Step 4. Valuation of the land**

Part III of the Land Act 2012, section 113 (2a) states that “the Commission shall determine the value of land with conclusive evidence of (i) the size of land to be acquired; (ii) the value, in the opinion of the Commission, of the land; (iii) the amount of compensation payable, whether the owners of land have or have not appeared at the inquiry.” The final award on the value of the land shall be determined by NLC and shall not be invalidated by reason of discrepancy, which may be found to exist in the area. The market value of the property, which is determined at the date of the publication of the acquisition notice, must be considered. Determination of the value has to take into consideration the conditions of the title and the regulations that classify the land use e.g., agricultural, residential, commercial or industrial.

#### **Step 5. Serve the notice of inquiry**

Thirty days after the publication of the Notice of Intention to Acquire, NLC will schedule a hearing for public inquiry. NLC must publish notice of this meeting in the Kenya Gazette and County gazette 15 days before the inquiry meeting and serve the notice on every person interested in the land to be acquired.

#### **Step 6. Holding of a Public Hearing**

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

#### **Step 7. Award of Compensation**

Upon the conclusion of the inquiry, and once the NLC has determined the amount of compensation, NLC will prepare and serve a written award of compensation to each legitimate claimant. NLC will publish these awards, which will be considered “final and conclusive evidence” of the area of the land to be acquired, the value of the land and the amount payable as compensation. The Land Value Amendment Act 2019 prescribes the forms of compensation.

#### **Step 8. Payment of Compensation**

A notice of award and offer of compensation shall be served to each person by the Commission. Section 120 provides that “first offer compensation shall be paid promptly” to all persons interested in land. Section 119 provides a different condition and states that the NLC “as soon as practicable” will pay such compensation. Where such amount is not paid on or before the taking of the land, the NLC must pay interest on the awarded amount at the market rate yearly, calculated from the date the State takes possession until the date of the payment. In cases of dispute, the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying owner of land accordingly. If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the

land, open a special account into which the Commission shall pay interest on the amount awarded at the rate prevailing bank rates from the time of taking possession until the time of payment.

### **Step 9. Transfer of Possession and Ownership to the State**

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

## **3.5 Institutional Responsibilities**

Responsibility for ensuring that all aspects of resettlement and compensation planning and implementation are taken into consideration falls to project proponents or project implementation bodies. The main institutions involved in land management, compensation and resettlement in this project are briefly described below.

**Table 3-1: Institutional Involvement and Roles in Resettlement Compensation**

| <b>Institution</b>                               | <b>Roles</b>  |
|--|---|
| Coast Water Works Development Authority          | Sourcing for counterpart funds for the RAP implementation and implementing all aspects of the RAP.  |
| National Land Commission                         | Approving payment/compensation to the PAH, and ensuring prompt, fair and adequate compensation.   |
| County Governments of Kwale, Mombasa and Kilifi  | Support the resettlement process including validation of census and asset valuation, supporting PAHs during transitional period.  |
| Ministry of Interior and National Administration | DCC will chair the GRM mediation committee, the chiefs and assistant chiefs will help in the identification of PAPs, convening of the disclosure meetings and supporting in the disclosure exercise |

## **3.6 World Bank Involuntary Resettlement Policy**

World Bank OP. 4.12 is a common standard of approved principles and guidelines for compensation/resettlement for this type of project. World Bank principles should, however, be harmonized with the national laws of the subject country where the project is to be funded to the extent possible. Where there are differences, World Bank OP 4.12, applies. World Bank's O.P. 4.12 on 'Involuntary Resettlement' requires that displaced persons should be compensated at full replacement cost, assisted with relocation/resettlement and during the transition period. The main features of O.P. 4.12 are as follows:

- a) All viable alternative project designs should be explored to avoid or minimise the need for resettlement and when it cannot be avoided, to minimise the scale and impacts of resettlement.
- b) Resettlement measures are to be conceived and executed as development activities.

- c) Assistance should be given to the community in their efforts to improve former production levels, income-earning capacity and living standards, or at least restore them to the levels at which they would have been without the project.
- d) Displaced persons should be:
  - a. Compensated at full replacement cost prior to the actual move;
  - b. Assisted with relocation; and
  - c. Assisted and supported during the transition period.
  - d. Particular attention will be given to socially disadvantaged and vulnerable groups such as the very poor, the disabled, minorities, orphans and child-headed families, encroachers, squatters, and others without clear legal rights to land, those incapacitated by advanced age, among others.
- e) Communities will be given opportunities to participate in planning, implementing, and monitoring their resettlement/compensation.

### **3.6.1 Differences Between Kenyan Laws and The World Bank Policy**

There are some differences between the World Bank policy and the laws of Kenya on resettlement and compensation. **Table 3-2** outlines World Bank OP. 4.12 policy on involuntary resettlement and compares them to the Kenyan legislation on the same. Recommendations are made on the existing gaps of the Kenyan laws. In general, where there is a difference between Kenyan law and OP 4.12, the latter shall prevail.

**Table 3—2: Comparative Analysis of World Bank OP 4.12 and Government of Kenya requirements including measures to address gap**

| OP 4.12  | Kenyan Legislation  | Comparison  | Recommendation to Address Gap   |
|--|---|---|---|
| <b>GENERAL REQUIREMENTS</b>  |   |   |   |
| <p>World Bank OP 4.12 has overall policy objectives, requiring that:</p> <ol style="list-style-type: none"> <li>1. Involuntary resettlement should be avoided wherever possible, or minimized, exploring all alternatives.</li> <li>2. Resettlement programs should be sustainable, include meaningful consultation with affected parties, and provide benefits to the affected parties.</li> <li>3. Displaced persons should be assisted in improving livelihoods etc., or at least restoring them to previous levels.</li> </ol> | <ol style="list-style-type: none"> <li>1. According to Kenyan Legislation, involuntary resettlement may occur as a result of projects implemented in public interest.</li> <li>2. The Land Act, 2012 Act outlines procedures for sensitizing the affected population to the project and for consultation on implications and grievance procedures.</li> <li>3. The Land Act 2012 guarantees the right to fair and just compensation in case of relocation.</li> </ol> | <ol style="list-style-type: none"> <li>1. The Land Act does not stipulate that resettlement should be avoided wherever possible; on the contrary, as long as a project is for public interest, involuntary resettlement is considered to be inevitable.</li> <li>2. Same as the World Bank</li> <li>3. Just and fair compensation as outlined in the Land Act 2012 is not clear and can only be determined by NLC, which can be subjective. It does not talk about improving livelihood or restoring them to pre-project status.</li> </ol> | <ul style="list-style-type: none"> <li>• For RAP, ensure that resettlement issues are considered at the design stage of the project in order to avoid/ minimize resettlement.</li> <li>• Implement World Bank OP 4.12 policy - displaced should be assisted in improving their livelihood to pre-project status.</li> </ul> |
| <b>OP 4.12</b>   | <b>Kenyan Legislation</b>   | <b>Comparison</b>   | <b>Recommendation to Address Gap</b>  |
| <b>PROCESS REQUIREMENTS</b>  |   |   |   |



| OP 4.12   | Kenyan Legislation  | Comparison                | Recommendation to Address Gap   |
|---|---|---------------------------|---|
| <p><b>Consultation and Disclosure</b><br/>Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.</p> <p>Displaced persons and their communities (...) are provided with timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement.</p> <p>Documents to be disclosed will be in a format that is accessible to the affected communities.</p> <p>It is necessary to undertake and document a process of consultation in a manner that provides the affected communities with opportunities to express their views and allows the project to consider and respond to them.</p> <p>The consultation process will be undertaken in a manner that is inclusive and culturally appropriate. It is necessary to tailor the consultation process to the language preferences of the affected communities, their decision-making process, and the needs of disadvantaged or vulnerable groups.</p> | <p>The Land Act 2021 outlines procedures for consultations with affected population by NLC and grievance management procedures.</p> | <p>Same as World Bank</p> | <p>Implement consultation procedures as outlined in both Kenyan legislation and World Bank.</p> |

| OP 4.12   | Kenyan Legislation   | Comparison                                     | Recommendation to Address Gap   |
|---|--|--|---|
| For projects with significant adverse impacts on affected communities, the consultation process will ensure their free, prior and informed consultation and facilitate their informed participation.  |  |  |   |
| <p><b>Grievance Mechanism:</b> For physical and economic resettlement, appropriate and accessible grievance mechanism will be established.</p> <p>It is necessary to establish a grievance mechanism to receive and facilitate the resolution of the affected communities' concerns and grievances about the Project's environmental and social performance.</p> <p>The grievance mechanism should address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, and at no cost and without retribution.</p> <p>It is necessary to inform the affected communities about the mechanism in the course of its community engagement process.</p> | Land Act 2012 clearly outline the steps and process for grievance redress that includes alternative dispute resolution, re-negotiation with NLC and is backed by the judicial system through the Land Acquisition Tribunal as established by the Land Value (Amendment) Act 2019 and Environmental and Land Court as established by the Constitution 2010. | Kenyan legislation meets OP 4.12 requirements. | Implement grievance procedures as outlined in both Kenyan legislation and World Bank. |

| OP 4.12   | Kenyan Legislation   | Comparison  | Recommendation to Address Gap  |
|---|--|---|--|
| <p><b>Eligibility Criteria</b><br/>Defined as:</p> <p>(a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);</p> <p>(b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan (see Annex 10 A, para. 7(f)); and 19</p> <p>(c) those who have no recognizable legal right or claim to the land they are occupying to determine eligibility:<br/>Carry out resettlement census. Cutoff date for eligibility is the day when the census begins.</p> | <p>The Land Act 2012 provides that written and unwritten official or customary land rights are recognized as valid land right. The Law provides that people eligible for compensation are those holding land tenure rights.</p> <p>Land Act also recognizes those who have interest or some claim in the land such pastoralist or who use the land for their livelihood.</p> <p>The constitution recognizes ‘occupants of land even if they do not have titles’ and payment made in good faith to those occupants of land. However, this does not include those who illegally acquired land</p> <p>Land Act 2012 provides for census through NLC inspection and valuation process.</p> | <p>Kenya’s Land Law defines eligibility as both formal (legal) and informal (customary) owners of expropriated land. However, it does not specifically recognize all users of the land to be compensated.</p> <p>The constitution of Kenya on the other hand recognizes ‘occupants of land’ who do not have title and who the state has an obligation to pay in good faith when compulsory acquisition is made.</p> <p>Same as World Bank</p> | <p>Ensure ALL users (including illegal squatters, laborers, rights of access) of affected lands are included in the census survey or are paid.</p> <p>Implement cut-off procedures as outlined in the RPF and Kenyan Law</p> |
| <p><b>Measures:</b> Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land-based. Cash based compensation should only be made where (a) land taken for the project is a small fraction of the affected asset and the residual is economically viable; (b) active</p>   | <p>Previously, the National Land Commission (NLC) was required to compensate a landowner prior to taking possession of the land. However, the Land Value (Amendment) 2019, Act now allows the NLC to take possession of the land and pay compensation at a later date within a reasonable amount of time (not later than one year).</p>  | <p>OP4.12 requires that displacement must not occur before all necessary measures for resettlement are in place, i.e., measures over and above simple compensation.</p> <p>Cash based compensation seems</p>  | <p>Ensure ALL users (including illegal squatters, laborers, rights of access) of affected lands are included in the census survey or are paid</p> <p>(b) If the impacts include physical relocation include</p>              |

| OP 4.12   | Kenyan Legislation   | Comparison   | Recommendation to Address Gap   |
|---|--|--|---|
| <p>markets for lost assets exist and there is sufficient supply of land and housing; or (c) livelihoods are not land-based.</p> <p>World Bank OP4.12 Article 6(a) requires that displaced persons are provided with prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project.</p> <p>If physical relocation is an impact, displaced persons must be provided with assistance during relocation and residential housing, housing sites and/or agricultural sites to at least equivalent standards as the previous site. Replacement cost does not take depreciation into account. In terms of valuing assets, if the residual of the asset being taken is not economically viable, compensation and assistance must be provided as if the entire asset had been taken.</p> <p>Compensation and other assistance required for relocation should be determined prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required</p> | <p>It may be argued that the provision which provides for compensation to be paid after possession is taken is unfair and unreasonable, particularly where the property was being used for residential purposes by its owner. Similarly, the provision for compensation to be paid within one year is arguably unconstitutional given that the Constitution expressly provides for prompt payment of compensation. One year may be regarded too long a period to be considered prompt.</p> <p>The Act provides that valuation of land for purposes of compensation shall be based on the Land Value Index. This is an analytical representation showing the spatial distribution of land values in a given geographical area at a specific time. It is to be developed jointly by the national government and county government.</p> <p>In calculating the Land Value Index, the declared value of the land for purposes of payment of rates, rents or stamp duty shall be taken into account in addition to other factors provided in the Act such as the increase in the value of the land due to improvements made on it. However, an increase in value will be disregarded if the improvements are carried out after the publication of a gazette notice that sets</p> | <p>to be the preferred mode of awarding compensation to the affected population by Government of Kenya.</p> <p>Apart from monetary compensation, the following new forms of compensation have been introduced under the Act: -</p> <ul style="list-style-type: none"> <li>• Allocation of an alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;</li> <li>• Issuance of government bond;</li> <li>• Grant or transfer of development rights as may be prescribed;</li> <li>• Equity shares in a government-owned entity; and</li> <li>• Any other lawful compensation.</li> </ul> <p>OP4.12 requires that displacement must not occur before all necessary measures for resettlement are in place, i.e., measures over and above simple compensation</p> | <p>measures to ensure that the displaced persons are</p> <p>(i) provided assistance (such as moving allowances) during relocation; and</p> <p>(ii) provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the old site.<sup>13</sup></p> <p>(c) Ensure that displaced persons are</p> <p>(i) offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and</p> <p>(ii) provided with development assistance in addition to compensation measures</p> <p>(iii) such as land preparation, credit facilities, training, or job opportunities.</p> <p>Implement prompt and effective compensation at full replacement cost for</p> |

| OP 4.12  | Kenyan Legislation  | Comparison   | Recommendation to Address Gap  |
|--|---|--|--|
|  | <p>out the government's intention to acquire the land compulsorily. Different criteria apply for freehold and community land on one hand and leasehold land on the other.</p> <p>Additional forms of compensation</p> <p>Apart from monetary compensation, the following new forms of compensation have been introduced under the Act:</p> <ul style="list-style-type: none"> <li>• Allocation of an alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;</li> <li>• Issuance of government bond;</li> <li>• Grant or transfer of development rights as may be prescribed;</li> <li>• Equity shares in a government-owned entity; and</li> <li>• Any other lawful compensation. An owner whose land has been compulsorily acquired shall elect the form of compensation. However, compensation may come much later so the choice of compensation would need to be carefully considered.</li> </ul> |  | <p>the losses of the assets.</p> <p>Ensure that ALL resettlement options are agreed on with PAHs and put in place BEFORE displacement of affected persons.</p> |
| <p><b>Valuation:</b> With regard to land and structures, "replacement cost" is defined as follows:</p> | <p>The Land Value (Amendment) Act 2019 provides that valuation of land for purposes of compensation shall be based on the Land Value Index. This is an</p>  | <p>Previously, the National Land Commission (NLC) was required to compensate a landowner prior to taking possession of the land.</p> | <p>Apply the World Bank OP4.12 valuation measures, as outlined in Section 6, in order to fully</p>   |

