

Intercontinental Consultants and Technocrats PVT Ltd in Association with Geodev Ltd



Final Abbreviated Resettlement Action Plan (ARAP) Report in the Construction of Kangundo -Kenol, Kenol-Koma, Katumani –Mombasa Rd and, rehabilitation of Kenol- Machakos Town-Katumani Link Road Project

Submitted by-

**Repcon Associates
The Repcon Center
Sigona 410 off KEFRI/KARI Rd-Muguga
P.O. Box 79605-00200, Nairobi
Telefax: 254-20-2248119;
Mobile- 0721-274358/0736499399
Email: info@repcon.co.ke**

November 9, 2017

ABBREVIATIONS

ARAP	Abbreviated Resettlement Action Plan
Cap	Chapter of the Laws of Kenya
EHS	Environment Health and Safety
EMCA 1999	Environment Management and Coordination Act 1999
EMP	Environmental Management Plan
ESIA	Environmental and Social Impact Assessment
GoK	Government of Kenya
Ha	Hectare
LN	Legal Notice
LRCC	Locational Resettlement and Compensation Committees
m	meter
M&E	Monitoring & Evaluation
NaMSIP	Nairobi Metropolitan Services Improvement Project
NEMA	National Environment Management Authority
O&M	Operation and Maintenance
PAPs	Project Affected Persons
PIT	Project Implementation Team
PIM	Project implementation Manual
RO	Resettlement officer
RR	Road Reserve
SGPs	Safe Guard Policies
SCRCC	Sub County Resettlement and Compensation Committees
TORs	Terms of Reference
US\$	United States Dollar

DISCLOSURE PAGE

This Abbreviated Resettlement Action Plan is hereby disclosed for public review as follows:-

Proponent: Ministry of Transport, Infrastructure, Housing & Urban Development
State Department of Housing & Urban Development

Assignment: **Abbreviated Resettlement Action Plan-ARAP** in the Detailed Engineering Design of the Kangundo (Tala)-Kenol, Kenol-Koma, Katumani –Mombasa Rd and, rehabilitation of Kenol-Machakos Town-Katumani Link Road Project

Firm of Experts: Repcon Associates- NEMA Registration No. 0002
Contact address: The Repcon Center,
Sigona 410, off. KEFRI/KARI Rd Muguga
P.O. Box 79605-00200, Nairobi
Telefax: 254-20-2248119; Mobile- 0721-274358/0736499399
E-mail: info@repcon.co.ke



Signed:
Date: 11/10/2017.....

Michael M. Wairagu
Lead Expert (Environment)

Proponent: Ministry of Transport, Infrastructure, Housing & Urban Development
State Department of Housing & Urban Development

Contact address: P O Box 30130-00100
20th Floor AMBank Building;
Nairobi - Kenya

Attention of: Eng. Benjamin Njenga - The Project Coordinator

Signed: ***Date:***.....

EXECUTIVE SUMMARY

0.1 INTRODUCTION

The Government of Kenya, through its implementing agency, the Ministry of Transport and Infrastructure, Housing and Urban Development, Nairobi Metropolitan Development has commissioned Intercontinental Consultants and technocrats PVT Ltd in association with Geodev Ltd to carry out preliminary and detailed engineering design of Kangundo (Tala)-Kenol Road (C98/C99), Kenol-Koma Road (E474), Katumani –Mombasa Rd (D522) and Rehabilitation of Kenol-Machakos Town-Katumani (C99) Road.

This Report provides the Abbreviated Resettlement Action Plan prepared to guide resolution of displacement impacts associated with development of the 70km long Project Roads Project.

0.2 OBJECTIVES OF THE ARAP STUDY

The Abbreviated Resettlement Action Plan was designed to achieve the following objectives;

- To guide compensation against displacement in line with laws, regulations and guidelines for Resettlement/Land Acquisition Policy Framework of the Government of Kenya and the World bank.
- To identify and quantify different categories of Project –Affected - People [PAPs] who would require some form of assistance, compensation, rehabilitation or relocation.
- To provide guidelines to stakeholders participating in the mitigation of adverse social impacts of the project.
- To verify the adherence and compliance of the World Bank’s Safeguard Policies.

0.3 ARAP APPROACH

The main activity in the ARAP study was an inventory of all potentially affected persons. This took place in January 2017 and entailed administration of questionnaires on the PAPs identified along the route of traverse. Further, as part of the ARAP Study, consultations with secondary stakeholders took place.

Based on the information collected, an Abbreviated Resettlement Action Plan has been prepared for the project. Core elements of the ARAP include an Asset register and entitlement matrix to guide compensation to all people likely to be affected.

0.4 The Cut -off Date

The Cut-off Date is the date the census began. The initial cut-off date was fixed in November 2014 but due to changes in design this was revised and fixed in January 2017 which is the date the final census began. Persons who encroach on the area after the cut-off date are not entitled to compensation or any other form of resettlement assistance

0.5 LEGAL AND INSTITUTIONAL FRAMEWORK OF THE ARAP

This ARAP and its entitlement matrix have been prepared in compliance with the applicable policy provisions of Kenyan Government and OP 4.12 of the World Bank on Involuntary Resettlement. OP 4.12 requires that an Abbreviated ARAP (ARAP) be prepared for all projects that anticipate minor land acquisition (10 percent or less of all holdings is taken) and fewer than 200 people and no physical relocation is involved. Basically, this

ARAP presents an inventory of (register) of people who will be affected by development of the project roads, a register of the assets that are to be displaced by the project and the proposed compensation package. Relevant Kenya laws considered include:-

- The National Constitution 2010The Land Act 2012
- The National Land Commission Act 2013, etc.

0.6. THE ARAP TEAM

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

- Mr. Michael M. Wairagu-EIA Lead Expert
- Ms. Nancy Kanyi-Sociologist
- Ms. Monicah Nyang- Socio-economist
- Meshack Owino-Biometrician

0.7 VALUATION AND COMPENSATION

Spectrum of Potentially Affected Persons (PAPs)

Outcome of the inventory of potential PAPs in the Project Road by road section is provided in Table ES 01 below. The study has determined that there are 36 number of PAPs out of which 4 belong to corporates (Farmers Society and Church) and one has no records in the registry/unknown. In this respect, there are 31 number. of PAPs who went through the socio economic survey who include 21 landed PAPs and 10 structured PAPs as summarized in table ES 02. It's worth noting that there are only 17 parcels of land which are being targeted for acquisition. Further analysis indicates that there are 12 affected structures, 11 out of which belong to PAPs on existing road reserve and one structure is on land targeted for acquisition.

Table ES 01: Spectrum of the PAPs by road section

PAPs Category	Section 1		Section 2		Section 4		Total	
	Land	Structure	Land	Structure	Land	Structure	Land parcels	structures
Individual Landed PAPs	4	1	5	0	4	0	13	1
Corporate PAPs	0	0	3	0	0	1	3	1
Encroachers	0	0	0	0	0	10		10
Unknown	0	0	1	0	0	0	1	
Total	4	1	9	0	4	11	17	12
No of PAPs	13	1	5	0	3	10	31	

Table ES 02: The PAPs who went through the socio economic survey

Total PAPs	Tally
------------	-------

Landed PAPs	21
Structured PAP	10
Total PAPs Interviewed	31

Quantification of Displacement Impacts

Section 1,3 and 4 has 40 meters road reserve while Section 2 enjoys 25m of reserve. This is the designated road reserve upon which the road upgrading is being aligned into. A total of 1.36 ha will be acquired in the road upgrading project which, for a 70km road project is quite small. This represents a significant drop from the 40.81 ha originally targeted and this has been achieved through a decision to restrict all road development to the existing road reserve.

Summary of Costs

This ARAP recognizes two costs regimes as follows:-

(a) Costs towards Compensation

Compensation costs have been computed based on the entitlement as applied to the Assets Register to yield to Costed Assets Register issued as Appendix 5.1 to this ARAP. A summary of the costed assets register is provided in Table ES 02 below. A total of Kshs 29,488,444.90 (Read: Kenya Shillings Twenty Eight Million, One hundred and Ninety Seven Thousands, Six hundred and Twenty shillings, cents Fifty) has been identified under this vote. The bulk (55.91%) of costs will go to acquisition of 1.36 ha.