| OP 4.12  | Kenyan Legislation   | Comparison   | Recommendation to Address Gap  |
|--|--|--|--|
| <p>For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes.</p> <p>For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors' fees, plus the cost of any registration and transfer taxes.</p> | <p>analytical representation showing the spatial distribution of land values in a given geographical area at a specific time.</p> <p>It is to be developed jointly by the national government and county government. In calculating the Land Value Index, the declared value of the land for purposes of payment of rates, rents or stamp duty shall be taken into account in addition to other factors provided in the Act such as the increase in the value of the land due to improvements made on it. However, an increase in value will be disregarded if the improvements are carried out after the publication of a gazette notice that sets out the government's intention to acquire the land compulsorily. Different criteria apply for freehold and community land on one hand and leasehold land on the other.</p> | <p>However, the Act now allows the NLC to take possession of the land and pay compensation at a later date within a reasonable amount of time (not later than one year).</p> <p>It may be argued that the provision which provides for compensation to be paid after possession is taken is unfair and unreasonable, particularly where the property was being used for residential purposes by its owner. Similarly, the provision for compensation to be paid within one year is arguably unconstitutional given that the Constitution expressly provides for prompt payment of compensation.</p> <p>One year may be regarded too long a period to be considered prompt.</p> | <p>value all affected assets in a consistent manner.</p> <p>Apply World Bank OP4.12 on valuation and compensation measures.</p> <p>Apply World Bank OP4.12 on valuation and compensation procedures.</p>                           |
| <p>Compensation and livelihood restoration and recognition of customary land rights</p>  | <p>Compensation for loss of assets at full replacement cost and other assistance to help the displaced improve or restore their standards of living or livelihoods.</p> <p>Affected persons with legal rights or claims to land to be provided with replacement property of equal or greater value or cash compensation at full</p>  |  | <p>Compensation will be calculated at replacement cost.</p> <p>The entitlements will provide alternative agricultural land or income-earning opportunities to compensate for loss of land.</p> <p>CWWDA will not displace land</p> |



| OP 4.12                                 | Kenyan Legislation  | Comparison  | Recommendation to Address Gap  |
|---|---|---|--|
|   | <p>replacement cost.</p> <p>Where livelihoods are land-based or where land is collectively owned, the client will, where feasible, offer the displaced land-based compensation.</p> <p>The developer will take possession of the land only after compensation has been made available.</p> <p>The client will also provide opportunities to displaced communities and persons to derive appropriate development benefits from the project.</p>  |   | users or commence construction activities until all affected parties have received compensation for lost assets. |
| Develop and Disclose an LRP and/or RAP. | <p>Prepare a Livelihood Restoration Plan (LRP) that mitigates the negative impacts of displacement, identifies development opportunities, and establishes the entitlements of all categories of affected persons with particular attention paid to the needs of the poor and the vulnerable.</p> <p>In the case of physical displacement, a Resettlement Action Plan (RAP) that covers, at a minimum, the applicable requirements of Performance Standard 5, regardless of the number of people affected, will be developed.</p> <p>The RAP will be designed to mitigate the negative impacts of displacement, identify development opportunities, develop a resettlement budget and schedule and establish the entitlements of</p> | Kenyan law does not require the development and documentation or consultation of a Livelihood Restoration Plan. | Apply OP. 4.12   |

| OP 4.12  | Kenyan Legislation  | Comparison  | Recommendation to Address Gap                                    |
|--|---|---|--|
|  | all categories of affected persons (including host communities).  |   |  |
| Vulnerable Groups and transitional support   | <p>Vulnerable groups should be identified from the start and offered specially tailored assistance throughout the resettlement process.</p> <p>Transitional support should be provided based on reasonable estimates of the time required to restore income earning capacity, productivity levels and associated livelihoods and standards of living.</p> <p>Additional support should be provided to vulnerable groups as necessary.</p> | No specific requirements for vulnerable groups                                | Apply Op. 4.12   |
| <p><b>Monitor</b></p> <p>Adequate monitoring and evaluation of activities to be undertaken.</p> <p>It is necessary to establish procedures to monitor and measure the effectiveness of implementation and use dynamic mechanisms, such as inspections and audits, where relevant, to verify compliance and progress toward the desired outcomes.</p> <p>It is necessary to retain qualified and experienced external experts to verify monitoring information.</p> <p>It is necessary to document monitoring results, implement corrective and</p> | According to Land Act can be undertaken County Land Boards.   | Both Kenyan Law and World Bank policy advocates for Monitoring and Evaluation | Implement as prescribed in the World Bank OP4.12 and Kenyan Law. |

| OP 4.12   | Kenyan Legislation | Comparison | Recommendation to Address Gap |
|---|--------------------|------------|-------------------------------|
| preventive actions, and follow up on these actions to ensure their effectiveness. |                    |            |                               |

### 3.6.2 Comparative Analysis of World Bank OP 4.12 & Kenya's Requirements Relevant to the Process

Table 3—3: Comparative Analysis of World OP 4.12 and Kenya's requirements Relevant to the Process

| Category of PAHs and Type of Lost Assets | Kenyan Law   | World Bank OP4.12   |
|--|--|---|
| <b>Land Users</b>                        | <p>Land Value (Amendment) Act 2019 clear on forms of compensation. Apart from monetary compensation, the following new forms of compensation have been introduced under the Act:</p> <ul style="list-style-type: none"> <li>• Allocation of an alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;</li> <li>• Issuance of government bond;</li> <li>• Grant or transfer of development rights as may be prescribed;</li> <li>• Equity shares in a government-owned entity; and</li> <li>• Any other lawful compensation.</li> </ul> <p>An owner whose land has been compulsorily acquired shall elect the form of compensation. However, compensation may come much later so the choice of compensation would need to be carefully considered.</p> | Entitled to compensation for land, structures and crops and investments made on the land; livelihood must be restored to at least pre-project levels. |
| <b>Landowners</b>                        | <p>The Land Value (Amendment) Act 2019 provides that valuation of land for purposes of compensation shall be based on the Land Value Index. This is an analytical representation showing the spatial distribution of land values in a given geographical area at a specific time.</p> <p>Land Value (Amendment) Act 2019 clear on forms of compensation. Apart from monetary compensation, the following new forms of compensation have been introduced under the Act:</p>   | Compensation based on replacement cost of land. Livelihood must be restored to at least pre-project levels.   |

|                                      |   |  |
|--------------------------------------|---|--|
|                                      | <ul style="list-style-type: none"> <li>• Allocation of an alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;</li> <li>• Issuance of government bond;</li> <li>• Grant or transfer of development rights as may be prescribed;</li> <li>• Equity shares in a government-owned entity; and</li> <li>• Any other lawful compensation.</li> </ul> <p>An owner whose land has been compulsorily acquired shall elect the form of compensation. However, compensation may come much later so the choice of compensation would need to be carefully considered.</p> |  |
| <b>Owners of Temporary Buildings</b> | The constitution of Kenya respects the right to private property and in case of compulsory acquisition, just compensation must be granted to the owner for the loss temporary buildings. Occupancy in good faith.   | Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement. Livelihood must be restored to at least pre-project levels. |
| <b>Owners of Permanent buildings</b> | The constitution of Kenya respects the right to private property and in case of compulsory acquisition, just compensation must be granted to the owner for the permanent building. Land Act 2012 requires compensation for structures based on replacement cost.  | Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement. Livelihood must be restored to at least pre-project levels. |
| <b>Perennial Crops</b>               | Compensation for the loss of crops based on Ministry of Agriculture guidelines and rates.   | Full replacement cost for the loss of crops valued at market price.  |
| <b>Encroachers</b>                   | Compensation for the loss of structures (and other assets   | Full replacement cost for the loss structures (other assets). Livelihood must be restored to at least pre-project levels.  |

## 4 SOCIO-ECONOMIC PROFILE OF THE PROJECT AFFECTED HOUSEHOLDS

This chapter provides socio-economic profile of the PAHs affected by the project in the two Counties where the Project is located, namely Mombasa and Kilifi. The information included within this section is from the socio-economic survey targeting all the PAHs and presented by County. Kwale county has one PAP only and his profile was not taken due to absence from site during census and inventory of assets.

### 4.1 Kilifi County

#### 4.1.1 Governance and Administration

The transmission pipeline route passes through the following locations (see **table 4-1**) in Kilifi County. The County is governed by a governor who is elected. Counties are divided into Sub Counties, Locations, Sub Locations and finally villages as the lowest level of governance and administration.

**Table 4—1: Project Affected Households per location.**

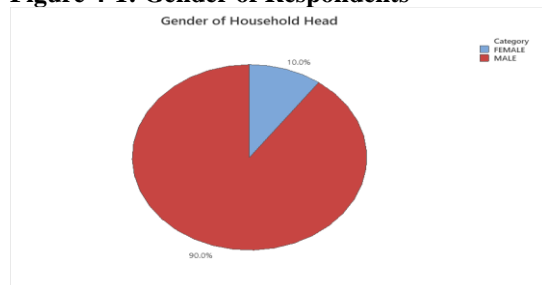
| County | Sub County | Location  | Village                                       |
|--------|------------|-----------|---|
| Kilifi | Rabai      | Rabai     | Bonje<br>La Mwajoha<br>Mwatsama<br>Chisirwani |
|        | Rabai      | Bwagamoyo | Imela<br>Mwarendo<br>Bwagamoyo<br>Mwalewa     |
|        | Rabai      | Mwawesa   | Kanyumbuni                                    |

### 4.1.2 Demographic Profile

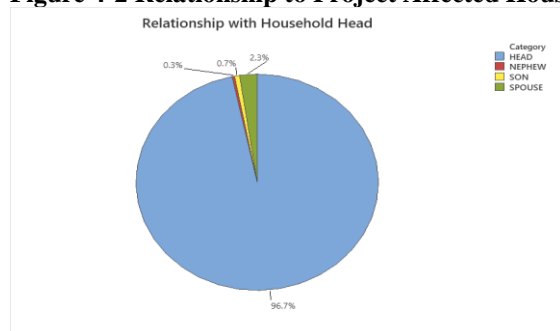
#### 4.1.2.1 Distribution of PAPHs by Age and Gender

A 100% census was carried out to get information on socio-economic and demographic details of the PAHs. 90% of those interviewed were male and 10% females of the total Project Affected Household Heads HHs). The average size of a household was 5 persons per family.

**Figure 4-1: Gender of Respondents**

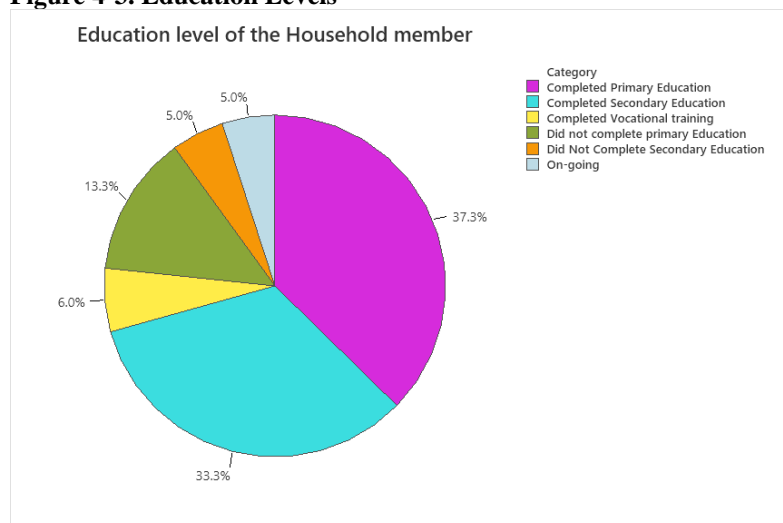


Majority (96.7%) of those who were interviewed were household heads. Spouses of the household heads were 2.3%. Nephews and sons were 0.3% and 0.7% respectively.

**Figure 4-2 Relationship to Project Affected Household Head**

#### 4.1.3 Literacy Levels of PAHHs

During the PAPs census the literacy level data was collected for the households. A good percentage of the household heads have completed primary education 37.3% with 33.3% having completed secondary education. 13.3% of HHs indicated that they did not complete primary education while another 6% completed vocational training. 5.0% of those who were interviewed indicated that they complete secondary and primary education respectively as shown in the below figure.

**Figure 4-3. Education Levels**

#### 4.1.4 Ethnicity, Language and Religion

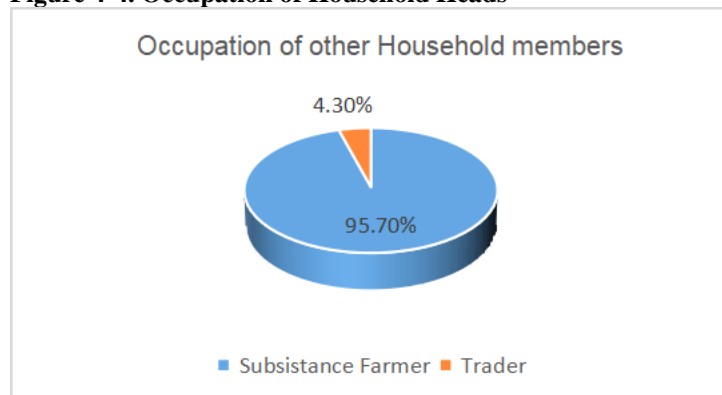
The main ethnic groups in the settlements of the study area are Kambe, followed by Ribe. No conflicts or tensions between these groups have been reported. While the official language is Swahili, the field study has shown that Ribe and Kambe are widely spoken. The population in the project area is predominantly Muslims followed by Christians.

#### 4.1.5 Economy and Employment

Majority of the household heads are subsistence farmers (95.7%) who engage in different business as shown in the figure 4-4.



**Figure 4-4. Occupation of Household Heads**

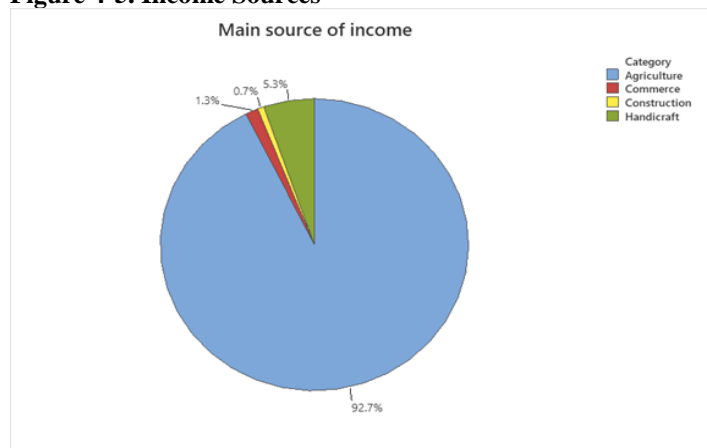


#### **4.1.6 PAP Income and Livelihoods**

##### **4.1.6.1 Income**

The major source of income for the PAHHs is from agriculture at 92.7 %. 5.3% obtain their income from handicraft. Commerce and constructions work provides income to 1.3% and 0.7% of the households respectively.

**Figure 4-5. Income Sources**



##### **4.1.6.2 Main Livelihood Activities**

The majority of the PAPs reported that subsistence agriculture in the project area. In addition, other livelihood activities reported are:

- Fishing
- Subsistence agriculture
- Mining

As described in **Figure 4-6**, all of the PAPs reported subsistence agriculture as their primary livelihood activity. In the peri-urban areas the settlements similarly reported subsistence trade as their primary livelihood as well as informal agriculture. Subsistence trade is mainly composed of selling vegetables, fruits, second hand (used) clothes among others. Household food consumption is usually dependent on a combination of trade. Complementary goods such as salt and oil are bought with money from informal trade and temporary jobs.

Agriculture for self-consumption with occasional commercialization of surplus was identified as practiced by the PAHs. Among the PAHs, agriculture production is the second main source of food for the community with any surplus for commercialization. Subsistence agriculture was reportedly a complementary food source as well as complementary source of income.

The main crops identified along the project area are maize, beans, kale, sweet potato, cassava. There are also permanent crops (mainly fruit trees) including mango, cashew nut, bananas, coconut etc. All crops are for self-consumption and commercialization.

**Figure 4-6: Crop Types**



#### **4.1.6.3 Land Tenure**

Land tenure along the project route and in the ROW is private and all PAHs categorized as landowners in the project affected RoW hold formal titles to the land showing legal ownership. Inheritance is the main source of access to rural land, which can also be accessed by leasing, borrowing, and sharecropping; all these types of access were identified throughout the Study Area.

In contrast, in urban and peri-urban areas, land access is less dependent on inheritance and more on the land market. The average parcel size is more than one hectare, although it can vary according to land availability. Households may share the use of different plots to grow different crops, using plots in different areas that have the characteristics required for each type of crop (e.g., soil type, water availability etc.).

In relation to land tenure and property rights for women, women do not have equal land access to men. This is due to the fact that under traditional inheritance practices, land passes to sons and male relatives of the deceased, or other male relatives such as brothers or nephews.

#### **4.1.6.4 PAH Expenditure Levels**

Agriculture input purchase account for the highest expenditure followed by food.

**Table 4—2. PAPH Monthly Expenditure Levels**

| <b>Expenditure</b> | <b>Amount (Ksh)</b> |
|--------------------|---------------------|
| House Rent         | 1,300.00            |

|                    |           |
|--------------------|-----------|
| Agricultural Input | 8,700.00  |
| Food               | 13,164.71 |
| Health             | 4,520.00  |
| Transport          | 5,086.66  |
| Education          | 9,362.50  |
| Other              | 3,300.00  |

#### 4.1.7 PAP Welfare Analysis

##### 4.1.8 Housing

The houses in the project area are divided into two types of use: residential and ancillary structures including small shacks used by farmers as shelters and storage and are usually located next to farming land. The average size of residential buildings along the surveyed area is 50m<sup>2</sup>, divided into two bedroom and one living room. The kitchen is generally located outside the house with toilet facilities also most located outside. Most houses are made of mud walled and zinc sheets, with fewer being built with brick (red) and block (grey). Zinc sheets are the main material used for roofs with a few makuti roofed houses.

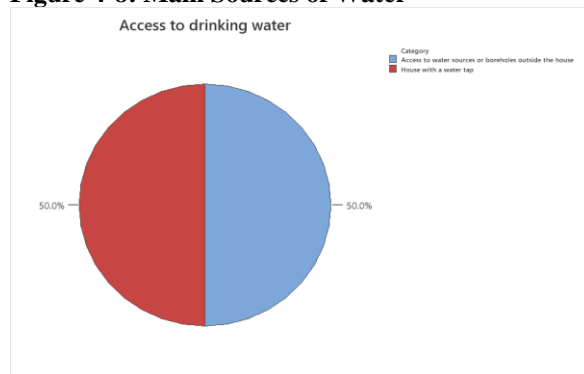
Figure 4-7: Housing along the Project Route



##### 4.1.8.1 PAPs Sources of Water

50% of the PAHs receive their drinking water from boreholes while another 50% have water taps in their houses of as shown in **figure 4-8** below. The major issue experienced in the area is inadequacy of water, with 62% of the PAHs stating that the water supply is not adequate further solidifying the fact that the major issue that people have in the area with regards to water supply is the irregularity of the supply.

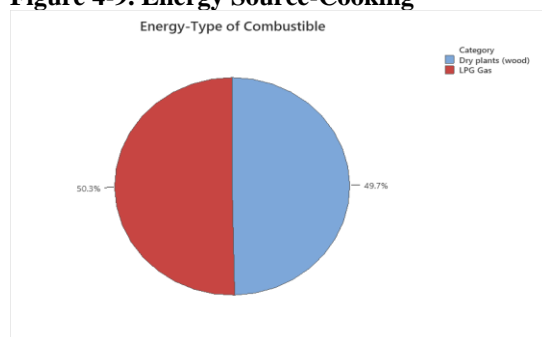
**Figure 4-8: Main Sources of Water**



#### 4.1.9 PAPs Energy Source

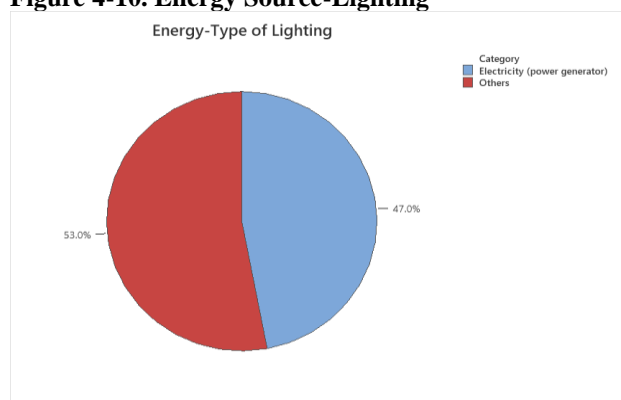
Energy for cooking is mainly from LPG gas at 50.3% with 49.7% indicating that they use firewood/charcoal for cooking as shown in **figure 4-9** below.

**Figure 4-9. Energy Source-Cooking**



47% of the respondents indicated that their source of energy for lighting was electricity. Other sources included lanterns/kerosene lamps diesel generators, solar, candle, and wood at 53% as shown in **figure 4-10** below.

**Figure 4-10. Energy Source-Lighting**



##### 4.1.9.1 PAP Vulnerability

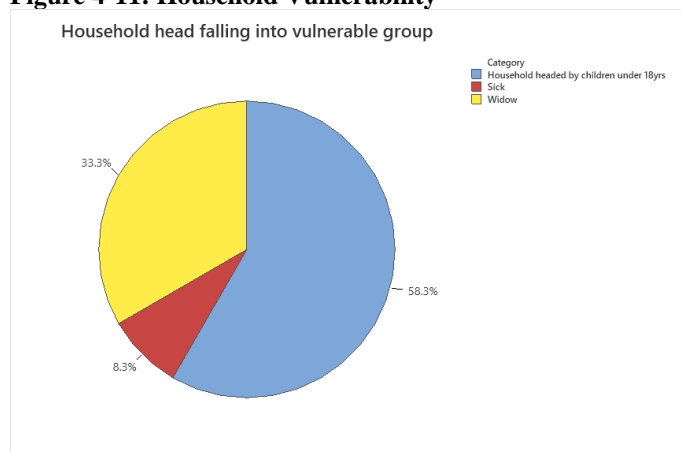
In the context of infrastructure development, vulnerable people are often defined as: 'People who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by resettlement [or project

impacts] than others and who may be limited in their ability to claim or take advantage of ... assistance and related development benefits’.

Vulnerable groups and individuals refer to people who are often exposed to several risks and adverse impacts at once, are more sensitive to those risks and impacts, and/or have a weaker adaptive capacity for coping with and recovering from impacts, usually due to limited access to certain assets and/or resources.

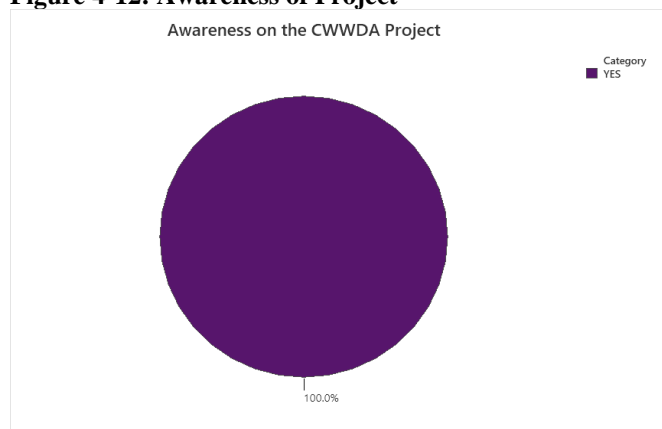
Vulnerable individuals and groups are therefore more susceptible to negative impacts or have a limited ability to take advantage of positive impacts. Vulnerability is a pre-existing status that is independent of the Project and may be reflected by an existing low level of access to key socio-economic or environmental resources or a lack of access to information and decision making. According to the census survey 33% of PAPs falling in the vulnerable category are individuals under 18 years of age. 58% of the vulnerable PAPs are widowed. The chronically ill and those living with disabilities account for 9% as shown in **figure 4-11** below.

**Figure 4-11: Household Vulnerability**



#### **4.1.10 Awareness of the Project and magnitude of Loss**

All the PAHs (100%) were aware about the proposed Mwache West Mainland water transmission pipeline Project, with the public meetings organized by CWWDA and the consultant being the sole source of information about the project. The average land size owned by the PAHs is 69.8 acres (28.26Ha). The PAHs will lose an average of 0.43Ha approximately 2.04% for those with land only and 0.15Ha, approximately 8.46% for those PAHs with land and structures. Therefore, the magnitude of expected loss (land) is considered minimal.

**Figure 4-12: Awareness of Project**

#### 4.1.10.1 Preference for Compensation and Assistance

The preferred mode of compensation by the PAPs (85.7%) was cash while 14.3% preferred alternative land/space for settlement to conduct business. 100% of the PAPs wanted disturbance allowance as well as support in salvage of materials and transportation of the same.

## 4.2 Mombasa County

### 4.2.1 Governance and Administration

The transmission pipeline route passes through the following locations (**table 4-3**) in Mombasa County. The County is governed by Governor who are elected. Counties are divided into Sub Counties, Locations, Sub Locations and finally villages as the lowest level of governance and administration.

**Table 4—3. Affected Locations**

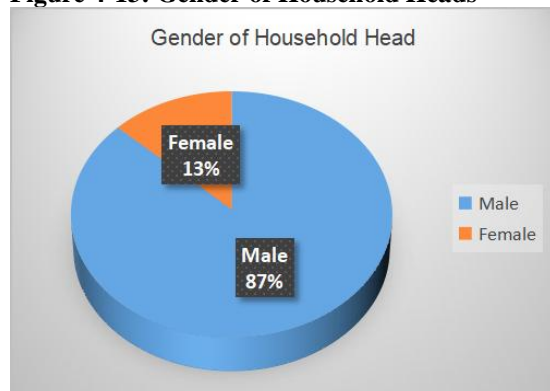
| County  | Sub County | Location   | Village   |
|---------|------------|------------|---|
| Mombasa | Kisauni    | Mwakirunge | Nguu Tatu<br>Marimani<br>Mkomani<br>Mworoni<br>Mwakirunge |

### 4.2.2 Demographic Profile

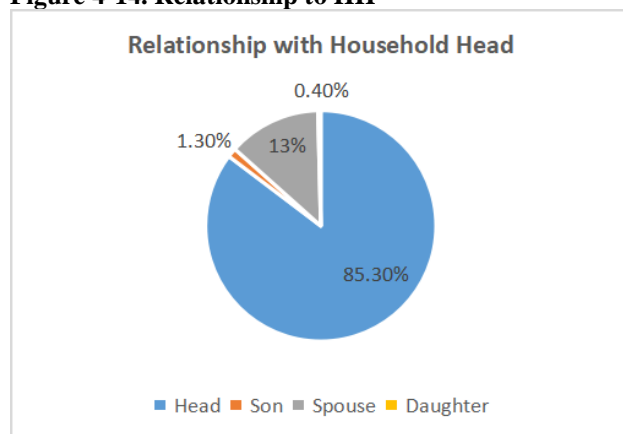
#### 4.2.2.1 Distribution of HHs by Age and Gender

A 100 % census was carried targeting the PAPs and specifically the household heads. Out of the total Project Affected Household Heads interviewed 87% were male and 13% females. The average size of a household was 3 persons per family (estimated number of adults per person per family are 2.4).



**Figure 4-13: Gender of Household Heads**

As shown below, majority of the interviewed were household heads (85.3%), the spouses were 13%. Sons and daughters of the household heads formed 1.3% and 0.4% respectively.

**Figure 4-14. Relationship to HH**

Majority of the household heads are of ages between 36-45, (38.2%). Those above 55 years of age accounted for 11.5% of the PAHHs. The other household members were mainly related to the household head by parenthood.

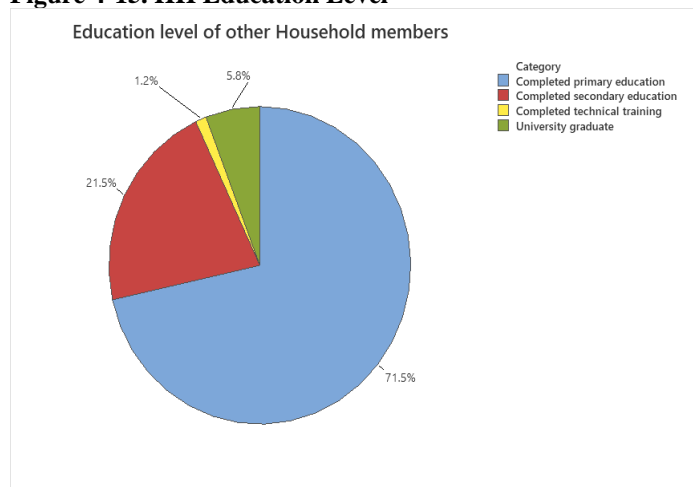
**Table 4–4: Age of HHs**

| Age of PAPs            | %     |
|------------------------|-------|
| <b>Below 18</b>        | 1.0%  |
| <b>18-25yrs</b>        | 2.7%  |
| <b>26-35yrs</b>        | 32.6% |
| <b>36-45yrs</b>        | 38.2% |
| <b>46-55yrs</b>        | 12.4% |
| <b>Above 55yrs</b>     | 11.5% |
| <b>Did Not Respond</b> | 1.5%  |
| <b>Total</b>           | 100.0 |

### 4.2.3 Education Levels of HHs

A good percentage of the HHs have completed primary education 71.5% with 21.5% having completed secondary education and 5.8% continuing with some form of tertiary education. The percentage of PAHHs who have completed technical, and university are low (1.2%) compared to other levels of completed education. Most of the PAHHs (90.7%) are able to read and write.