Table ES 02: Gross Budget for the ARAP

Budget item	Additional Notes	Cost	Remarks
Land	1.36 ha of land or 17 parcels of land	14,337,000	
Structures	12 structures including 7 non-operational shops, 2 toilets and 3 gates	7,880,656	
Trees	Including fruit trees(299) and other trees (70)(both indigenous and exotic)	649,000	
Seasonal crops		84,470	
Restoration cost	An additional 15% markup	6,537,319	
	Trainings on good crop husbandry and environmental conservation as part of CSR.	1,000,000	BOQ Item 1.24. This is however catered for under the ESMP
	Provision of tree seedlings to all PAPs and local reforestation groups as CSR.	2,000,000	BOQ item 1.24. This is provided for under the budget for ESMP
Corporate Social responsibility (CSR)	Support to local reforestation and conservation groups, Trainings on good crop husbandry and environmental conservation as a component of CSR.	1,000,000	BOQ item 1.20. Catered for under the ESMP

Costs towards cushioning the vulnerable	Attachment to the county social services office for counseling and inclusion in the social development projects.	1,000,000	
<i>Total compensation budget</i>		<i>29,488,444.90</i>	
ARAP implementation	External Impact Assessment and Monitoring	6,846,533.47	
Costs: 30% of direct costs	Training on GRM structures	1,000,000.00	
<i>Total Direct Costs</i>		<i>38,334,978.37</i>	
20% Contingency		7,666,995.67	
Total ARAP Budget		46,001,974.04	

(b) ARAP Implementation Costs

A total of Kshs 8,846,533.47 (Read Kenya Shillings Eight Million, Eight Hundred and Forty Six thousands, Five hundred and Thirty Three, Forty Seven cents five) equivalent to 30% of the Compensation Cost has been earmarked to facilitate Nairobi Metropolitan Development to implement the ARAP inclusive of capacity building for the PAPs, management of the GRM as currently managed by the Social Office under the Resident Engineer, and external monitoring.

(c) Contingency:

A 20% Contingency has been allowed to cater for fluctuation in costs and any unforeseen cost elements. Kshs 7,666,995.67 (Read Seven Million, Six Hundred and Sixty Six thousand, Nine Hundred and Ninety Five, Sixty Seven cents only) has been voted for this.

d) Total budget for the ARAP

Table E02 above summarizes the gross budget for the ARAP computed at Kshs 46,001,974.04 (Read: Kshs Forty Six Million, One thousand, Nine hundred and Seventy Four shillings and four cents) will be required in implementing the ARAP.

OTHER ASSISTANCE MEASURES

Assistance to Vulnerable groups: Additional measures will be pursued as follows;-

- **Creating of special programmes:** While ordinary PAPs will undergo training on modalities of coping either the displacement, elderly and sick PAPs will not be available for such. An outreach programme in which they have been linking with the County Social Development Office for assistance either under the Cash Transfer Program, relief assistance among others has been put in place,
- **Monitoring management of proceeds from compensation:** If left alone, some PAPs have no capacity to manage monies accruing from compensation and would end up losing the money without replacing lost assets. The Resettlement Officer will require to network with PAPs to ensure such PAPs have re-placed lost assets.
- **Assistance through Corporate Social Responsibility (CSR) Programme:** Under the CSR programme, training on conservation and crop husbandly have been mounted under the Environmental and Social programme of the in construction supervision. Other components of the CSR already underway include:-

-
- Euphorbia fencing of all water pans (BOQ Item 1.20)
 - Allowing communities access to water dammed for road construction during drought season
 - Support to local reforestation groups (BOQ Item 1.24)
 - Engagement of local communities in reforestation and grassing of cut and fill areas

0.8 REQUIREMENTS FOR MONITORING AND EVALUATION

Monitoring by the DoNMED: The arrangements for monitoring will fit in with the overall monitoring plan of the entire project under auspices of the DoNMED. For purposes of this ARAP, monitoring will ensure smooth administration of the compensation packages in a matter that favours all. Exposure of PAPs to vulnerability has to be safeguarded against all costs. So far, monitoring by DoNMED has entailed the following:

- Monthly site meetings bringing together the contractor, RE and Client
- Monthly Technical Meetings
- Quarterly monitoring by World Bank Missions: The RE Team prepares quarterly reports in anticipation of such missions

Post Project Impact Assessment: In order to ensure that compensation and assistance will enable the affected people to improve or restore their livelihoods, an external impact assessment will be undertaken 6-12 months after the implementation is completed to evaluate whether the intended objectives are realized. For this, suitable baseline indicators related to income, assets, land ownership, expenditure pattern of key activities, housing conditions, access to basic amenities, demographic characteristics, indebtedness, etc.

0.9 CONCLUSION AND RECOMMENDATIONS

From discussions with diverse stakeholders, there is a general agreement that the project is quite justifiable and necessary. It enjoys overwhelming public support. Further, this ARAP has determined that, with the exception of a few structures, the road upgrading project as currently aligned will occasion little displacement of people out of their farm holdings which greatly mitigates would be social and displacement impacts. Measures to offset impacts of the little displacement anticipated have already been identified.

● ● ●

TABLE OF CONTENTS

Executive summary	iv
1 Introduction	1
1.1 Background to this report	1
1.2 Objectives of the ARAP	1
1.3 Justification for the ARAP	1
1.4 The ARAP team	1
1.5 Principles of this ARAP	2
2 Project description	3
2.1 Ownership	3
2.2 Project description	3
2.3 The Socio-economic background	5
2.3.1 The County perspective	5
2.3.2 Administrative jurisdiction	5
3 Overview of the policy framework	10
3.1 Overview of the policy framework	10
3.2 An overview of GOK policy blueprints	10
3.3 Legal framework In compulsory land acquisition	10
3.4 The land acquisition process	17
3.5 World Bank’s safeguard policies	19
3.5.1 Involuntary resettlement (Op 4.12)	19
3.5.2 Institutional context	19
3.5.3 Comparison of Kenya land laws & World Bank/Gap Analysis	20
4 The ARAP methodology	24
4.1 Scope of the ARAP study	24
4.2 ARAP methodology	25
4.3 Stakeholder consultations	25
4.3.1 The need for stakeholder consultations	25
4.4 Field inventory of PAPs and assets	27
4.4.1 Questionnaire design	28
4.4.2 The Socio-economic survey	28
4.4.3 Data cleaning and analysis	28
4.4.4 Computation of the assets register	29

4.5	Approach to valuation of PAP assets.....	29
4.5.1	Principles in asset valuation in the ARAP study.....	29
4.5.2	Parameters to valuation.....	29
4.5.3	Valuation methods adopted.....	29
4.6	Modalities for disclosure.....	30
5	Findings of the ARAP process.....	31
5.1	Potential scope of displacement.....	31
5.1.1	Spectrum of potentially affected persons (PAPs).....	31
5.1.2	The Socio Economic Data.....	31
5.1.3	Quantification of Displacement Impacts.....	32
5.1.4	Cost allocation in The ARAP.....	33
5.2	Socio Economic Survey.....	35
5.2.1	Focus of the survey.....	35
5.2.2	Approach to the socio-economic survey.....	35
5.2.3	Characteristics PAPs Participating in the Socio-Economic Survey.....	35
5.2.4	Household basic needs.....	38
6	Resettlement Measures and Entitlement Matrix.....	40
6.1	Eligibility.....	40
6.1.1	Principle Authorities.....	40
6.1.2	Criteria for Eligibility.....	41
6.2.3	The Cut -Off Date.....	41
6.3	The Entitlement Matrix.....	41
6.4	The Resettlement Budget.....	43
6.5	Other Assistance Measures.....	45
7	The Institutional Arrangements for ARAP Implementation.....	46
7.1	Agencies Responsible for Resettlement Activities.....	46
7.2	Roles And Responsibilities in ARAP Implementation.....	46
8	Grievance Management and Redress.....	51
8.1	Overview.....	51
8.2	Anticipated Types of Grievances.....	51
8.3	Management Mechanism.....	51
8.3.1	General Principles and Key Aspects.....	51
8.3.2	Grievance Registration and Monitoring.....	52
8.3.3	Village Level in Cooperation with DoNMeD.....	53

8.3.4	Mediation Committee (Sub County)	54
8.3.5	Third Level: Resort to Justice.....	55
8.3.6	National Land Commission Grievance Mechanism	55
9	Implementation Schedule	57
9.1	Loan Effectiveness and Implementation Planning	57
9.2	Implementation Phase Activities.....	57
9.3	Compensation Process	58
9.4	Removal of Assets	59
9.5	Costs in the ARAP Implementation Schedule.....	59
10	Procedure for Monitoring and Evaluation.....	60
10.1	The Concepts	60
10.1.1	Monitoring.....	60
10.1.2	Project Evaluation	60
10.1.3	Indicators and Means for Verification	60
10.1.4	Progress/Output Monitoring.....	60
10.1.5	Effect Monitoring	60
10.1.6	Impact Monitoring.....	60
10.2	Procedure for Internal Monitoring.....	62
10.2.1	Development of Criteria and Indicators for Monitoring.....	62
10.2.2	Responsibility for Internal Monitoring	63
10.3	External Monitoring	64
	Appendices.....	67

1 INTRODUCTION

1.1 BACKGROUND TO THIS REPORT

The Government of Kenya, through its implementing agency, the Ministry of Transport and Infrastructure, Housing and Urban Development, Nairobi Metropolitan Development has commissioned Intercontinental Consultants and technocrats PVT Ltd in association with Geodev Ltd to carry out preliminary and detailed engineering design of Kangundo (Tala)-Kenol Rd (C98/C99), Kenol-Koma Rd (E474), Katumani –Mombasa Rd (D522) and Rehabilitation of Kenol-Machakos Town-Katumani (C99) Road.