**Figure 4-15. HH Education Level**



### 4.2.4 Ethnicity, Language and Religion

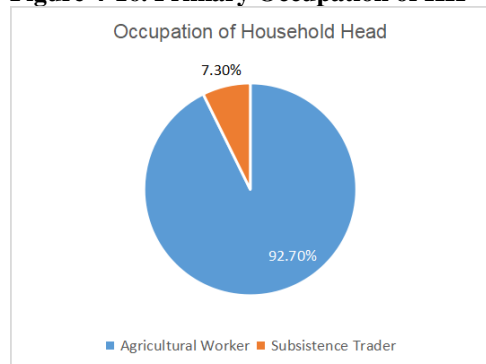
The main ethnic group in the project area is Mijikenda. The languages widely spoken are Kambe, Ribe and Kiswahili. The population in the project area is predominantly Muslims at 78.2%. Religion in the study area is often associated with place of worship and all surveyed settlements have mosques and churches.

### 4.2.5 Economy and Employment

#### 4.2.5.1 Employment

The primary sources/sectors of employment in the Study Area follow the national profile, with the predominance of the trade sector and related activities. Majority of the household heads are subsistence farmers (92.7%) who engage in different farming activities as shown in the **figure 4-16** below.

**Figure 4-16. Primary Occupation of HH**



#### 4.2.5.2 Informal Employment

Street vending is an important part of informal employment and of urban livelihoods. Street vendors offer a wide range of goods and services and were mostly found along the Study Area.

#### 4.2.6 PAH Income and Livelihood

The majority of the PAPs reported that subsistence trade along the existing roads in the project area. In addition to trade, other livelihood activities reported are:

- Commerce
- Construction
- Handcraft
- Fishing
- Subsistence agriculture

PAHs reported subsistence trade as their primary livelihood activity. In the peri-urban areas the settlements similarly reported subsistence trade as their primary livelihood as well as informal agriculture. Household food consumption is usually dependent on a combination of trade. Complementary goods such as salt and oil are bought with money from informal trade and temporary jobs. Agriculture for self-consumption with occasional commercialization of surplus was identified as practiced by the PAHs.

Among the PAHs, agriculture production is the second main source of food for the community with any surplus for commercialization. Subsistence agriculture was reportedly a complementary food source as well as complementary source of income. The main crops identified along the project area are maize, beans, kale, sweet potato, cassava. There are also permanent crops (mainly fruit trees) including mango, cashew nut, bananas, coconut etc. All crops are for self-consumption and commercialization. The main seasonal crops identified along the surveyed settlements are cassava, kales, and maize. There are also permanent crops (mainly fruit trees) including mangos, bananas, and coconut trees etc. All crops are for self-consumption (See Figure 4-17) presents photos of some of the plots farmed within the Study Area.

Figure 4-17. Crop Types

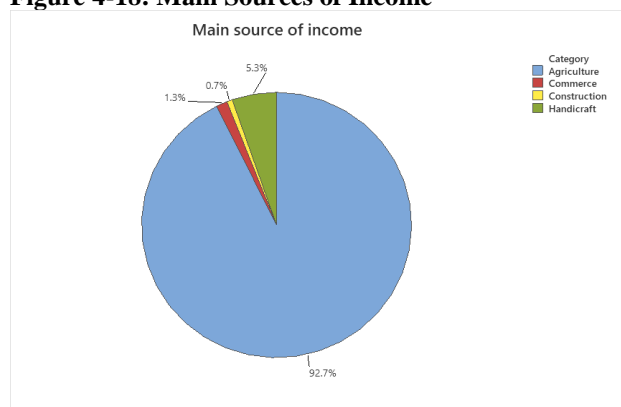


#### 4.2.6.1 Income

From the survey, the average household heads monthly income levels were Ksh.15,645.00 per month with their spouses earning an average of Ksh. 6,700 - per month. The survey also showed that adult children were earning an average of Ksh. 10,500,000 per month. Main sources of income in the project area being agriculture

(92.7%), handicraft at (5.3%) commerce and constructions works at (1.3%) and (0.7%) respectively.

**Figure 4-18: Main Sources of Income**



#### 4.2.6.2 PAH Expenditure Levels

The **table 4-5** below shows the average monthly expenditure of the PAPs with food accounting for the highest expenditure.

**Table 4—5: Household Expenditure**

| Expenditure        | Amount (Ksh) |
|--------------------|--------------|
| House Rent         | 9,022.22     |
| Agricultural input | 2,000.00     |
| Food               | 11,164.71    |
| Health             | 1,520.00     |
| Transport          | 1,066.66     |
| Education          | 5,362.50     |
| Other              | 3,500.00     |

### 4.2.7 Household Welfare Analysis

#### 4.2.7.1 Housing

The average size of residential buildings in the project area is 50m<sup>2</sup>, divided into two bedroom and one living room. The kitchen is generally located outside the house with toilet facilities also most located outside. Most houses are made of mud walled and zinc sheets, with fewer being built with brick (red) and block (grey). Zinc sheets and makuti are the main materials used for roofs.

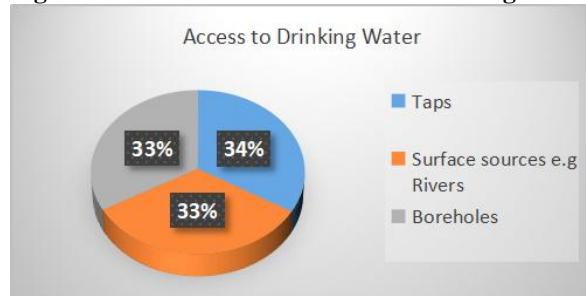
**Figure 4-19: Housing Types in the Project Area**



#### 4.2.7.2 Household Sources of Water

34% of the PAPs receive their drinking water from taps in their houses, 33% get water from surface sources e.g., rivers and a similar 33% receive water from boreholes and public water taps outside of the houses as shown in **figure 4-20** below.

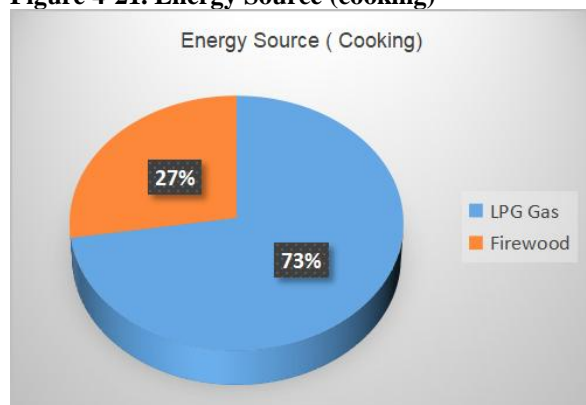
**Figure 4-20: PAPs Main Sources of drinking Water**



#### 4.2.8 PAP Energy Source

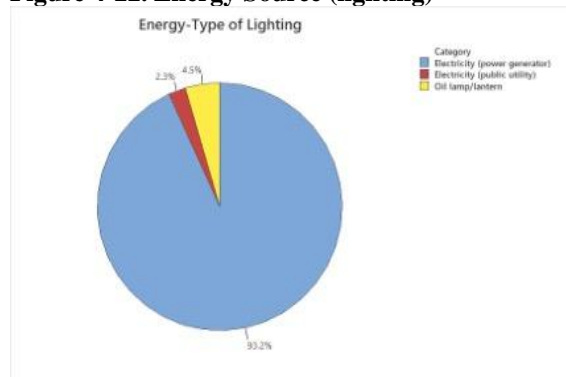
The widely used energy source for cooking is from LPG gas 72% followed by firewood at 28% as shown in **figure 4-21** below.

**Figure 4-21. Energy Source (cooking)**



The main household sources of lighting were electricity from the national grid at (93.2%). Other sources included lanterns/kerosene and generators as shown in figure 4-22 below.

**Figure 4-22. Energy Source (lighting)**



#### 4.2.9 Household Vulnerability

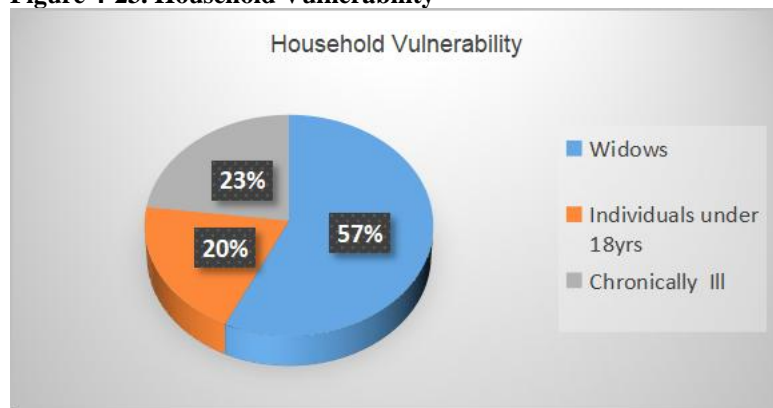
In the context of infrastructure development, vulnerable people are often defined as: ‘People who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by resettlement [or project impacts] than others and who may be limited in their ability to claim or take advantage of ... assistance and related development benefits’.

Vulnerable groups and individuals refer to people who are often exposed to several risks and adverse impacts at once, are more sensitive to those risks and impacts, and/or have a weaker adaptive capacity for coping with and recovering from impacts, usually due to limited access to certain assets and/or resources.

Vulnerable individuals and groups are therefore more susceptible to negative impacts or have a limited ability to take advantage of positive impacts.

Vulnerability is related to the ability of individuals and groups to adapt to socioeconomic. Or bio-physical change. . Vulnerability is a pre-existing status that is independent of the Project and may be reflected by an existing low level of access to key socio-economic or environmental resources or a lack of access to information and decision making. According to the census survey, 57% of PAPs falling in the vulnerable category are widows. 20% of the vulnerable PAPs are individuals below 18yrs. The chronically ill individuals formed 23% shown below.

**Figure 4-23. Household Vulnerability**



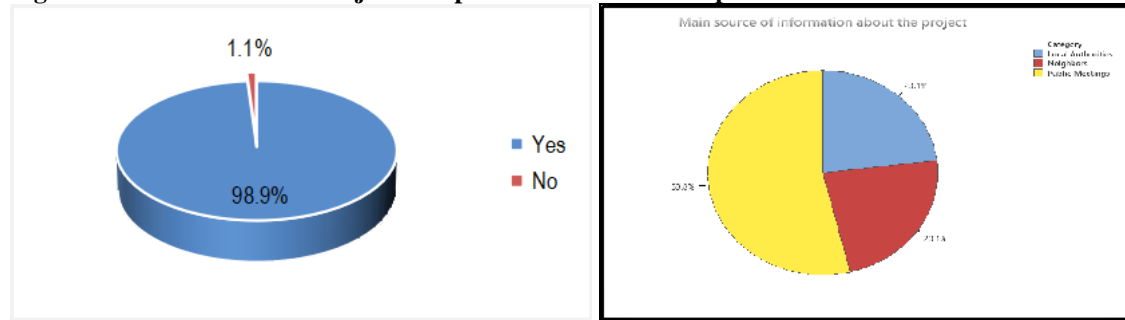
**Table 4-7: Vulnerable PAPs**

| Type of Vulnerability   | Number of PAPs |
|-------------------------|----------------|
| Widow                   | 05             |
| Hearing Impairment      | 02             |
| Physically disabled     | 01             |
| Elderly (Over 60 years) | 12             |
| <b>Total</b>            | <b>20</b>      |

#### 4.2.10 Awareness of the Project and magnitude of Loss

Almost all the PAPs were aware about the proposed water transmission pipeline Project, with the public meetings organized by CWWDA and the consultant being the highest source of information about the project. The average land size owned by the PAHs is 69.8 acres (28.26Ha). The PAHs will lose an average of 0.43Ha approximately 2.04% for those with land only and 0.15Ha, approximately 8.46% for those PAHs with land and structures. Therefore, the magnitude of expected loss is considered minimal.

Figure 4-24: Awareness of Project and preferred mode of compensation



#### 4.2.11 Preference for Compensation and Assistance

The preferred mode of compensation by the PAHs (80%) was cash, 76.9 % of the PAPs wanted disturbance allowance as well as support in salvage of materials and transportation of the same.



## 5 STAKEHOLDER CONSULTATIONS AND DISCLOSURE

The aims of community and stakeholder consultations were to:

- Introduce project details, objectives, proposed implementation plan and strategies and potential impacts to the community members.
- Identify the communal property and public infrastructure and facilities likely to be affected.
- Identify the vulnerable social groups that may require special support.
- Identify various socially and culturally acceptable resettlement and other mitigation alternatives.
- Identify the PAPs expectations and fears related to the resettlement and compensation.
- Explain to the PAPs the procedure for asset identification and assessment for the PAHs.
- Inform PAPs about the property identification and valuation principles to be followed during assessment, as well as the resettlement compensation options available to them.
- To create awareness and garner up support for the proposed project.
- To provide an opportunity for all the PAPs to raise issues and concerns pertaining to the project, feedback, and allow the identification of alternatives and recommendations.
- Appraise the PAPs about the applicable laws for land acquisition for the public interest projects.

### 5.1 Consultation Process

A total of three community meetings and fourteen meetings with relevant national and county governments were held as part of the consultations. Meetings were carried out before field census survey and prior to carrying out household interviews. Stakeholders in the project areas were identified and consulted with the objective of establishing the existing socio-economic conditions within the proposed project area.