Under this contract, and in line with existing national legislation and international practice, the Consultant is expected to develop an Abbreviated Resettlement Action Plan (ARAP) to guide resolution of displacement Impacts associated with development of the Road Project.

This report gives the findings of the Abbreviated Resettlement Action Plan Study undertaken as an integral part of the design project. The ARAP was prepared under contract by the Consultants with Environmental Experts and Sociologist from Repcon associates, duly registered and licensed by NEMA-and other Government of Kenya (GoK) agencies.

1.2 OBJECTIVES OF THE ARAP

A detailed description of the road project is provided in Chapter Two below. The Abbreviated Resettlement Action Plan is designed to meet objectives as follows;-

- a) To identify and assess potential impacts from land take.
- b) To identify and quantify different categories of Project –Affected People [PAPs] who would require some form of assistance, compensation, rehabilitation or relocation.
- c) To provide guidelines to stakeholders participating in the mitigation of adverse social impacts of the project including compensation and rehabilitation for affected people.
- d) To verify compliance with the land acquisition and resettlement regulations and industry's standards including the World Bank's Safeguard Policies.
- e) To generate baseline data for monitoring and evaluation of how well the mitigation measures will be implemented during the project cycle

1.3 JUSTIFICATION FOR THE ARAP

This ARAP has been prepared consistent with the applicable policy provisions of Kenyan Government and the provisions of the World Bank's Safeguard Policy on Involuntary Resettlement (OP 4.12). OP 4.12 requires that an ARAP be prepared for all projects that anticipate minor land acquisition(10 percent or less of all holdings is taken) and fewer than 200 people and no physical relocation is involved. Basically, this ARAP presents an inventory of (register) of people to be affected by development of the project roads, a register of the assets that are likely to be displaced by the project and the proposed compensation package.

1.4 THE ARAP TEAM

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

- Mr. Michael M. Wairagu-EIA Lead Expert

-
- Ms. Nancy Kanyi-Sociologist
 - Ms Monicah Nyang-Socio-economist
 - Meshack Owino-Biometrician

1.5 PRINCIPLES OF THIS ARAP

Preparation of this Abbreviated Resettlement Action Plan has been guided by core principles as follows:

(i) Minimization of Displacement

In line with the OP 4.12, displacement under the project will be minimized through the following design procedures:

- The development planned to avoid any impact on structures to avoid displacement/relocation accordingly.
- To the extent possible, Project facilities will utilize public easements- pipelines, public taps, other linear infrastructures etc. wherever possible.

(ii) Livelihood Restoration

One of the objectives of this ARAP is to ensure that livelihoods are improved or restored to pre-displacement levels. To restore people's income-earning opportunities after land acquisition and resettlement, OP 4.12 specifies that "displaced persons are provided with development assistance in addition to compensation measures thus, the following will also be included ;

- An additional 15%markup under every PAP budget
- Trainings on good crop husbandry and environmental conservation as part of CSR
- Provision of tree seedlings to all PAPs and local reforestation groups as CSR.

(iii) The Need to Cushion Vulnerable Groups

Vulnerable households may have different needs from most households, or needs unrelated to the amount of land available to them. The social-economic survey conducted as part of this ARAP identified some female headed households (10) and elderly people 70 years and above (6) as being vulnerable and in need of cushioning. As well, this ARAP recognizes the need for providing additional support to the vulnerable groups to facilitate faster adjustment in terms of relocating property and re-establishing again. They will undergo capacity building in respect to environmental conservation and in this light, tree seedlings will be provided to enable soil conservation in their farms and along the road reserve. They will require to be attached to the county social services office for counseling and inclusion in the social development projects

PRESENTATION OF THIS ARAP REPORT

This ARAP is presented in 10 chapters and 4 Appendices. A glossary of terms is issued as Annex One to this report.

• • •

2 PROJECT DESCRIPTION

2.1 OWNERSHIP

The project is owned by the Republic of Kenya through the implementing agency, Ministry of Transport and Infrastructure, Housing and Urban Development, Directorate of Nairobi Metropolitan Development under the NaMSIP initiative and is being financed by the World Bank.

2.2 PROJECT DESCRIPTION

The project Roads comprises of four sections amounting to 70 km as follows;

Section 1: Kangundo (Tala)-Kenol Rd (21.452 km)

Section 2: Kenol-Koma Rd (9km).

Section 3: Katumani –Mombasa Rd (9km).

Section 4: Kenol-Machakos Town-Katumani Link Road (30km)

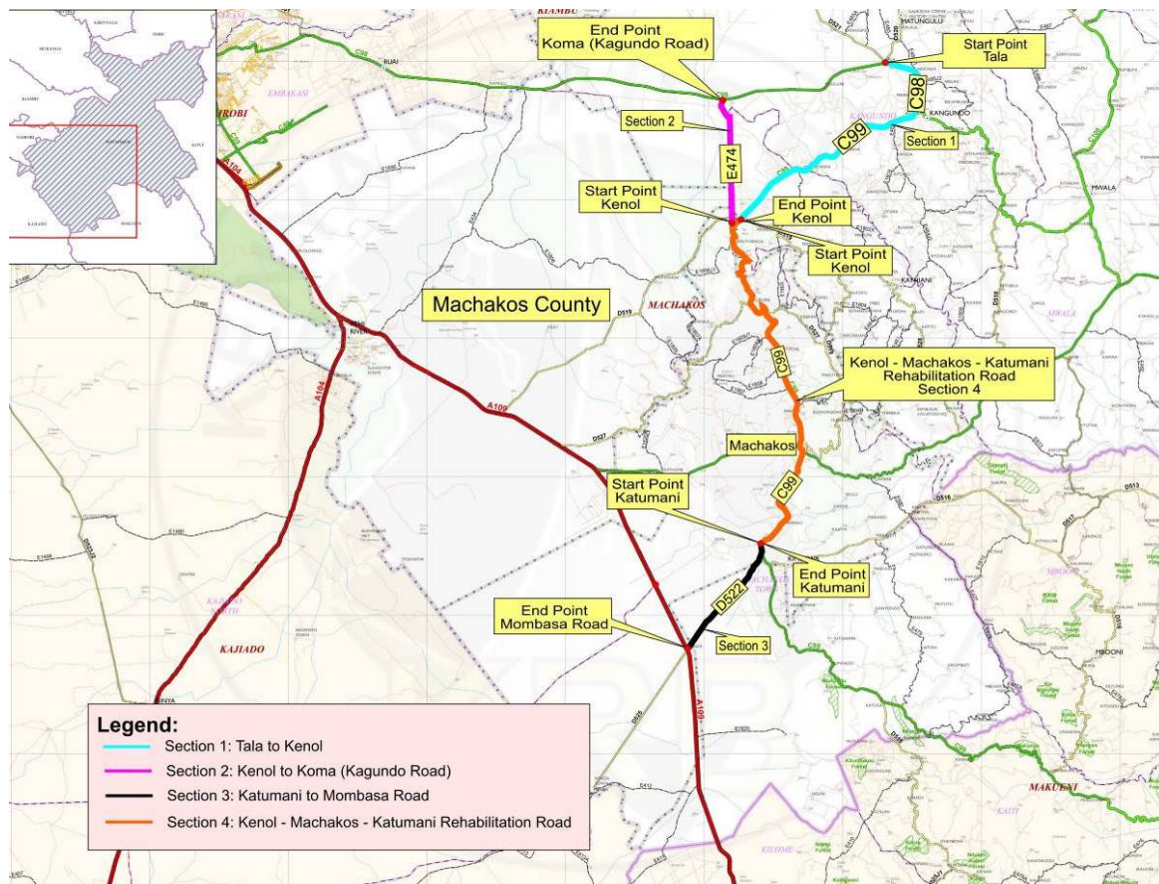


Fig 2.1: The road sections targeted for reconstruction between Mombasa road and Kangundo road.

Section 1 (Kangundo (Tala) -Kenaol-C98/C99 Road is 21.452 km long and starts at the junction of Tala (Kilimambogo) of C98 and Kenol C99 road. The first 6 km of the road is tarmac and balance of gravel standard. There are various quarries, stone crashing and sand harvesting activities along this route. It traverses various rivers including the Kathaana River whose bridge construction has occasioned land acquisition. 4 parcels have been affected amounting to only 0.537 acres of land.

The existing road reserve of 40m is adequate for the road construction works and there are no encroachers on this road.

Section 2: The Kenol-Koma Rd (E474) section is a 9km long gravel road that starts at the Kenol Junction with C99 thereby proceeding to join the same road (C99) at Koma Market. The road is relatively straight with a total land acquisition amounting to 0.984 acres or 9 parcels of land.

Section 3: Katumani (C99) –Konza (A109) Mombasa Rd it is 9km long. The road starts at the junction with the Machakos –Wote road just past Katumani proceeds in a SW direction to join Mombasa Road. It traverses a wildlife dispersion area. This section is barely built, the existing road reserve is adequate(40m) and has no land acquisition and hence no PAPs.

Section 4: Kenol-Machakos Town-Katumani Link Road (30km). This road, currently built to bitumen standard starts at Kenol. This section is entirely tarmac which is dilapidated at some sections. The road from Kenol to Machakos cuts through a hilly terrain dominated by the Mua and Sinai hills. Land is being acquired for Mwanja bridge construction on km 25. There are 4 parcels of land (1.844acres) that will be acquired. Additionally, between km3.8 to 7 are shops gates and toilets which have encroached on the road reserve belonging to 11 PAPs.

Full information is provided in Chapter 5 below on the findings of the ARAP .

Table 2.1: Area to be affected by the project

SN	Section	Parcel Numbers	Acquisition	
	Registration Section	Parcel No	Area acquired	
			Acres	Ha
	Section One			
1	Mitaboni	1462	0.105	0.04
2	Mitaboni	1415	0.123	0.05
3	Mitaboni	1413	0.236	0.10
4	Mitaboni	2672	0.073	0.3
	Total for Section One		0.537	0.28
	Section Two			
5	Donyo Sabuk/ Komarock Block 2	3786	0.083	0.03
6		3798	0.083	0.03
7		3799	0.094	0.38
8		3807	0.052	0.02
9		3998	0.055	0.02
10		4000	0.110	0.05
11		4020	0.113	0.05
12		4022	0.290	0.12
13		4023	0.103	0.04
	Total Section Two		0.984	0.40
	Section Three		0	0
	Section Four			
14	Kivuti Kimutwa	1856	0.210	0.09
15	Kivuti Kimutwa	714	0.476	0.19
16	Kivuti Kimutwa	715	0.356	0.14
17	Kivuti Kima Kimwe	613	0.802	0.32
	Total for Section Four		1.844	0.75

	Total for all Sections	3.365	1.36
--	-------------------------------	--------------	-------------

2.3 THE SOCIO-ECONOMIC BACKGROUND

2.3.1 The County Perspective

Machakos County covers 6,208 square kms and has a population of 1,098,584 as per 2009 census (Male – 49 %,Female – 51 %); with an age distribution of 0 to 14 years at 39%, 15 to 64 years 56% and 5% above 65 years. The population annual Growth Rate is 1.7 % with a current estimate of 264,500 households. The capital town Machakos is cosmopolitan and is located 64 kilometers southeast of Nairobi. The prevailing local climate is semi-arid and the landscape is hilly, rising from an altitude of 1,000 to 1,600 meters above sea level.

2.3.2 Administrative jurisdiction

According to the Machakos County Development Profile, Machakos County is divided into eight sub-counties (Machakos, Kangundo, Matungulu, Kathiani, Yatta, Masinga, Athi River and Mwala) which are further sub divided into 22 divisions, 71 locations and 233 sub locations all covering 6,208 square kilometres of land.

(i) Location and administrative set-up

Table 2.1 provides a summary of the administrative jurisdictions traversed by the proposed 70km long road project. The entire road project falls will traverse 4 sub-Counties namely;- Central, Kathiani, Kangundo and Matungulu in the process covering a total of 11 administrative locations. 39 out the 70 kilometres of road project are located within the Central sub-County which also accounts for 6 out of the 11 administrative locations covered.

Table 2.2: Administrative jurisdiction within the traverse

Road Section	Administrative jurisdiction		Population statistics		
<i>Section</i>	<i>Sub-County</i>	<i>Location</i>	<i>Population</i>	<i>Area (Sq km)</i>	<i>Density</i>
Kangundo-Kenol	Kangundo	Kathaana	5,301	15.1	351
		Matetani	7,239	11.4	636
		Isinga	6,686	8.6	775
	Matungulu	Tala	26,297	34.1	770
Kenol-Koma Rd	Matungulu	Koma Rock	14,116	189.9	74
		Lukenya	150,137	180.4	84
	Kathiani	Mitamboni	6,691	14.7	454
Katumani – Mombasa Rd	Central	Kiima Kimwe	2,177	3.5	619
		Kimutwa	13,806	333.7	41
Kenol-Machakos Town-Katumani Link Road		Masaku	7,753	14.6	176
		Township	14,698	5	2938
Mutituni		12,970	11.6	1121	
Ngelani		10,776	15.2	707	
	Mumbuni	4,515	11.5	393	
Totals	5		148,162	849.3	913.3

(ii) Population dynamics along the route of traverse

Going by the 2009 National Population Census, the 10 locations traversed by the road project had a combined population of 148,162 people (**Table 2.2** above/Plate 2.1) equivalent to 9.1% of the County Population. This population is spread out in a ground area of 849.3 square kilometres implying a population density of 913 persons per square kilometre. Highest population densities in excess of 2000 per square kilometre occur within Machakos Town and vicinity followed by Kangundo.



Plate 2.1: Population density is highest within Machakos and its suburbs

(iii) Land use and livelihoods

An analysis of dominant land use along the traverse is provided in **Table 2.2** below. Agro pastoralism in which local breeds of cattle, goats and poultry are kept supplemented by crop farming (maize, pigeon peas, green grams and some vegetables) is the main economic mainstay. Towards the cooler areas at Kangundo and on the hills, some coffee farming takes place but to a very limited scale on account of aridity.

Within Machakos town, trade is the economic mainstay again giving way to agro pastoralism in the Katumani area. Between Katumani and the Mombasa Rd, main land use has been ranching but this is currently being replaced by agro pastoralism. On account of aridity, crop farming is a risky business and the district frequently relies on food relief. Some community members increasingly resort to charcoal making, sand harvesting, quarry activity and exploitation of other natural resources to earn an income. There is overwhelming evidence of increasing land degradation due to exploitation of natural resources for sale. This was noted along the Kangundo –Kenol road.

Table 2.3: Summary of land-use system

Section	Relief	Climate	Main land use
Kangundo(Tala)- Kenol	Gentle relief and low lying	Marginal semi- arid	Agro-pastoralism
Kenol-Koma Rd	Gentle relief and low lying	Marginal semi-arid	Agro-pastoralism
Katumani –Mombasa Rd	Gentle relief and low lying	Marginal semiarid	Agro-pastoralism
Kenol-Machakos Town- Katumani Link Road	Hilly	Semi-humid	Crop production and urban land use



Plate 2.2: Quarries and stone crashing along the project road

(iv): Other land-use interests:

A breakdown of market centres served by the proposed road project is provided in **Table 2.3** below. Along the traverse are found a total of 24 markets exclusive of Machakos Town all of which host a total of 1254 shops and 110 stalls implying the importance of trade as a means to livelihood for both traders and local residents whose reliance on farm output is undermined by aridity and hence have to rely on food input from outside the county. Indeed, one of the main strategies of the County Government currently is to put an end to food reliance by boosting local production.

Other than trade facilities, the road project will also serve 33 churches, 2 hospitals and 4 dispensaries, 26 schools and 2 colleges, 7 gas stations and one mosque all of which will benefit from efficient delivery of services on account of enhance passenger and good transport. Other major stakeholders within the traverse include the Katumani based Agriculture research station, the Norturesh water pipeline and extensive storm runoff drainage within Machakos Town.