#### 5.1.1 PAPs and Stakeholder Consulted

**Table 5-1** highlights the stakeholder consultations held, dates, venues, and number of participants.

**Table 5—1: Institutional Consultation-Kwale County**

| Date       | Venue                            | Participants | Males | Females |
|------------|----------------------------------|--------------|-------|---------|
| 25/10/2022 | Chief Officer's Office           | 5            | 3     | 2       |
| 25/10/2022 | County Commissioner's Office     | 3            | 2     | 1       |
| 25/10/2022 | Governor's Office, Kwale         | 3            | 2     | 1       |
| 25/10/2022 | Department of Lands - Kwale      | 3            | 2     | 1       |
| 25/10/2022 | Department of Environment        | 3            | 2     | 1       |
| 25/10/2022 | Kwale Water and Sewerage Company | 3            | 3     | 0       |
| 25/10/2022 | NEMA-Kwale                       | 4            | 2     | 2       |

## Resettlement Action Plan- Mwache North Mainland Transmission Pipeline

|              |   |           |           |           |
|--------------|---|-----------|-----------|-----------|
| 26/10/2022   | Deputy County Commissioner's Office-Samburu | 5         | 4         | 1         |
| <b>Total</b> |   | <b>29</b> | <b>20</b> | <b>09</b> |

**Table 5—2. Kwale County Public Consultations, Dates and Number of Participants**

| Date         | Venue                    | Participants | Male      | Female    |
|--------------|--------------------------|--------------|-----------|-----------|
| 3/11/2022    | Mwamdudu- Chief's Office | 56           | 41        | 15        |
| <b>Total</b> |                          | <b>103</b>   | <b>81</b> | <b>22</b> |

**Table 5—3: Institutional Consultation-Mombasa County**

| Date         | Venue  | Participants | Male      | Female    |
|--------------|--|--------------|-----------|-----------|
| 3/11/2022    | CWWDA Office   | 9            | 7         | 2         |
| 3/11/2022    | County Commissioners office -Mombasa                 | 3            | 3         | 0         |
| 25/11/2022   | Governor's Office- Mombasa County                    | 3            | 3         | 0         |
| 9/11/2022    | Deputy County Commissioner's Office-Jomvu Sub County | 4            | 3         | 1         |
| 25/11/2022   | MOWASCO Offices                                      | 3            | 3         | 0         |
| 7/11/2022    | Chief Officer Public Works-Mombasa                   | 3            | 3         | 0         |
| 9/11/2022    | Regional Director's Office-KeNHA                     | 4            | 4         | 0         |
| 9/11/2022    | Deputy Regional Director's Office, KURA              | 3            | 3         | 0         |
| 8/11/2022    | Kenya Railways-Mombasa Regional Office               | 7            | 7         | 0         |
| 25/11/2022   | NEMA Offices -Mombasa                                | 3            | 3         | 0         |
| 7/11/2022    | KFS Office-Mombasa                                   | 3            | 3         | 0         |
| <b>Total</b> |  | <b>45</b>    | <b>42</b> | <b>03</b> |

**Table 5—4: Institutional Consultation-Mombasa County**

| Date         | Venue                      | Participants | Male      | Female   |
|--------------|----------------------------|--------------|-----------|----------|
| 10/11/2022   | Mwakirunge- Chief's Office | 21           | 18        | 3        |
| <b>Total</b> |                            | <b>21</b>    | <b>18</b> | <b>3</b> |

**Table 5—5. Institutional Consultation-Kilifi County**

| Date         | Venue   | Participants | Males     | Female    |
|--------------|---|--------------|-----------|-----------|
| 25/11/2022   | Kilifi County Governor's Office               | 4            | 4         | 0         |
| 3/11/2022    | County Commissioner's Office                  | 3            | 3         | 0         |
| 3/10/2022    | DCCs Office Rabai                             | 5            | 3         | 2         |
| 2/11/2022    | Department of Water and Environment           | 3            | 3         | 0         |
| 26/10/2022   | Department of Lands                           | 3            | 3         | 0         |
| 26/10/2022   | NEMA-Kilifi                                   | 3            | 3         | 0         |
| 7/11/2022    | Department of Public Works & Infrastructure   | 3            | 3         | 0         |
| 26/10/2022   | Kilifi Mariakani Water and Sanitation Company | 3            | 3         | 0         |
| 9/11/2022    | KeNHA-Office                                  | 4            | 4         | 0         |
| <b>Total</b> |   | <b>31</b>    | <b>29</b> | <b>02</b> |

**Table 5—6. PAHs Consultation Kilifi County**

| Date         | Venue                     | Participants | Males     | Females   |
|--------------|---------------------------|--------------|-----------|-----------|
| 10/11/2022   | Mwawesa- Chief's Office   | 21           | 18        | 3         |
| 10/11/2022   | Forodhani- Chief's Office | 39           | 28        | 11        |
| 04/11/2022   | Mwatsama- Chief's Office  | 43           | 35        | 8         |
| <b>Total</b> |                           | <b>103</b>   | <b>81</b> | <b>22</b> |

### 5.1.2 PAPs and Stakeholders Views and Concerns

The summary views of the PAHs and institutional stakeholders consulted are presented in the tables below. Annex C contains the minutes of the meetings.

**Table 5—7. Summary of Consultations with Stakeholders in Mwakirunge (Mombasa County)**

| Issue/Comments  | Responses   |
|---|---|
| Will there be compensation for losses of assets (land, structures, crops, and trees) as a result of the project?                    | All PAPs will be compensated for lost assets as provided for by the laws of Kenya and OP. 4.12.   |
| We have been experiencing a lot of water rationing for a very long time. Will the project address this issue?                       | The main aim of the project is to address the water shortage by constructing a new water supply system.   |
| When will the construction works begin?   | The construction is likely to commence in 2024 and CWWDA will communicate accordingly on the start date. Construction will not commence until compensation is provided to all the PAPs identified in the RAP  |
| Who is the contractor?  | The contractor is unknown to us at the moment and the process for procuring a contractor will only commence when the ESIA/RAP and designs are approved by CWWDA.  |
| How will the census of potential PAHs be carried out?   | In the event that we encounter routes where households will be displaced, we will use the following tools (questionnaires) to conduct the census: - <ul style="list-style-type: none"> <li>• Asset Questionnaire</li> <li>• Socio-Economic Survey</li> </ul> These tools will capture all the relevant household information of the affected household including land sizes, structures, crops and trees as applicable. |
| Who is the financier?   | This is a World Bank and EIB funded project.  |
| What will you do to contain adverse environmental and social impacts that will be brought about by the project during construction? | An Environmental Impact Assessment (ESIA) report is being prepared alongside the RAP which is aimed at addressing bio-physical and socio-economic impacts of the project. This is a requirement by National Environment Management Authority (NEMA) and World Bank.   |
| How will we benefit from the project as locals?   | The contractor is expected to hire workers and hence the project is likely to create employment opportunities for the local communities. A Labour Recruitment   |

|  |  |
|--|--|
|  | <p>Plan will be developed by the contractor that will consider hire of locals for skilled, semi-skilled and unskilled labour.</p> <p>As a result of the project, there will be enhanced access to water for the local communities. Access to clean water is a basic need and will have greater indirect effects (positive) with respect to health and sanitation of the communities.</p>         |
| In case you have a structure on the road reserve, will you still be compensated? | <p>The categories of identified PAHs that we intend to determine during the transect walks will include private landowners and encroachers (those on ROW) who will be entitled for compensation for the loss of assets (structures) and livelihoods as per the requirements of World Bank OP. 4.12. encroachers will not be compensated for loss of land since they are not rightful owners.</p> |

**Table 5—8. Summary of Consultations with Stakeholders in Mwawesa (Kilifi County)**

| Questions/Comments   | Responses   |
|--|---|
| Some people have rented the land and have crops like maize, but the land is not theirs. How will such issues be handled?                             | Such people will be compensated for the crops and the landowner will be compensated for loss of land.   |
| We need transparency when it comes to land issues; this is because we would not want cases where people who are being compensated are not real PAPs. | The RAP team will conduct a census of PAHs guided by the project design report. We will be able to identify those affected, enumerate them, and take an inventory of their assets. These will be valued, and compensation recommended.  |
| If the consultant gives low value to our land and structure, can we reject it?   | <p>The NLC Act provides for aggrieved persons throughout the compensation process to present the same to NLC and even the judicial system and this includes grievances related to under valuation.</p> <p>The RAP will also establish an alternative GRM for amicable dispute resolution (arbitration).</p> |

**Table 5—9. Summary of Consultations with Stakeholders in Forodhani (Kilifi County)**

| Questions/Comments  | Responses   |
|---|---|
| Are you NLC valuation staff?  | We are not NLC staff, but consultants recruited by CWWDA to prepare the RAP. NLC will as provide by NLC Act at some point come to undertake independent census and valuation of assets to pave way for compensation. Our RAP report will be a preliminary guide to help NLC in its valuation. |
| Elaborate on the assets that are eligible for compensation  | All assets in a PAH land are eligible for compensation including land, crops, trees, structures, graves etc.  |
| Explain how community owed resources will be compensated to the PAPs  | Community owned resources like boreholes etc. will be compensated by awarding the compensation to the management of the community resource.   |
| We have land title deeds in our name, but land is resided upon by our children. How will such cases be handled?   | Compensation for land will be to those whose names are on the title deed.   |
| How will you handle PAPs with no title deed.  | Everyone is required to have a title deed prior to compensation by NLC. The project will work with the department of lands to ensure that all PAHs without title deeds obtain the same prior to compensation.   |
| Some PAPs may be away during the census survey (based in other towns). How is the census and asset inventory going to be undertaken in such circumstances | The RAP team is undertaking awareness about the census and asset inventory in conjunction with the local administration to ensure that PAPs are available for the exercise.   |

**Table 5—10. Summary of Consultations with Stakeholders in Mwatsama (Kilifi County)**

| Questions/Comments                                  | Responses  |
|---|--|
| How will we benefit from the project as the locals? | Job opportunities will be created during the construction and operational phase of the project.  |
| Will the project help improve roads as well?        | The project has potential to improve existing infrastructure and improvement of roads will be considered.                                |
| What size of our land will be taken?                | The size is not uniform to every individual. It will vary from person to person and will be determined during census and asset inventory |
| Will you value cash crops like “mnazi?”             | All assets i.e. structures, crops and trees and land parcels will be inventoried   |

|  |   |
|--|---|
|  | documented and valued thus ensuring compensation to respective owners.  |
| What do we do in case we have a dispute on how to share compensation proceeds or if we are not satisfied with the compensation provided? | <p>The NLC Act provides for aggrieved persons throughout the compensation process to present the same to NLC and even the judicial system and this includes grievances related to under valuation.</p> <p>The project will establish a resettlement and grievance management committee, which will handle any disputes related to compensation. PAHs will be made aware of this committee and will be encouraged to channel their grievances to the said committee. In case they would not be satisfied, they will be free to use other legal channels available.</p> |
| When will the project implementation commence?   | The project is expected to commence in early 2024   |
| You are likely to encounter a lot of land disputes, how will you deal with this?   | All disputed land case or grievances will be documented during the census survey and inventory of assets. We will use the administration (chief, village elders) to resolve such cases.   |
| We have seen cases where contractors come with their own workers even for manual jobs; We will not allow the same here                   | The procured contractor will be expected to hire the residents within the project area both for manual and skilled jobs where the locals qualify.   |
| Will we have a choice on what mode of compensation we prefer?  | Compensation will be as per the choice of the individual PAPs. It may be in money form or as an asset equivalent i.e. land for land.  |

**Table 5—11. Summary of Consultations with Stakeholders in Mwamdudu, Kwale County**

| Questions/Comments  | Responses   |
|---|---|
| How will I know that my property is affected?                                       | Surveyors have already mapped out the proposed pipeline project. The RAP team with the use of GPS equipment will walk along the line and identify those affected.                                       |
| What are the things that will be affected within the RoW as mentioned by this team? | Surveyors have already mapped out the proposed pipeline. The RAP team with the use of modern mapping equipment will walk along the line and identify those affected and what exactly has been affected. |
| What are the documents I need to  | The documents needed are a title deed of the  |

|   |   |
|---|---|
| have?   | parcel of land that will be affected, National ID, KRA PIN, bank account, and phone number. It is advisable that you start obtaining these documents especially title deeds (if none) KRA PIN, national ID, and bank account in case you do not have them since this will facilitate smooth engagement and compensation by NLC. |
| Are there maps within these areas and how can we know if we have been affected and the list of people who will be affected? | There are maps which show areas that will be affected. We cannot give out the exact numbers since we do not know the people who will be affected and what exactly will be affected.   |
| How will I know the day you will be coming because we also have other duties?   | This will be communicated via local administrative leaders through the chief and the village elders.  |

### 5.1.3 Public Disclosure

The RAP report will also be disclosed on the website of CWWDA and World Bank and AFD's external affairs website. Hard copies of the RAP report will be availed at the County headquarters, Sub County headquarters, location chief's office and each GRM Committee will also have a copy of the RAP report.



## 6 DISPLACEMENT IMPACTS

### 6.1 Zones of Potential Impact of Project Activities

The proposed North Mainland Pipeline will transmit the Mwache Project water allocation for the Mombasa North Mainland from its start point at Ch. 4+800 of the trunk main, just before the West Mainland Reservoir site, to the Nguu Tatu Reservoir site. The Project will lead to physical and economic displacement of 182 PAPs who own the land and are currently utilizing the resource for agriculture or residential purposes. The impacts will be felt in the following locations as shown in table 6-1 below

**Table 6—1: Project Affected Locations in Kilifi County**

| County | Sub County | Location  | Village                                      |
|--------|------------|-----------|--|
| Kilifi | Rabai      | Rabai     | Bonje<br>Lamwajoha<br>Mwatsama<br>Chisirwani |
|        |            | Bwagamoyo | Imela<br>Mwarendo<br>Bwagamoyo<br>Mwalewa    |
|        |            | Mwawesa   | Kanyumbuni                                   |

**Table 6-2: Project Affected Locations in Mombasa County**

| County  | Sub County | Location   | Village   |
|---------|------------|------------|---|
| Mombasa | Kisauni    | Mwakirunge | Nguu Tatu<br>Marimani<br>Mkomani<br>Mworoni<br>Mwakirunge |

**Table 6-3: Project Affected Locations in Mombasa County**

| County | Sub County | Location | Village |
|--------|------------|----------|---------|
| Kwale  | Samburu    | Mwamdudu | Bonje   |

### 6.2 PAH Category

#### 6.2.1 Impacts on Land and Assets therein

A total of 182 PAHs out of which 131 PAPs (landowners) own a total of **82.29** acres of land which will be acquired by the project for construction of a reservoir and laying of pipes in the 3(three) counties. The land is currently utilized for agriculture purposes and for establishing residential structures.

**Table 6—3. Land Impacts and assets therein**

| Type of loss                            | No. of PAPs |
|---|-------------|
| Loss of land only                       | 45          |
| Loss of land and residential structures | 39          |
| Loss of land, crops, and trees          | 44          |

| Type of loss  | No. of PAPs |
|---|-------------|
| Public and Community Institutions                       | 03          |
| Loss of residential and non-residential structures only | 41          |
| Loss crops and trees (on other persons land)            | 07          |
| Public and community institutions                       | 03          |
| <b>Total</b>  | <b>182</b>  |

### 6.2.1.1 Land Loss (Acreage and PAP Number)

The project will acquire **82.29** acres of privately owned land. The individually owned land is used by the PAPs for farming, grazing and residential purposes. A summary of project impacts in terms of number of PAPs owning land affected by location is presented below.

**Table 6—4. Number of Affected Land Parcels**

| County  | Location     | Land PAPs | Acreage      |
|---------|--------------|-----------|--------------|
| Mombasa | Mwakirunge   | <b>55</b> | <b>26.66</b> |
| Kwale   | Mwamdudu     | <b>01</b> | <b>8.65</b>  |
| Kilifi  | Rabai        | <b>54</b> | <b>25.53</b> |
|         | Bwagamoyo    | <b>07</b> | <b>11.80</b> |
|         | Mwawesa      | <b>05</b> | <b>7.06</b>  |
|         | <b>Total</b> |           | <b>82.29</b> |

### Mitigation Measures

- Cash compensation for loss of land at full replacement cost.
- Financial management training

The average land size owned by the PAHs is 2.12 acres (Ha). The PAHs will lose an average of 0.43Ha approximately 2.04% for those with land only and 0.15Ha, approximately 8.46% for those PAHs with land and structures. Therefore, the magnitude of expected loss is considered minimal and hence no livelihood restoration measures other than cash compensation and financial management training was considered.

### 6.2.2 Impact on Residential and Non-Residential Structures

A total of residential and non-residential structures affected by the project is shown in table below. The PAPs will restore their structures in the same land without the need to relocate elsewhere based on the impact magnitude and severance of land to be acquired which is minimal with remaining parcels adequate for rebuilding.