Table 2.4: Market centres and facilities served by the road sections

Section	Name of Market	Sub County	Shops	Bank	Kiosks/Stalls	Chch	Hosp/Disp	Sch	Clige	Misq	Gas Stns
Koma-Kenol	Koma Rock	Matungulu	75		16	1					
	Kwa Mama Dan	Kathiani	3								
	Kwa Makau	Kathiani	3			1					
Kenol-Kangundo	Kilalani	Kangundo	17								
	Syanthi	Kangundo	120			2	2	2			
	Sambarau	Kangundo	47		8						
	Kathaana	Kangundo	108			1					
	Muonyweni	Kangundo	62			3					
	Kinyau	Kangundo	9								
	Kwa Ngondi	Kangundo	20		3	2					
Kenol-Machakos	Kenol	Machakos	124		20	3		1			
	Kwa Ngila	Machakos	12		10	1		1			
	Kwa Vaa	Machakos	40			1					
	Kamuthanga	Machakos	17		17		1	1			
	Mua Market	Machakos	42		3			1			
	Kivutini	Machakos	15					1			
	Mutituni Centre	Machakos	250			4	1	4		1	1
	Tumba	Machakos	106			4					
	Kwa Musyoka	Machakos	35			1					
	Kwa Kathoka	Machakos	48			3		5			
	St Valentine	Machakos	19			2		4			2
	Machakos Town	Machakos		1			2	3	2		4
	Katoloni market	Machakos	44		24	2		1			
Kwa Mwau	Machakos	38			2		2				
Katumani-Msa rd	Konza market	Machakos	0		6						
	Totals		1254	1	110	33	6	26	2	1	7

(v) Physical Infrastructure

Utilities – Water and Sewerage: Machakos and its surroundings is served from Marumba Dam, Nol Turesh Water Systems and boreholes under Machakos Water and Sewerage Company. The Nolturesh mains and the main sewerage system infrastructure runs along the Machakos-Katumani link road.

Power lines: There is heavy presence of power lines running along the proposed roads. This power serves the neighborhoods including, hospitals, schools, colleges ,universities various petrol stations, hotels etc within and outside the project area. Design and construction activity will require that operators of all these be fully consulted and involved at all stages of project development.

Housing and Sanitation: The main systems available for sewage management in Machakos County include the following: -

- Centralized sewers and treatment plants
- Septic tanks and soakage pits, and
- Pit latrines.

The centralized sewer system serves only a small proportion of the population in the town. The use of septic tanks and soakage pits is largely limited to the planned areas of development. The majority of the population is served by the use of pit latrines and septic tanks. The treatment plant serving the settlements mentioned above is located at Mutheu river.

(vi) Economic Activities

Commerce and trade: The proposed road development is fronted by various market centres and quarries which due to poor roads their growth and accessibility is very limited. There will be need to ensure that road construction does not interfere with such activity which provide vital anchorage to much needed economic development.

(vii) Status of Socio-welfare

Poverty levels in the County are at 59.6 % against a national average of 47.2% based on KIHBS (2009); this positions the County at 33 out of the 47 counties ,while 52% of the population lives in the urban centers, which is way above the national average of 29.9%. There is a high increase in labour force which has led to increase in unemployment and this could lead to escalation of crimes as a result of non-absorption of this active population in services of gainful employment. This scenario coupled with the fact that the 51% of the Machakos County citizen are considered as economically inactive implies that the County is in need of investments to spur growth and reverse the situation.

• • •

3 OVERVIEW OF THE POLICY FRAMEWORK

3.1 Overview of the Policy Framework

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

3.2 An overview of GOK Policy blueprints

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

3.2.1: Policy blue prints on land and environment

Sessional Paper No. 3 of 2009 on National Land Policy

The Land Policy of 2009 forms the basis upon which the land chapter in the Constitution is founded. Article 45 of the Policy highlights the problems with the previous land law regime in Kenya with respect to compulsory acquisition. With a view to curb the identified vices, the Land Policy proposed the following changes in the general administration of land in Kenya:

- The review of the previous land laws on land acquisition to be aligned with the new land tenures(Article 47)
- Harmonization of the institutional framework for compulsory acquisition to avoid overlap of mandates(Article 47)
- Development of compulsory land acquisition processes that are efficient, transparent and accountable
- Compulsory land acquisition be done through the National Land Commission
- Resettlement be carried out in a transparent and accountable manner(Article 175)
- Establishment of a land bank to implement resettlement
- The Government resettles all internally displaced persons(Article 208)
- Is has also mandated the Government to develop mechanisms to remove squatters from informal settlement for their resettlement

The National Land Policy is relevant to infrastructure development as it provides for compulsory acquisition- the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation, and is provided for in the current Constitution. This power is exercised by the National land Commission on behalf of the State.

3.3 Legal Framework in compulsory land acquisition

3.3.1: Legal basis for land ownership in Kenya

(i) Provision of the National Constitution

-
- a) Article 40 of the Constitution of Kenya provides for the protection of right to property.
 - (i). The right to property is extended to every person either individually or in association with others, to acquire and own property of any description; and in any part of Kenya.
 - (ii). The Constitutional right to own property is extended to both citizens and non-citizens.

 - b) The right to own property is however not absolute.
 - (i). It is expressly stated to be subject to Article 65 which deals with the extent and tenure of ownership permitted to non-citizens.
 - (ii). Article 40 (3) provides that the state shall not deprive a person of property of any description unless the deprivation-
 - a. Results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
 - b. Is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that-
 - i. Requires prompt payment in full, of just compensation to the person; and
 - ii. Allows any person who has an interest in or right over, that property a right of access to a court of law.

 - c) Article 40 (4) of the Constitution makes provision for compensation for occupants in good faith who may not hold title to land that is subsequently compulsorily acquired-
 - (i). This Article does not distinguish between public community and private land. Compensation is not linked to ownership in registered interests in land.
 - (ii). Thus squatters and other occupiers in good faith are entitled to some form of compensation.

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

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

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

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

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

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

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

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

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

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

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

3.3.2: Statutory mechanism for compulsory land acquisition in Kenya

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

(i) The National Land Policy

The National Land Policy recognises the need for compulsory land acquisition where the overriding motivation is the service of public interests.

(ii) Provision of the National Constitution

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

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

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

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

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

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

(iii) Provisions of the Land Act of 2012

On Compulsory Acquisition, the Land Act 2012:-

- Identifies compulsory acquisition as a means of acquiring title to property (Section 7)
- Tasks the National Land Commission to maintain a register detailing particulars of persons whose land has been compulsorily acquired
- Prescribes the procedure for compulsory acquisition of property (Part VIII)

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

On Conversion of Land-

- Section 9 of the Act provides for the conversion of land from public to private and vice versa.

-
- It also provides for conversion of community land to public or private subject to the law on community land.
 - Section 127 provides for methodology of dispute resolution in respect of compulsory acquisition.
 - Section 107 provides for the establishment of the overseeing authority in compulsory acquisition.
 - Section 111 gives effect to the constitutional safeguards on deprivation of private property by compulsory acquisition.
 - Section 153 establishes the Land Compensation Fund.

The Lands Act 2012 is the principal act to be applied in guiding land acquisition for the proposed Tala Kangundo Roads development Project.

(iv) The National Land Commission Act, 2012

The National Land Commission (“NLC”) is established under Article 67(1) of the Constitution with the following functions:

- to manage public land on behalf of the National and County Governments;
- to recommend a national land policy to the National Government;
- to advise the National Government on a comprehensive programme for the registration of title in land throughout Kenya;
- to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- to encourage the application of traditional dispute resolution mechanisms in land conflicts;
- to assess tax on land and premiums on immovable property in any area designated by law; and
- to monitor and have oversight responsibilities over land use planning throughout the country.
- any other functions prescribed by national legislation.

Apart from the functions listed under Article 67(2) of the Constitution, Section 5(2) of the Land Act assigns other tasks to the NLC as follows:

- (i). on behalf of, and with the consent of the National and County Governments, alienate public land;
- (ii). monitor the registration of all rights and interests in land;
- (iii). develop and maintain an effective land information management system at national and county levels; and
- (iv). manage and administer all unregistered trust land and unregistered community land on behalf of the County Government.

-
- (i). Pursuant to Section 36 of the National Land Commission Act, the NLC is obliged to make regulations to regulate its functions.

This ARAP recognises the NLC as the Acquiring Authority in all land targeted in the development of the project at hand.

(v) The Environment and Land Court Act (E&LC) 2012

- Article 162 (2) of the Constitution provided that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to Employment and labour relations; and The environment and the use and occupation of, and title to, land.
 - Section 4 of the Act establishes the Environment and Land Court while section 13 :-
 - Provides for the jurisdiction of the Court and states that it includes hearing and determining disputes relating to compulsory acquisition of land.
 - Defines the powers of the Court and orders that can flow there from with respect to disputes involving land.
 - Provides for the administrative structure of the Court and the manner of operation of the Court as follows:
 - (a) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 - (b) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes:
 - relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - relating to compulsory acquisition of land;
 - relating to land administration and management;
 - relating to public, private and community land and contracts, leases in action or other instruments granting any enforceable interests in land; and
 - any other dispute relating to environment and land.

The Grievance Mechanism proposed in Chapter Eight of this Report provides for access to the E&LC as a fallback position for disaffected PAPs.

(vi) The Evictions and Resettlement Bill, 2014

Kenya has no reigning eviction law as the Evictions and Resettlement Bill 2014 is yet to be enacted. The Bill however has useful guidelines on forced evictions.

-
- Section 5 has some guiding principles on forced evictions
 - Section 6 (2) delineates the circumstances when eviction and demolitions are allowed
 - Section 7 provides that private land owners may not evict any person without a Court order
 - Section 8 and 9 contain certain safeguards with respect to evictions
 - Section 11 provides for the manner to deal with property left behind by persons evicted
 - Part III mandates the Cabinet Secretary to cause to be undertaken resettlement planning to facilitate the resettlement of persons evicted from public land or persons who have been displaced as a result of internal strife or acts of war.
 - The Cabinet Secretary may also prepare Regulations to govern return to residence where persons have been resettled due to an act of war or an act of God and return is possible.
 - It requires that an Environmental and Social Impact Assessment be conducted whenever the government intends to resettle affected persons.
 - Section 19 of the Bill provides that the Cabinet Secretary may, by notice in the gazette, declare any area as a resettlement area for the purpose of resettlement of the affected persons.
 - The Cabinet Secretary may constitute a resettlement committee to implement the resettlement plan

(vii) The Land Acquisition Act (Cap 295 of Laws of Kenya)

The Land Acquisition Act was repealed by the Land Act 2012. However, the Schedule to the Land Acquisition Act continues to remain in force until the promulgation of rules and regulations outlining the principles for the assessment of just and full compensation by the National Land Commission.

The Act lists the principles upon which compensation for compulsory acquisition of land is made, key among which is pegging compensation to the market value of land. The Act defines the term “market value” of the land to be acquired as “the market value of the land at the date of publication in the Gazette of the notice of intention to acquire the land.” The effect of any express or implied condition of title or law which restricts the use to which the land concerned may be put is taken into account in determining the market value of the land intended to be acquired. An increase in the value of the land on the following grounds is to be disregarded in computation of the compensation payable:-

- An improvement made by the owner of the land two years before publication of the notice of intention to acquire the land, unless the same is bona fide and if the improvement was made not in contemplation of proceedings for the acquisition of the land.
- Due to use of land in a manner restrained by a court or contrary to the law or a manner detrimental to the health of the occupiers of the premises or public health.

Additionally, the following matters shall be taken into account in determining the compensation payable as a result of compulsory acquisition of land:

- The market value of the land
- *Severance damage*-damage occasioned to the owner of the land as a result of severing the acquired land from the rest of his land

-
- *The principle of injurious affection*-damage occasioned to the owner of the land by reason of the acquisition injuriously affecting the owner's other property, whether moveable or immovable
 - *The principle of disturbance*-where the acquisition will compel the owner to change his residence, or place of business, reasonable expenses incidental to the change.
 - Damage genuinely resulting from the diminution of profits of the land from the date of publication of the notice of intention to acquire land and the date of actual possession by the Commission.
 - In determining the compensation payable, the following matters are not considered:
 - The urgency necessitating the acquisition
 - Reluctance of the owner of the land to part with the land
 - Damage sustained by the person interested which, if caused by a private person, would not be a good cause of action
 - Damage likely to be caused to the land after publication of the notice of intention to acquire the land or in consequence of the use to which the land will be put
 - Increase in the actual value of the land likely to accrue from the use to which the land will be put when acquired
 - Any outlay on additions or improvements to the land, incurred after the date of publication in the Gazette of the notice of intention to acquire the land, unless the additions or improvements were necessary for the maintenance of any building in a proper state of repair
 - The amount of compensation determined shall be increased by 15% of the market value of the land for disturbance
 - The owner of the land shall not be awarded an amount of compensation exceeding that claimed during the inquiry for compensation
 - Where a person interested in the land has failed, or neglected without sufficient cause to make a claim for compensation, that person shall not at any time be awarded an amount beyond the amount awarded by the Commission.
 - In addition, Courts have tended to take into account the nearness of the land in question to the main town and its nearness to the road access in assessing the compensation payable.

In preparing this ARAP, the Schedule to Cap 295 has been applied in computing compensation for Assets to be displaced by the proposed roads.

3.4 The land Acquisition process

The NLC guidelines in compulsory land acquisition prescribe an action plan as follows:-

(i) Proof that compulsory possession is for public good

It is very explicit in the Land Act, 2012, Section 107, that whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110 of Land Act 2012, the possession of the land must be necessary for public purpose or public interest, such as, in the interests of public defence, public safety, public order, public morality, public health, urban and planning, or the

development or utilization of any property in such manner as to promote the public benefit. Infrastructure projects including public highways are explicitly identified as meriting land acquisition as public utility and the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having right over the property, and so certifies in writing, possession of such land may be taken.

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

The respective Cabinet Secretary or Government agency or the County Executive Committee Member must submit a request for acquisition of private land to the NLC to acquire the land on its behalf. The Commission will prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land. It is important to note that if the NLC is constituted prior to conclusion of land acquisition, it could prescribe criteria and guidelines necessitating variations or revisions to the current ARAP. Similar, the Commission has powers to reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed.

(iii) Inspection of land to be acquired

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

(iv) Publication of notice of intention to acquire

Upon approval, NLC shall publish a notice of intention to acquire the land in the Kenya Gazette and County Gazette.²⁸ It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar. The courts have strictly interpreted this provision, requiring that the notice include the description of the land, indicate the public purpose for which the land is being acquired and state the name of the acquiring public body. NLC shall ensure that the provisions are included in her notice.

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

(v) Serve the notice of inquiry

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

(vi) Holding of a public hearing

NLC then convenes a public hearing not earlier than 30 days after publication of the Notice of Intention to Acquire. On the date of the hearing, NLC must conduct a full inquiry to determine the number of individuals who have legitimate claims on the land, the land value and the amount of compensation payable to each legitimate claimant. Besides, at the hearing, the Commission shall— make full inquiry into and determine who are the persons interested in the land; and receive written claims of compensation from those interested in the land. For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Commission (NLC) of

documents of title to the land. The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry. It will also provide opportunity to land owners to hear the justification of the public authority in laying claims to acquire the land.

(vii) Valuation of the land

Part III of the Land Act 2012, section 113 (2a) states that “the Commission shall determine the value of land with conclusive evidence of (i) the size of land to be acquired; (ii) the value, in the opinion of the Commission, of the land; (iii) the amount of compensation payable, whether the owners of land have or have not appeared at the inquiry.” This can be interpreted that NLC must determine the value of the land accordingly and pay appropriate just compensation in accordance with the principles and formulae that it will develop. Nonetheless, just compensation could also be interpreted as market rate. The final award on the value of the land shall be determined by NLC and shall not be invalidated by reason of discrepancy, which may be found to exist in the area.

3.5 World Bank’s Safeguard Policies

By virtue of source of funding, the proposed development of road sections by the Ministry of Land, Housing and Urban Development, and Nairobi Metropolitan Development under the NaMSIP is also subject to World Bank requirements for impact assessment. As such, this ARAP study has been formulated to address and cater for both Kenyan and World Bank requirements for impact assessment. World Bank projects and activities are governed by Operational Policies, which are clearly spelt out in the Bank's Operational Manual ("Bank Procedures" and "Good Practices"). The World Bank’s safeguard policies are designed to ensure that projects proposed for Bank financing are environmentally and socially sustainable, and thus improve decision-making.

With regard to Involuntary Resettlement, the Bank Policy is expounded in OP 4.12 Involuntary Resettlement.

3.5.1 Involuntary Resettlement (OP 4.12)

OP 4.12 requires that an ARAP be prepared for all projects that anticipate minor land acquisition (10 percent or less of all holdings is taken) and fewer than 200 people and no physical relocation is involved. The policy aims to avoid involuntary resettlement to the extent feasible, or to minimize and mitigate its adverse social and economic impacts. Given that the proposed roads project will require land acquisition, this ARAP has determined that requirements of OP 4.12 will be triggered by the project.