**Table 6—5. Structure Loss**

| Type of loss  | No. of PAHs |
|---|-------------|
| Loss of land and residential structures                       | 39          |
| Loss of primary residential structures on other people's land | 22          |
| Loss of fence   | 20          |
| Loss of graves  | 1           |

| Type of loss | No. of PAHs |
|--------------|-------------|
| <b>Total</b> | <b>82</b>   |

#### Mitigation Measures

- Cash compensation for loss of structures at full replacement cost.
- Right to salvage
- Financial management training

### 6.2.3 Impact on Crops and Trees

There are trees and crops that will be affected as a result of the project, and they include:

- Beans
- Pumpkins
- Sisal
- Mango
- Cashew nut
- Lemon
- Coconut
- Neem
- Baobab
- East African Bombax
- Pawpaw
- Guava
- Cypress
- Orange

**Table 6—6. Crops and Trees**

| Type of loss                                    | No. of PAPs |
|---|-------------|
| Loss of trees and crops only (no claim to land) | 07          |
| Loss of land, crops, and trees                  | 44          |
| <b>Total</b>                                    | <b>51</b>   |

#### Mitigation Measures

- Cash compensation for loss of crops and trees.
- Financial management training

### 6.3 Impact on Cultural Resources

There is a single grave that will be affected by the project and will require relocation. An Environmental and Social Impact Assessment (ESIA) report has been prepared and highlights mitigation measures associated other cultural heritage resources. A Chance Find Procedure has been prepared as part of ESIA for this project to mitigate impacts associated with chance find of cultural resources during construction.

## 6.4 Impact on Public and Community Infrastructure

There is one community institution (Masjid Qubaa Mosque) that will be partially affected and two (Marcas School and Kanyumbuni Dispensary) that will be fully affected by the project.

The construction activities may also have adverse impacts or disruption of public utilities e.g., existing electricity lines, as well as traffic disruption. An ESIA study has been conducted for the Project and mitigation measures for the disruptions included. The procured Project contractors will be required to collaborate with utility companies of any affected utility in order to limit any disruption of services during construction process. . . The ESIA has been prepared for this project and highlights mitigation measures associated with disruption of public utilities.

## 6.5 Impacts on Vulnerable Groups

Vulnerable people, as defined by the World Bank guidelines are people who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by resettlement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. The census and socio-economic survey data revealed that the project will have an impact on **20 PAPs** who meet the above criteria for vulnerability.

**Table 6—7. Vulnerable PAPs and their locations**

| County       | Location   | Widows    | Hearing Impairment | Physically disabled | Elderly (Over 60 years) |
|--------------|------------|-----------|--------------------|---------------------|-------------------------|
| Kilifi       | Rabai      | 02        | 01                 | 01                  | 03                      |
|              | Bagamoyo   | 02        | 00                 | 00                  | 04                      |
|              | Mwawesa    | 01        | 00                 | 00                  | 02                      |
| Mombasa      | Mwakirunge | 00        | 01                 | 00                  | 03                      |
| <b>Total</b> |            | <b>05</b> | <b>02</b>          | <b>01</b>           | <b>12</b>               |

**Source:** Survey data

The criteria for vulnerability were assessed through observation during the census and from feedback received via analysis of responses on socio-economic survey tool utilized during development of the RAP. It took note of various factors including income streams. A copy of the socio-economic survey tool is attached as **Annex I**.

### Mitigation Measures

- Assistance in the compensation payment procedure. There may be PAPs who may have challenges in acquiring or availing documents required by NLC for compensation processing. These documents include national identification card, Kenya Revenue Authority PIN, and bank account.
- Assistance in the post payment period to secure the compensation money
- Assistance in moving: providing vehicle, driver and facilitation at the moving stage, providing ambulance services for disabled or inform persons during moving, and;
- Health care if required at critical periods

- Priority in processing disbursement of compensation packages
- Contractor to consider employing able PAPs during construction phase of the project

## 6.6 Summary of Displacement Impacts

The project will adversely affect **182** PAHs disaggregated as shown in **table 6-8** below. Annex A contains the register of PAPs.

**Table 6—8: Summary of Displacement Impacts**

| Type of loss  | No. of PAPs |
|---|-------------|
| Loss of land only                                       | 45          |
| Loss of land and residential structures                 | 39          |
| Loss of land, crops, and trees                          | 44          |
| Public and community institutions                       | 03          |
| Loss of residential and non-residential structures only | 41          |
| Loss crops and trees (on other persons land)            | 07          |
| Total   | 182         |

## 6.7 Alternatives and Mechanisms to Minimise Resettlement/Displacement and Restricted Access

A number of alternatives and mechanisms have been considered to avoid or minimise resettlement/displacement and restricted access to socio-economic services during the design and implementation of project activities. This is also in consideration of the concerns of community members and institutional stakeholders consulted.

- Use of manual excavation: The contracting firm will as much as possible use manual excavation in built-up areas. This will enable the project to minimise the extent of structural damage associated with machine excavation in such heavily built-up areas.
- Selection of non-residential sites. As much as possible, besides engineering design prerequisites, site selection has been guided by the desire to minimise the displacement of human settlements/residences.
- Social services access points such as schools, markets and health facilities along the project corridor will remain open or alternative entry points will be provided. One strategy is to work on the entry points of such service institutions during weekends or during breaks when the access points are not fully engaged.

## 7 ELIGIBILITY AND ENTITLEMENTS

This chapter provides an overview of the criteria for eligibility for compensation and livelihood restoration support for the different PAHs taking into account Kenyan law and World Bank's OP. 4.12. Where there is a deviation between the two, the more stringent eligibility criteria will be adopted by CWWDA on behalf of the Project.

### 7.1 Eligibility Criteria

#### 7.1.1 Kenyan Eligibility Criteria

As discussed in Section 3.2.3, national legislation defines two primary forms of land rights applicable to the Project: (i) legal/formal property rights; and (ii) customary rights. All PAHs losing land and structures are also eligible for the provision of replacement housing and land or alternatively for compensation in cash. In addition to customary right holders and formal/legal property right holders, individuals or households residing on and/or cultivating land for which they do not hold any customary rights or legal property rights, are not formally recognised as right holders under Kenyan law and they are compensated in cash for the loss of assets and not land.

#### 7.1.2 World Bank OP. 4.12

The OP. 4.12 eligibility criteria broadly align with those defined by the national legislation in the sense that both legal and customary right holders and individuals or households who do not have any formal rights are eligible for some form of compensation and OP. 4.12 favors the provision of alternative land to compensation in cash. However, within the OP. 4.12, losses to improvements (including crops, trees, and structures) needs to be compensated for at full replacement cost.

#### 7.1.3 Cut-off Date

The purpose of the cut-off date is to avoid speculative claims within the Project Area by persons seeking compensation. People moving into the Project Area after the cut-off date are not entitled to assistance. Improvements made to homes or other structures by existing residents after the cut-off date are also not eligible for compensation.<sup>2</sup> According to Kenyan law<sup>3</sup>, a cut-off date for eligibility is established after the declaration of the expropriation for public utility, i.e., after the expropriation approval has been made public and affected parties informed. After this date any circumstance initiated by the affected person is not taken into consideration and therefore not eligible for compensation. To align with OP. 4.12 requirements, the Project will establish the cut-off date for eligibility<sup>4</sup> as the last day of the socio-economic surveys in the context of RAP implementation.

As guided by ESF-Guidance Note 5, if there is a significant time lag between the cut-off date and actual implementation (i.e., more than three years) a repeat census and inventory

<sup>2</sup> If there is a significant time lag between the completion of the socio-economic census and implementation of the RAP, provisions will need to be made for population movements as well as natural population increase and expansion of households, which may include a repeat census.

<sup>3</sup> Land Act 2012

<sup>4</sup> The Project will accommodate individuals or groups who were not present at the time of registration, but have a legitimate claim to membership in the affected communities

and asset valuation shall be undertaken and this report updated accordingly to take into account any improvements made to the land. The compensation package prepared for this RAP as reflected in the inventory and asset register will be adjusted to reflect changes in market value and inflation should the project implementation delay.

The ‘cut-off date’ for this RAP has been taken as 2<sup>nd</sup> December 2022 and was communicated to the affected individuals during the field activities and consultations. The cut-off date is the respective date of completion of census survey in the affected project area.

#### 7.1.4 Eligible Groups

Drawing from the socio-economic studies that were undertaken as part of the RAP preparation, there are 3 categories (table 7-1 below) of PAPs who will be exposed to losses as a consequence of the Project’s land acquisition process, and thus will be eligible for compensation and/or other resettlement assistance. It is important to note that whereas it may be an individual asset owner that incurs a loss, Bank’s OP. 4.12 requires that the standard of living and livelihood of the overall household is considered centrally in designing compensation and livelihood restoration measures.

**Table 7—1. Categories of PAPs**

| Primary Category                 | Description  | No of PAPs |
|----------------------------------|--|------------|
| Residential Structure Owner      | Members of this group rightfully own residential structures on which will be displaced as a result of the project.             | 61         |
| Non-Residential Structure Owners | Members of this group rightfully own non-residential structures on which will be displaced as a result of the project.         | 21         |
| Private Landowner                | Members of this group are individuals who own land within the project corridor and have customary and or official land rights. | 84         |
| Crop and Tree Owner              | Members of this group are individuals who own crops within the project corridor.   | 51         |

**Source: Survey Data**

#### 7.1.5 Disturbance Allowance

Property and livelihood income restoration will also include a livelihood/disturbance allowance that will be paid to the PAHs at the rate of 15 per cent of the value of compensation and a three months’ notice. This has been fully incorporated in the RAP and complies with both the national legislation for resettlement compensation and the World Bank requirements for PAH assistance for income and livelihoods restoration.

## 7.2 Entitlement Matrix

**Table 7-2** presents the entitlement matrix, which will be used as a basis for compensation and other entitlements that will be provided to PAPs.



Table 7—2. Entitlement Matrix

| Impact   | Description of affected property | Entitled person | Compensation measure  |
|--|----------------------------------|-----------------|---|
| Loss of residential structures                 | Residential structures           | Structure Owner | <p>Cash compensation (replacement cost) for loss of structures.</p> <p>Right to salvage assets and materials</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Financial training for the sustainable and prudent use of cash compensation.</p>   |
| Loss of residential structure (Vulnerable PAP) | Residential Structure            | Structure owner | <p>Cash compensation (replacement cost) for loss of structures.</p> <p>Right to salvage assets and materials</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Financial training for the sustainable and prudent use of cash compensation.</p> <p>Assistance in the compensation payment procedure. There may be PAPs who may have challenges in acquiring or availing documents required by NLC for compensation processing. These documents include national identification card, Kenya Revenue Authority PIN, and bank account.</p> <p>Assistance in the post payment period to secure the compensation money</p> <p>Assistance in moving: providing vehicle, driver and facilitation at the moving stage, providing ambulance services for disabled or inform persons during moving, and;</p> <p>Health care if required at critical periods</p> <p>Priority in processing disbursement of compensation packages</p> <p>Contractor to consider employing able PAPs during construction</p> |

| Impact  | Description of affected property | Entitled person            | Compensation measure  |
|---|----------------------------------|----------------------------|---|
| Loss of residential structure (Community property)  | Residential Structure            | Community owning Structure | <p>phase of the project</p> <p>Cash compensation (replacement cost) for loss of structures.</p> <p>Right to salvage assets and materials</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Financial training for the sustainable and prudent use of cash compensation for the community affected</p>   |
| Loss of non-residential structures                  | Non-Residential structures       | Structure Owner            | <p>Cash compensation (replacement cost) for loss of structures.</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Right to salvage assets and materials</p> <p>Financial training for the sustainable and prudent use of cash compensation.</p>   |
| Loss of non-residential structures (Vulnerable PAP) | Non-residential structure        | Structure owner            | <p>Cash compensation (replacement cost) for loss of structures.</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Right to salvage assets and materials</p> <p>Financial training for the sustainable and prudent use of cash compensation.</p> <p>Assistance in the compensation payment procedure. There may be PAPs who may have challenges in acquiring or availing documents required by NLC for compensation processing. These documents include national identification card, Kenya Revenue Authority PIN, and bank account.</p> <p>Assistance in the post payment period to secure the compensation money</p> |

## Resettlement Action Plan- Mwache North Mainland Transmission Pipeline

| Impact   | Description of affected property | Entitled person   | Compensation measure  |
|--|----------------------------------|---|---|
| Loss of non-residential structures (Community Asset) | Non-residential structure        | Community owning Structure                                | <p>Assistance in moving: providing vehicle, driver and facilitation at the moving stage, providing ambulance services for disabled or inform persons during moving, and;</p> <p>Health care if required at critical periods</p> <p>Priority in processing disbursement of compensation packages</p> <p>Contractor to consider employing able PAPs during construction phase of the project</p> <p>Cash compensation (replacement cost) for loss of structures.</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Right to salvage assets and materials</p> <p>Financial training for the sustainable and prudent use of cash compensation for the community affected.</p> |
| Loss of land   | Land                             | Registered landowner or claimants of customary held land. | <p>Cash compensation for loss of land</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Financial training for the sustainable and prudent use of cash compensation.</p>  |
| Loss of land (Vulnerable PAP)                        | Land                             | Registered landowner or claimants of customary held land. | <p>Cash compensation for loss of land</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Financial training for the sustainable and prudent use of cash</p>  |

| Impact                        | Description of affected property | Entitled person  | Compensation measure  |
|-------------------------------|----------------------------------|--|---|
| Loss of land (Community land) | Land                             | Registered community claimants or of customary held land | <p>compensation</p> <p>Assistance in the compensation payment procedure. There may be PAPs who may have challenges in acquiring or availing documents required by NLC for compensation processing. These documents include national identification card, Kenya Revenue Authority PIN, and bank account.</p> <p>Assistance in the post payment period to secure the compensation money</p> <p>Assistance in moving: providing vehicle, driver and facilitation at the moving stage, providing ambulance services for disabled or inform persons during moving, and;</p> <p>Health care if required at critical periods</p> <p>Priority in processing disbursement of compensation packages</p> <p>Contractor to consider employing able PAPs during construction phase of the project</p> <p>Cash compensation (replacement cost) for loss of structures.</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Right to salvage assets and materials</p> <p>Financial training for the sustainable and prudent use of cash compensation for the community affected.</p> |
| Loss of crops and trees       | Crops and trees                  | Crop and tree owners                                     | <p>Cash compensation for loss of crops and trees</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Financial training for the sustainable</p>   |

## Resettlement Action Plan- Mwache North Mainland Transmission Pipeline

| Impact                                   | Description of affected property | Entitled person      | Compensation measure  |
|--|----------------------------------|----------------------|---|
| Loss of crops and trees (Vulnerable PAP) | Crops and trees                  | Crop and tree owners | <p>and prudent use of cash compensation.</p> <p>Cash compensation for loss of crops and trees</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Financial training for the sustainable and prudent use of cash compensation.</p> <p>Assistance in the compensation payment procedure. There may be PAPs who may have challenges in acquiring or availing documents required by NLC for compensation processing. These documents include national identification card, Kenya Revenue Authority PIN, and bank account.</p> <p>Assistance in the post payment period to secure the compensation money</p> <p>Assistance in moving: providing vehicle, driver and facilitation at the moving stage, providing ambulance services for disabled or inform persons during moving, and;</p> <p>Health care if required at critical periods</p> <p>Priority in processing disbursement of compensation packages</p> <p>Contractor to consider employing able PAPs during construction phase of the project</p> |
| Loss of grave(s)                         | Grave                            | Grave owner          | <p>Compensation for loss of grave(s)</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Relocation of graves through cultural norms</p>  |

| Impact                               | Description of affected property | Entitled person | Compensation measure   |
|--------------------------------------|----------------------------------|-----------------|--|
| Loss of grave(s)<br>(Vulnerable PAP) | Grave                            | Grave owner     | <p>Compensation for loss of grave(s)</p> <p>Disturbance allowance at the rate of 15% of asset valuation</p> <p>Relocation of graves through cultural norms</p> <p>Assistance in the compensation payment procedure. There may be PAPs who may have challenges in acquiring or availing documents required by NLC for compensation processing. These documents include national identification card, Kenya Revenue Authority PIN, and bank account.</p> <p>Assistance in the post payment period to secure the compensation money</p> <p>Priority in processing disbursement of compensation packages</p> |

### 7.3 Strategy for Property and Livelihoods Income Restoration

The resettlement measures or strategies have been developed in close consultation with community members, the PAPs, institutional stakeholders and in reference to the national legal regimes, the World Bank OP. 4.12. Two main strategies have been identified and are discussed below. All PAPs are aware of these options, including those who requested further consultations with other household and family members.