3.5.2 Institutional Context

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 are briefly described below:

- The Ministry of Transport and Infrastructure Housing & Urban Development in collaboration with DoNMeD:
- . County Governments of Machakos

3.5.3 Comparison of Kenya Land Laws & World Bank/Gap Analysis

Table 3 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.

Comparative Analysis of World Bank Op 4.12 & Kenyan Resettlement Laws

Table 3 Comparative Analysis of World Bank OP 4.12 and Government of Kenya requirements including measures to address gaps

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

planning and implementing resettlement programs			
<p>Eligibility Criteria <i>Defined as:</i> (a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country); (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 (c) those who have no recognizable legal right or claim to the land they are occupying <i>To determine eligibility:</i> Carry out resettlement census. Cut-off date for eligibility is the day when the census begins.</p> <p>Monitor Adequate monitoring and evaluation of activities to be undertaken.</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. Land Act also recognizes those who have interest or some claim in the land such as pastoralist or who use the land for their livelihood. 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. Land Act 2012 provides for census through NLC inspection and valuation process.</p> <p>According to Land Act M& E can be undertaken by the County Land Boards</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. 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. Same as World Bank</p> <p>Both Kenyan Law and World Bank policy advocates for Monitoring and Evaluation</p>	<p>Ensure ALL users (including illegal squatters, laborers, rights of access) of affected lands are included in the census survey or are paid. Implement cut-off procedures as outlined in the Kenyan Law.</p> <p>Implement as prescribed in the World Bank OP4.12 and Kenyan Law.</p>

Table 3.2. Comparative Analysis of World Bank OP 4.12 and Kenya's requirements Relevant to the Process

Category of PAPs and Type of Lost Assets	Kenyan Law	World Bank OP4.12
Land Owners	Fair and just compensation which could be in form of cash compensation or Land for Land	Recommends land-for-land compensation. Other compensation is at replacement cost
Land Tenants	Constitution says that 'occupants of land' entitled to some level of pay in good faith. Land Act stipulates that they are entitled to some compensation based on the amount of rights they hold upon land under relevant laws. However, those who acquired land illegally not entitled to any.	PAPs are entitled to some form of compensation whatever the legal/illegal recognition of their occupancy.
Land Users	Land Act not clear on Land Users although in some cases they can receive some form of compensation depending on the determination by NLC	Entitled to compensation for crops and investments made on the land; livelihood must be restored to at least pre-project levels.
Owners of Temporary Buildings/Structures on the road reserve (illegal traders)	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 of the temporary buildings.	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Owners of Permanent buildings	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	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Perennial Crops	Compensation for the loss of crops	Full replacement cost for the loss of crops valued at market price Relocation assistance and livelihood restoration program.

4 THE ARAP METHODOLOGY

4.1 SCOPE OF THE ARAP STUDY

OP 4.12 Annex has been adopted as the TOR to define the scope of the ARAP Study as follows:-

Task 1: Carry out a detailed survey on the actual number of people to be affected by the proposed road

- A concise description of project area including location of the project area and the number of people to be affected by the project in each location or Sub county
- Undertake a socio-economic baseline survey of the people affected by the project
- Description of categories of people to be affected; partially or wholly taking into account gender, vulnerability and other diversity concerns.

Task 2: Carry out a detailed evaluation of the amount of land to affected by the project

- Description of the total land that will be affected by the way leave access
- Baseline description of land tenure, land use patterns and transfer systems
- Evaluation of farmland; commercial and subsistence farm land that will be affected by the proposed road upgrading and give a rough estimate of land values

Task 3: Carry out a detailed survey on the structures to be affected by the proposed road

Total number of structures to be affected by the proposed road

- Description of the structures to be affected by the ROW access
- Baseline description of structures affected including permanent and semi-permanent structures
- Total number of Structures to be affected
- Estimated valuation of structures to be affected accompanied by pictures of the affected structures and measurements

Task 4: Detailed description of:

- Type of compensation
- How compensation values will be calculated
- Preferred method of valuation and why
- Compensation framework including country laws and regulations

Task 5: Prepare an inventory of losses and a detailed Entitlement Matrix that will be used for compensation.

Task 6: Prepare livelihood restoration strategies and measures necessary to assist people affected by the project improve or restore their living standards.

Task 7: Prepare a detailed organizational arrangement for delivery of entitlements, including livelihood restoration measures, preparation and review of cost estimates, the flow of funds and contingency arrangements.

Task 8: Prepare a detailed description of the implementation process, linking resettlement implementation to civil works. Initiate stakeholder involvement and come up with specific stakeholder committees either locational or sub-locational in areas affected that will ensure smooth implementation of the ARAP.

Task 9: Prepare a detailed grievance redress mechanism including concise procedures for dispute resolution taking into account traditional dispute settlement measures and judicial recourse.

Task 10: Prepare a detailed description of mechanisms for consulting with, and participation of, displaced persons in planning, implementation and monitoring.

Task 11: Prepare a detailed description of arrangements for monitoring by the implementing agency and if required, by independent monitors.

Task 12: Prepare a detailed estimated budget cost for the whole Abbreviated Resettlement Action Plan inclusive of costs of structures, land, contingencies and monitoring of the project.

Briefly, the methodology set out to capture details of all individuals likely to be affected by the road construction, their social economic background to allow computation of realistic compensation packages in line with GoK and World Bank safeguard requirement in land acquisition. The methodology thus entailed activities as outlined in sections below.

4.2 ARAP Methodology

The ARAP Study followed six core steps all of which called for application of specific approaches. They include:-

(i) Discussions with client representatives

Towards planning this ARAP Study, consultative meetings were held at NaMSIP offices bringing together the Client, the main consultant and the ESIA/ ARAP Consultant. Essentially, such forums served as steering committees where diverse aspects of the study were reviewed to build consensus.

(ii) Familiarization with the Route of Traverse

Field work started with a reconnaissance trip to identify and familiarize with the entire alignment.

(iii) Field data collection

A farm to farm reconnaissance survey was undertaken during which a full inventory of project affected persons and their affected property was undertaken. The inventory of potential impacts was based on an identification of assets and livelihood activities based in the road reserve.

(iv) Data entry and computation of the Assets Register (see below).

(v) Preparation of this ARAP report

This draft version of the ARAP has been prepared for review by the client following which the final version (this Report) has been prepared and released.

4.3 STAKEHOLDER CONSULTATIONS

4.3.1 The Need for Stakeholder Consultations

OP 4.12 of the World Bank also requires for projects where resettlement is anticipated, both a

Resettlement Plan and Resettlement Policy Framework be developed taking care to inbuilt measures to ensure that displaced persons are;- informed about their options and rights pertaining to resettlement; consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project. The aim is to ensure that all stakeholder interests are identified and incorporated in project development, implementation and operation. Of necessity, stakeholder consultations should take place alongside project design and implementation to ensure that the project puts in place measures to cater for stakeholder concerns in all project phases. In case of the proposed development of the road, public consultations followed several steps as outlined in sections below.

Stakeholders Consultation

Consultation with the stakeholders is an ongoing process which will proceed up to the end of the project.

Objectives

- To disclose the roads upgrading project with the aim of provision of correct and accurate information about the project.
- To engage the local community especially the Interested and Affected Parties about the project benefits, problems they anticipate with the project and how these can be overcome and mitigated against;
- To consult and gather recommendations from the local administration e.g. DC, DOs, Chiefs, Assistant Chiefs, MCAs, Village Elders and communities that have a stake in the project;
- To provide an opportunity to all the communities in the areas where the project road traverses in order to raise issues and concerns pertaining to the project, and allow the identification of alternatives and recommendations.