#### 7.3.1 Cash compensation

Majority of the PAHs prefer cash compensation or the loss of assets including land. Land for land compensation was not preferred mainly because the project is linear in nature and loss of land is only partial with the PAPs remaining with extra land that they are able to rebuild and restore themselves without the need of relocation.

#### 7.3.2 Livelihood Restoration

After compensation, it is anticipated that PAPs will re-establish themselves in unaffected parcels of land noting that the pipeline will only affect limited portions of their land, with the PAPs able to move their residential structures and farming in the non-affected land. The average land size owned by the PAPs is 2.12 acres (0.86Ha). The PAPs will lose an average of 0.0175Ha approximately 2.04% for those with land only and 0.15Ha, approximately 8.46% for those PAPs with land and structures. Therefore, the magnitude of expected loss is considered minimal and hence no livelihood restoration measures other than cash compensation and financial management training was considered.

#### **Resettlement Action Plan- Mwache North Mainland Transmission Pipeline**

Financial training on the use of compensation money will be provided as a livelihood restoration measure for all the PAPs while vulnerable PAPs will be provided with additional support as outlined in section 6.6.1.



## 8 GRIEVANCES MANAGEMENT SYSTEM

### 8.1 Grievance Procedure and Rationale

The objective of the grievance handling systems and procedure is to establish for the PAPs mechanisms for raising complaints related to compensation for loss of assets and livelihoods and having such complaints resolved as amicably as possible through acceptable and binding corrective actions. This grievance management system will be in place for the entire construction period until all PAPs are resettled and RAP audit completed.

#### 8.1.1 Grievance Redress Management Committees

The GRMC are partners on the local level for RAP implementation, and will especially provide support in the following ways:

- Compensation process
- Involvement into the grievance mechanism
- Involvement into monitoring procedures, especially in monitoring of progress of livelihood restoration measures and of compensation disbursement
- Maintaining a grievance log.

A three-tier level GRMC is recommended to be established for this RAP implementation.

##### 8.1.1.1 First Level: Site Level Grievance Redress Management Committees

This RAP prefers the first level of grievance or conflict redress on RAP related issues as a result of this project to be handled by the GRMC to be established in the project site and handle all forms of grievances in an amicable manner and as an alternative dispute resolution to formal process, which is normally lengthy and costly. Grievances not resolved by the site level committees will be taken to the second level. There will be a site GRMC, and the membership will include:

- The locational chief,
- Assistant chief,
- One project affected youth
- One project affected woman
- One project affected male
- A representative of vulnerable PAPs,
- CWWDA representative
- Contractor and Supervising Engineer representative

##### 8.1.1.2 Second Level: Sub County Mediation Committee

There will be a mediation committee at each Sub County level to handle grievances that cannot be resolved by the site level committees and membership will include:

- One representative of the Administration; - National Government
- One representative of County Administration; - County Government
- One representative of the CWWDA acting as an observer
- One representative of the construction contractor, acting as an observer

- Three representatives of the affected people, amongst them at least one woman, chosen i.e., from community-based organizations, elders, traders.

#### **8.1.1.3 Third Level: Resort to Justice**

In case this mechanism will not allow an amicable agreement to be reached, the complainant or the defendant can resort to justice (and could at any time even without going through the established committees).

#### **8.1.2 National Land Commission**

The NLC has a grievance redress process mainly triggered at the time of award of compensation following public hearings. If a PAP is dissatisfied with the awards given by NLC, they have a right to appeal and NLC would look into the matter and determine justification. In the event that a PAP is not satisfied with the appeal made to NLC and the resolution thereof, then dispute is resolved by resorting to the legal justice system where PAP could go to the environment and land court. Whereas, the NLC is an independent commission with the mandate to acquire land, it is expected that the commission will work closely with the CIT and PAPs constituted GRM to ensure the any grievances or disputes are tended to at the first level and that all PAPs are compensated as laid out in the Entitlement Matrix. Finally, there will be the option for each complainant to resort to court (third level) in case there is no solution within the Project's grievance mechanism.

### **8.2 Grievance Mechanism Steps and Procedures**

#### **8.2.1 Step 1: Receipt of Grievance**

A verbal or written complaint from a PAP will be received by the Social Specialist or member of GRMC at the respective level and recorded in a grievance log. The grievance log will indicate grievances, date opened/lodged, actions taken to address or reasons why the grievance was not acted upon (e.g., the grievance was not related to the resettlement process), information provided to complainant and date on which the grievance was closed. Grievances can be lodged at any time, either directly to the Social Specialist based at the CWWDA's, contractor's site office or the sub-county offices or to the GRMC using grievance registration form (**Annex F**). Grievances or complaints can also be lodged anonymously both in written form or verbally e.g., through telephone call. Any grievance received in this manner will be recorded in the grievance log albeit without a name of the complainant and will follow the approved channel for determination and resolution.

#### **8.2.2 Step 2: Determination of Corrective Action**

GRMC will be established to assess grievances that arise from disputes. The committee once in receipt of a grievance or complaint, will either investigate the grievance as a full committee or constitute an ad hoc committee to investigate and report on the results of the outcome of investigation. Decisions will be reached by simple majority. Once the GRMC has determined its approach to the lodged grievance, this will be communicated to the Social Specialist, who will communicate this to the complainant. If satisfied, the complainant signs to acknowledge that the issue has been resolved satisfactorily. If the complainant is not satisfied, however, the complainant notes the outstanding issues, which may be re-lodged with a higher level GRMC, or the complainant may proceed

with judicial proceedings. Grievances will be resolved, and the status reported back to complainants within 10 days. If more time is required, this will be clearly communicated and in advance to the aggrieved person.

### **8.2.3 Step 3: Meeting with the Complainant**

The proposed corrective action and the time frame in which it is to be implemented will be discussed with the complainant within 30 days of receipt of the grievance. Written agreement to proceed with the corrective action will be sought from the complainant (e.g., by use of an appropriate consent form). If no agreement is reached, Step 2 will be revisited. Agreed corrective actions will be undertaken by CWWDA within the agreed time frame. The date of the completed action will be recorded in the grievance database.

### **8.2.4 Step 4: Verification of Corrective Action**

To verify satisfaction, the aggrieved person will be approached by the GRMC to verify that the corrective action has been implemented. A signature of the complainant will be obtained and recorded in the log and/or on the consent form. If the complainant is not satisfied with the outcome of the corrective action, additional steps may be undertaken to reach agreement between the parties. If additional corrective action is not possible alternative avenues may be pursued.

### **8.2.5 Step 5: Alternative Action/Judicial Recourse**

In case this mechanism will not allow an amicable agreement to be reached, the complainant or the defendant can resort to Justice (and could at any time).

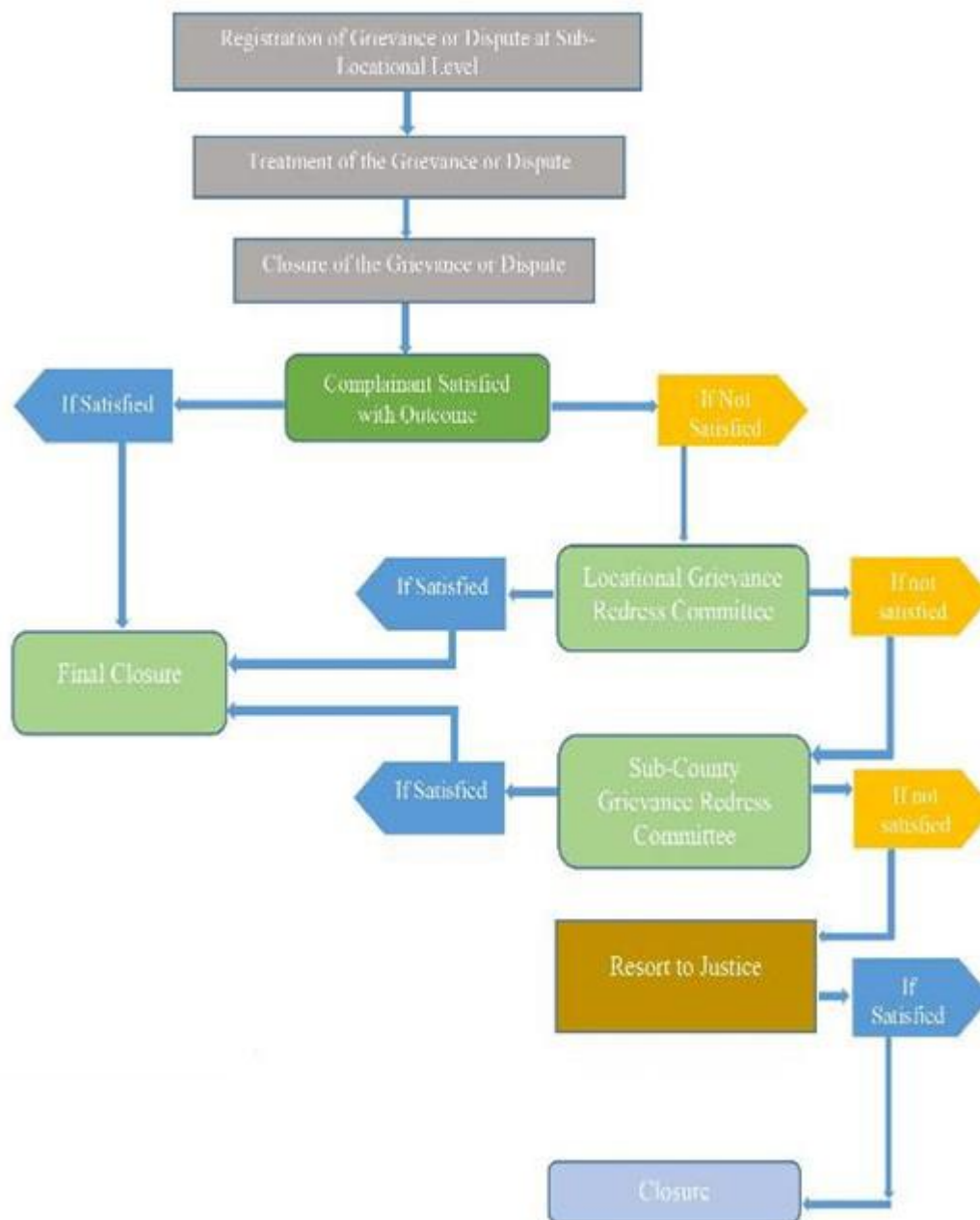
## **8.3 Appointment of GRMC Members**

The members of the GRMCs will be appointed through an election process with all the affected PAHs in the project area participating.

### **8.3.1 GRMC Capacity-Building and Renumeration**

The GRMCs will also need to be oriented to the grievance management system suggested in the RAP. The capacities of the GRMCs will also need to be built around issues of conflict identification, conflict information analysis and conflict resolution as provided for in the land legislation. All the members of the GRMCs established at the different levels will perform their duties on a voluntary basis. There will be no remuneration other than costs associated with transport, communication, meals and sitting allowance.

Figure 8-1: Grievance/Dispute Management Mechanism



## 9 RESETTLEMENT PLANNING AND IMPLEMENTATION

### 9.1 RAP Implementation Arrangements

#### 9.1.1 RAP Implementation Unit

All PAPs will be compensated before their structures are demolished, implying that compensation will be paid before project works start at a specific site/in a specific area as per the contractor's work schedule. CWWDA has established a Contract Implementation Team (CIT) specifically for this project and will implement this RAP.

The day-to-day role of the CIT will be to:

- a) Plan and coordinate prompt cash compensation payments.
- b) Plan and coordinate non-cash compensation such as special assistance to vulnerable groups.
- c) Ensure that the compensation process and entitlements adhere to legal provisions.
- d) Establish, manage, and update the RAP implementation database.
- e) Contribute to the regular monitoring and evaluation of the RAP implementation.
- f) Sensitise the PAPs with regard to the RAP implementation progress.
- g) Validation of PAPs prior to compensation
- h) Coordinate construction schedule of contractors and alert PAPs on when they would be needed to relocate.
- i) Plan, facilitate and coordinate GRMC trainings and subsequent meetings.

The CIT staffing includes a social specialist, Environmentalist, surveyor and engineer who will be dedicated to this project and who will be the focal points and coordinators with respect to the RAP implementation. The supervising engineer and the contractor will also each have full time social specialists who will work jointly with the CIT and other stakeholders in the implementation of the RAP.

#### 9.1.2 National Land Commission

Implementing the RAP by updating the asset inventory and determining the compensation amount. Coordinating with CWWDA to disclose the compensation amounts to PAPs.

#### 9.1.3 Ministry of Interior and National Administration

DCC will chair the GRM mediation committee, the chiefs and assistant chiefs will help in the identification of PAPs, convening of the disclosure meetings and supporting in the disclosure exercise.

#### 9.1.4 County Governments of Kwale, Mombasa and Kilifi

The County Executive Committee Members and staff from Kwale, Mombasa and Kilifi counties shall contribute with their expertise, their capacity and competence to the implementation of the RAP; corresponding to the different technical areas they represent (i.e., roads and infrastructure, trade, social assistance, youth, and women) e.g., County Governments (Departments of Lands, urban planning, and Water) will support CWWDA in processing of land title deeds for the affected persons, support in grievance

resolution by participating in the resolution committee meetings with invitation and provide any necessary approvals. County government land valuers will provide NLC with prevailing land prices for reference among others.

### 9.1.5 RAP Implementation Schedule

The implementation schedule of this RAP spans from the RAP study to the completion of the project. However, this is an indicative proposal, which should be synchronized with the contractor's work program. The phased approach aims to prevent re-encroachment by PAPs after receiving compensation. To ensure a smooth transition, immediate follow-up must occur after compensation is disbursed, followed by RoW clearance. The contractor must then swiftly begin work to minimize the potential for the re-establishment of structures. The CWWDA's RAP implementation team, NLC and PAPs, will develop the schedule for the implementation of activities. The implementation schedule will include:

- Target dates for the start and completion of compensation payments.
- Target dates for fulfilling the prerequisites for compensation payments and other legal requirements by PAPs.
- The timetable for special assistance to vulnerable groups.
- Dates for vacant possession of the acquired land from the PAPs (this date must be after the payment of all compensation).
- The link between the RAP activities to the implementation of the overall sub-project components.

Table 9-0: Tentative RAP Implementation Schedule

| Activity  | Responsible Entity   | Months |   |   |   |   |   |   |   |   |    |    |    |
|---|--|--------|---|---|---|---|---|---|---|---|----|----|----|
|   |  | 1      | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| <b>Planning Phase</b>                                 |  |        |   |   |   |   |   |   |   |   |    |    |    |
| <b>RAP Study</b>                                      | <b>CWWDA</b>   |        |   |   |   |   |   |   |   |   |    |    |    |
| <b>Disclosure of RAP Report</b>                       | <b>CWWDA/WB/EIB</b>  |        |   |   |   |   |   |   |   |   |    |    |    |
| <b>Setting Up Phase</b>                               |  |        |   |   |   |   |   |   |   |   |    |    |    |
| <b>Constituting the RAP Implementation Team (RIT)</b> | <b>CWWDA and County governments of Kwale, Kilifi and Mombasa</b> |        |   |   |   |   |   |   |   |   |    |    |    |
| <b>Constituting and Briefing PAP Committee</b>        | <b>CIT</b>   |        |   |   |   |   |   |   |   |   |    |    |    |
| <b>Validation and Verification of PAPs</b>            | <b>CIT</b>   |        |   |   |   |   |   |   |   |   |    |    |    |
| <b>Disclosure of Updated PAP list</b>                 | <b>CWWDA</b>   |        |   |   |   |   |   |   |   |   |    |    |    |
| <b>Compensation of all PAPs</b>                       | <b>CIT/ NLC</b>  |        |   |   |   |   |   |   |   |   |    |    |    |
| <b>Issuance of 3 months' vacation notice to</b>       | <b>CIT/ NLC</b>  |        |   |   |   |   |   |   |   |   |    |    |    |

[illegible]

### 9.1.6 RAP Budget

Table 9—1: Assets Compensation Cost

| Aspect                      | Replacement Value (Kshs) |
|-----------------------------|--------------------------|
| Structures                  | 25,997,437.00            |
| Crops and Trees             | 4,738,202.00             |
| Land                        | 179,328,334.66           |
| <b>Total</b>                | <b>210,063,973.66</b>    |
| Disturbance Allowance (15%) | 31,509,596.05            |

**Table 9—2: RAP Implementation Costs**

| Aspect  | Value (Ksh)          |
|---|----------------------|
| Financial/Money Management Training/Meetings of Grievance Resettlement Committees/Administrative Costs (5%) | 10,503,198.68        |
| External Monitoring and External Coordination for RAP Implementation (5%).                                  | 10,503,198.68        |
| Contingency (1%)  | 2,100,639.74         |
| <b>Grand Total</b>  | <b>23,107,037.10</b> |



**Table 9—3: Total RAP Budget**

| <b>Aspect</b>                    | <b>Value (Ksh)</b>    |
|----------------------------------|-----------------------|
| Land                             | 179,328,334.66        |
| Structures                       | 25,997,437.00         |
| Crops and Trees                  | 4,738,202.00          |
| <b>Sub Total</b>                 | <b>210,063,973.66</b> |
| Disturbance Allowance            | 31,509,596.05         |
| Financial/Money Management costs | 10,503,198.68         |
| RAP Implementation               | 10,503,198.68         |
| Contingency (1%)                 | 2,100,639.74          |
| <b>Grand Total</b>               | <b>264,680,606.81</b> |

The total budget for resettlement compensation is **Kshs. 264,680,606.81** including a 15 per cent disturbance allowance. In addition, a 10 per cent administration cost for the RAP implementation, monitoring and evaluation has been considered as well as a 1% cost for contingency.

## 10 MONITORING AND EVALUATION

### 10.1 General Objectives of M&E

The general objective of the M&E system is to provide a basis for assessing the overall success and effectiveness of the implementation of the resettlement and compensation processes and measures.

### 10.2 Monitoring the Compensation Process

#### 10.2.1 Internal Monitoring Issues

Internal monitoring will be initiated during the implementation phase of the RAP and continue until the resettlement is deemed closed in accordance with a third-party closure audit. Monitoring reports will be completed by the CIT. Internal monitoring will be thematically carried out at two process levels: during the resettlement compensation payment period and after that period (post-compensation payment period). A monthly monitoring schedule is recommended during the implementation process.

Table 10—1: Monitoring Thematic Issues during and after Compensation Payments

| Thematic periods   |  |
|--|--|
| Resettlement compensation payment period   | Post-resettlement compensation payment period  |
| <ol style="list-style-type: none"> <li>1. Number of PAPs compensated.</li> <li>2. Number of PAPs who have restored their livelihood enterprises.</li> <li>3. Number of PAPs who have registered grievances with CLO.</li> <li>4. Number of PAPs whose grievances have been resolved.</li> <li>5. Number of vulnerable PAPs or groups identified and assisted during compensation payments</li> </ol> | <ol style="list-style-type: none"> <li>1. Number of PAPs with successfully restored livelihoods and assets,</li> <li>2. Number of PAPs who have maintained social and cultural ties,</li> <li>3. No of PAPs whose grievances have been resolved or otherwise,</li> <li>4. Number of vulnerable groups assisted and restored livelihood enterprise and assets.</li> </ol> |

#### 10.2.2 External Monitoring

A close out audit will be undertaken once all resettlement measures have been completed to confirm that the resettlement activities have been implemented and that livelihoods have been restored. The key objective of these external audits is to determine whether Project efforts to restore/improve the living standards and livelihoods of the affected people have fully executed and their objectives have been met.

### 10.3 Monitoring Indicators

#### 10.3.1 Performance Monitoring

Performance milestones for this Project might include:

- Grievance redress procedures in place and functioning to an agreed timeframe.
- Acquisition, compensation, and resettlement activities completed.
- Compensation payments disbursed.
- Livelihood restoration plans for vulnerable households in place.

### 10.3.2 Impact Monitoring

Impact monitoring gauges the effectiveness of the RAP and its implementation in meeting the overall objectives of restoring standard of living and livelihoods of the affected communities. The purpose of impact monitoring is to provide an assessment of the effects of the resettlement process and to identify adjustments required in the RAP, as required. The relevant monitoring indicators against which to measure the RAP implementation effectiveness are presented in **Table 10-2**. An illustration of a monitoring form is provided as **Annex H**.

**Table 10—2: Proposed Monitoring Indicators**

| Activity/Parameters                           | Indicators  |
|---|---|
| Compensation payments to PAPs                 | Number of PAPs promptly paid<br>Number of PAPs not paid promptly and reasons<br>Amounts of money paid to PAPs   |
| Restoration of livelihoods and assets         | Number of PAPs with restored assets<br>Number of PAPs with livelihood levels restored (based on socio-baseline survey)<br>Number of vulnerable PAPs assisted<br>Type of assistance provided to vulnerable PAPs<br>Number of PAPs without restored assets<br>Number of PAPs without restored livelihood enterprises<br>Number of community facilities not restored and reasons<br>Number of vulnerable PAPs not assisted and reasons |
| Community participation and public engagement | Number of consultative meetings held<br>Number of County and National Government leaders engaged/briefed about the RAP<br>Number of Civil Society representatives engaged/briefed about the RAP   |
| Grievance management                          | Number of grievances received<br>Number of grievances resolved promptly<br>Number of grievances not resolved in time but completed<br>Number of outstanding grievances not resolved<br>Number of grievances referred<br>Nature of outcomes from referred grievances   |
| Mutation and registration of land rights      | Number of mutation forms signed by PAPs<br>Number of land titles received<br>Number of land titles processed and returned to owners<br>Number of land titles not processed<br>Number or percentage of encumbrances entered on PAPs' titles  |

#### **10.4 RAP Completion and Audit Report**

CWWDA will at the end of the RAP implementation submit a final report to the financiers. The final report will indicate the effectiveness of the RAP implementation process, including: the organization and delivery of compensation payments and other resettlement measures; the grievance handling system; the M&E system; the community and public engagements, including vulnerable PAPs; and the socio-economic impacts of the resettlement measures. The final report will give an overall assessment of the RAP outputs against inputs indicating the planned activities completed and not completed as well as the lessons learnt during the RAP implementation.

The completion audit is intended to verify the results of the RAP implementation indicators, and to assess whether the RAP implementation achieved the resettlement objectives. A specific question for the final audit is whether livelihood and living standards have been restored or enhanced. If the answer is positive, then the RAP implementation will be considered to be completed. The audit will also assess the efficiency, effectiveness, impact and sustainability of the RAP sub-project activities and document the lessons learnt for application to future sub-projects or other projects in the sector and in the country. Finally, the RAP completion audit will ascertain whether the resettlement entitlements were appropriate, as defined in the RPF guidelines. CWWDA will engage a qualified firm to prepare the audit and will submit the completion audit report to the World Bank and AFD for review and appropriate action. CWWDA will be responsible for sourcing of and assigning to qualified firm (s) the undertaking of the completion audit.

## II APPENDICES

**Annex A:** PAHs Valuation Roll

**Annex B:** Stakeholder Consultation Minutes

**Annex C:** Stakeholder Consultation Attendance List

**Annex D:** Selected Photographs

**Annex E:** Sample GRM Form

**Annex F:** Sample GRM Acknowledgment Registration Form

**Annex G:** Sample Grievance Investigation Form

**Annex H:** Sample Grievance Investigation Outcome Form

**Annex I :** Questionnaires

**Annex J :** Introduction Letter

## 11.1 Annex A: PAPs Valuation Roll

-See separate attachment-

## **11.2 Annex B: Stakeholder Consultation Minutes**

-See separate attachment-



### **11.3 Annex C: Stakeholder Consultation Attendance List**

-See separate attachment-

## 11.4 Annex D: Selected Photographs

### A: Consultations Kwale County



### B: Consultations Kilifi County





**C: Consultations Mombasa County**



## 11.5 Annex E: Sample GRM Form

### GRIEVANCE FORM

|  |                |  |
|--|----------------|--|
| <b>Grievance Form</b>                    |                |  |
| Grievance Number                         |                | Copies to forward to:  |
| Name of the Recorder                     |                | (Original)-Receiver Party  |
| Sub-County                               |                | (Copy)-Responsible Party   |
| Date                                     |                |  |
| <b>INFORMATION ABOUT GRIEVANCE</b>       |                |  |
| Define the Grievance:                    |                |  |
|  |                |  |
| <b>INFORMATION ABOUT THE COMPLAINANT</b> |                | <b>Forms of Receive</b>  |
| Name-Surname                             |                | <input type="checkbox"/> Phone Line<br><input type="checkbox"/> Community/<br>Information Meetings<br><input type="checkbox"/> Mail<br><input type="checkbox"/> Informal<br><input type="checkbox"/> Other |
| Telephone Number                         |                |  |
| Address                                  |                |  |
| Village                                  |                |  |
| Sub-County                               |                |  |
| Signature of Complainant                 |                |  |
| <b>DETAILS OF GRIEVANCE</b>              |                |  |
|  |                |  |
| <b>GRIEVANCE RESOLUTION</b>              | <b>Comment</b> |  |

## 11.6 Annex F: Sample GRM Acknowledgment Form

### GRIEVANCE STATEMENT/ACKNOWLEDGMENT FORM

|   |
|---|
| <b>This form is for acknowledging receipt of your Grievance. We will inform you the investigation of your Grievance within ten days (10) from the receipt of your</b> |
| Name of the Complainant:  |
| Address/House Number:   |
| Town/Village:   |
| Cell phone number:  |
| Grievance Reference number:   |
| Place where the Grievance received:   |
| Name of the Community Relations Officer   |
| Who received the Grievance?   |
| Signature:  |
| Date:   |
| Initial register date (in case this Grievance was previously registered through the Village Office)   |

Name of the Complainant: \_\_\_\_\_

Address: \_\_\_\_\_

Town/Village/Company: \_\_\_\_\_

Cell Phone Number: \_\_\_\_\_

Gender: \_\_\_\_\_

Age: \_\_\_\_\_

Grievance Subject: \_\_\_\_\_

Grievance Reference Number: \_\_\_\_\_

**Resettlement Action Plan- Mwache North Mainland Transmission Pipeline**

Grievance Statement:

.....

.....

.....

.....

Complaint Signature:

Date:

Name/Signature of Community Relation Officer:

Date:

Name/Signature of the Village Chairman/Executive Officer:

Date:

## 11.7 Annex G: Sample Grievance Investigation Form

### **GRIEVANCE INVESTIGATION FORM**

Name of the Complainant: -----

Address: -----

Town/Company: -----

Cellphone number: -----

Gender: -----

Age: -----

Grievance Subject: -----

Grievance Reference number: -----

Grievance Investigation: -----

Details/Facts -----

**Investigators Signature:**

Date:

**CR Officer Signature:**

Date:

**Witness Name/Signature:**

Date:

**Name/Village Head**

Date:



## 11.8 Annex H: Grievance Investigation Outcome Form

### **GRIEVANCE INVESTIGATION OUTCOME FORM**

Grievance Reference Number: -----

Complainant Name: -----

Address: -----

Town/Village: -----

Cell phone number: -----

Grievance Subject: -----

Investigation Completion Date: -----

Investigation details:

I agree that I have received the outcome of the Investigation

Signature: ----- Name of the Complainant: ----- Date: -----

I agree that I have been informed with respect on the Investigation outcome of my Grievance. I accept the outcome and that I have no objection.

Signature : -----

## **11.9     Annex I: Socio-Economic and Asset Inventory Questionnaire**

-See separate attachment-

## 11.10 Annex J: Introductory Letter



Ref. : CWSB/NEMA/171/VOL.III/60

Date : 21<sup>st</sup> October 2022

**TO WHOM IT MAY CONCERN**

**CONSULTANCY SERVICES FOR PREPARATION OF FINAL ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT (ESIA) STUDIES/PROJECT REPORTS AND FINAL RESETTLEMENT ACTION PLANS (RAP) FOR PROPOSED MWACHE/WEST MAINLAND MWACHE/NORTH MAINLAND PIPELINES**

Coast Water Works Development Agency (CWWDA) is in the process of implementing Water and Sanitation Development Project (WSDP) funded by World Bank in parts of the Coast Region. The implementation of this project will trigger the World Bank's operational policies:

OP 4.01 Environmental Assessment

OP 4.12 Involuntary Resettlement

To mitigate the negative impacts of the project on the environment and social aspect of the community in the area it is required by the World Bank policies and the Kenyan Environmental Management and Coordination Act 1999 (Amended 2015) to carry out Environmental and Social Impact Assessment Studies and prepare the requisite reports (ESIA) and Resettlement Action Plans) for the respective sub-projects. CWWDA has engaged EMC Consultants to develop and prepare the safeguards reports (ESIA and RAP) for the Mwache/West Mainland and Mwache/North mainland pipelines.

This is therefore, to request for your cooperation and support to the firm in order to undertake the exercise.

Thank you in advance for your support.



**Eng. Martin Tsuma**  
**Aq. CHIEF EXECUTIVE OFFICER**



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