Under this ARAP 2 categories of stakeholders have been consulted through;

- i. Seminar and key informant interviews for the secondary stakeholders:** The secondary stakeholders continue to be identified and consulted with the objective of establishing the existing socio economic needs and the immediate surrounding. This is undertaken through visits to their offices. Additionally, a seminar was organized for all the Machakos County leadership where the roads upgrading project was disclosed and issues of concern raised.
- ii. Consultative Meeting with the PAPs:** A consultative meeting with all different categories of PAPs was undertaken with the aim of further disclosing the project and explaining to the PAPs on how they will be affected as well as administration of a socio economic questionnaire. The field inventorying was undertaken in collaboration with the respective PAPs in January 2017 when the cut-off date was declared.(Appendix 5.1 shows the Minutes of the consultative meeting with the PAPs)

Summary of the concerns raised in a meeting with the PAPs

Concern	Response
<p>Confirmation of road reserve: Complained of pegging been done beyond the land beacon. Adding that if that is the case all his land has been 'swallowed'</p>	<p>Concrete Beacons were for reference purposes for the use by surveyors. They don't show the extent of the road reserve. The extent of the road reserve is marked by pegs with red ribbon.</p>
<p>to be shown the extent of the road reserve so that she will know where to finally put her gate</p>	
<p>Compensation: clarification on whether the structures, crops and trees on the road reserve would be affected and whether there would be compensation.</p>	<p>Where structures are within the construction area, the owners will be contacted for detailed inventorying and recording as compensation should be given at replacement cost without considering depreciation. If there would be any crops or trees to be affected, the owner would be given time to harvest them where possible if not all will be valued for compensation.</p>
<p>Underpass: Asked whether there would be cattle underpasses for the cattle crossing along the road and whether there would be flyovers near the school for the safety of the school going children.</p>	<p>The surveyor answered by saying that they would be road signs and bumps put in these areas for the safety of the children and cattle. Also road safety campaigns will be undertaken in collaboration with the traffic officers.</p>
<p>Relocation: Asked that what would happen for those having their businesses under the trees.</p>	<p>In cases where the trees would be cut down, they would be notified in advance and necessary compensation effected for the days they will not be operating their business. They were however assured that the hawkers will not be affected as the current alignment is being adopted and if there are changes they will be informed and due procedure followed.</p>
<p>Requested that the contractor does not block the access for the customers</p>	
<p>Valuation: How will property be valued?</p>	<p>All the property for compensation will be valued at replacement cost without considering depreciation. The final value of land will be determined by valuers from National Land Commission</p>

4.4 FIELD INVENTORY OF PAPS AND ASSETS

This followed specific procedures as follows:-

4.4.1 Questionnaire Design

(i) Design of questionnaires:

For purposes of guiding collation of data on potentially affected persons and their assets, a one page questionnaire was designed and adapted for the study at hand.

(ii) Procedure in the Updating of Project Affected People

From the onset of the ARAP study, it had been clarified that road designs will be aligned to the existing road reserve and will therefore not entail any acquisition. The enumeration targeted assets and interests as informed by the detailed engineering designs and cadastral maps and took the form of questionnaires either filled by the respondent or filled after an interview. The questionnaire has covered details as follows:-

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

The final figure for each was agreed with the land owner following which any questions would be answered. The limit of the land acquisition had already been pegged on the ground by the surveyors for ease of identification. For the entire route of traverse, a total of 35 No. potential PAPs were identified and inventoried. Appendix 6.1a provides the Asset register

4.4.2 The Socio-Economic Survey

A socio-economic survey was conducted on 31 individual PAPs for purposes of establishing the baseline features of the potentially affected population. The baseline survey firstly targeted familiarization with documented socio-economic profiles largely through review of secondary data supplemented by interviews with thematic local experts within government, NGOs and other players. Basic primary data on each of potentially affected persons were captured as part of the asset inventory process.

4.4.3 Data Cleaning and Analysis

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

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

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

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

4.4.4 Computation of the Assets Register

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

4.5 APPROACH TO VALUATION OF PAP ASSETS

4.5.1 Principles in Asset Valuation in the ARAP Study

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

4.5.2 Parameters to Valuation

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

4.5.3 Valuation Methods Adopted

This ARAP adopted diverse valuation methodologies as follows:-

(i) Value of land

Determination of the land value factored many parameters including the current market prices as obtained from diverse sources land and property agents, local administration, land control boards, property owners, recent research papers and reports, etc). All entitlements also factored in a statutory 15% mark-up required for all compulsory acquisition.

(ii) Valuation of Buildings and other Structures

The replacement value of structures has been investigated during the Socio-Economic Baseline Survey. Structures in the project corridor are not numerous and were valued on case-by-case basis. Replacement costs was calculated based on actual cost of construction/re-establishment of a structure of at least equal or better quality as the affected structure.

(iii) The compensation package:

This was derived from summation of the costs to affected land, buildings, trees and crops to which was added a 15% mark-up to cater for involuntary acquisition in line with OP 4.12.

4.6 MODALITIES FOR DISCLOSURE

Responsibility of disclosing the ARAP vests with NaMSIP. Thus, once the ARAP is approved by the Bank, it is expected that it will be disclosed in the World Bank info shop, Ministry of Transport, Infrastructure, Housing and Urban Development website and at the County Government of Machakos. The Executive summary will also be availed in the language understandable to the PAPs either local language or Kiswahili and will be available at the site office and in the office of the proponent. Disclosure to the neighbors of the project and stakeholders throughout the traverse has already begun as the project is already under implementation following the issuance of the NEMA License. A hard copy of the ARAP report once approved by the Bank will also be available at the site office as well as the proponent's office.

5 FINDINGS OF THE ARAP PROCESS

This chapter unveils the outcome of the socio-economic survey and the impact survey (inventory of likely damage) all of which form the foundation on which the compensation package has been crafted. A major finding of the ARAP study however is that all the 4 sections of the Project Road follow existing reserves most of which are adequate to contain the proposed development without need for additional land and this greatly mitigates potential displacement. Only 17 parcels of land will be acquired.

5.1 POTENTIAL SCOPE OF DISPLACEMENT

5.1.1 Spectrum of Potentially Affected Persons (PAPs)

Outcome of the inventory of potential PAPs in the Project Road by road section is provided in Table 5.1 below. The study has determined that there are 36 number of PAPs out of which 4 belong to corporates (Farmers Society and Church) and one has no records in the registry/unknown. In this respect, there are 31 number of PAPs who went through the socio economic survey who include 21 landed PAPs and 10 structured PAPs as summarized in table 5.1. It's worth noting that there are only 17 parcels of land which are being targeted for acquisition. Further analysis indicates that there are 12 affected structures, 11 out of which belong to PAPs on existing road reserve and one structure is on land targeted for acquisition.

Table 5.1: Spectrum of the PAPs by road section

PAPs Category	Section 1		Section 2		Section 4		Total	
	Land	Structure	Land	Structure	Land	Structure	Land parcels	structures
Individual Landed PAPs	4	1	5	0	4	0	13	1
Corporate PAPs	0	0	3	0	0	1	3	1
Encroachers	0	0	0	0	0	10		10
Unknown	0	0	1	0	0	0	1	
Total	4	1	9	0	4	11	17	12
No of PAPs	13	1	5	0	3	10	31	

5.1.2 The socio economic data

The socio economic data was undertaken to 31 PAPs provided as Table 5.2 below who include 21 landed PAPs and 10 structured PAPs.

Table 5.2: The PAPs who went through the socio economic survey

Total PAPs	Tally
Landed PAPs	21
Structured PAP	10
Total PAPs Interviewed	31

5.1.3 Quantification of Displacement Impacts

From the below-listed schedule of impacts (Table 5.3), inference can be made as follows;-

Table 5.3 : Breakdown of the PAPs per category

Nature of Assets	Ownership	Tally
Land	Owners (as reflected in the search)	5
	Interests (land changed ownership but not yet transferred)	16
	Corporate (Farmers society;- 2 parcels, 1 parcel with no records of ownership in registry)	3
Structures	Owners identified	10
	Corporate—(church)	1
Total		35

The land registered under Karnt farmer's society is not subdivided and has no structures. It is worth noting that the owner of Karnt society has not yet been identified hence no socio economic data, full compensation will however be paid to the owner once identified. This also applies to the church, which has a membership of between 50-60 members including; 20 women, 11 men, 20 children and 10 youths. Full compensation will be paid in respect to the affected toilet.

Land Acquisition

Sections 1, 3 and 4 have a 40 m road reserve while Section 2 has only 25 m. A total of 1.36 ha will be acquired in the road upgrading project which, for a 70 Km road project is quite small. This represents a significant drop from the 40.81 ha originally targeted and this has been achieved through a decision to restrict all road development to the existing road reserve.

Table 5.1: Distribution of Land Acquisition by Registration Section

SN	Section	Parcel Numbers	Acquisition	
			Area acquired	
	Registration Section	Parcel No	Acres	Ha
	Section One			
1	Mitaboni	1462	0.105	0.04
2	Mitaboni	1415	0.123	0.05
3	Mitaboni	1413	0.236	0.10
4	Mitaboni	2672	0.073	0.3
	Total for Section One		0.537	0.28
	Section Two			
5	Donyo Sabuk/ Komarock Block 2	3786	0.083	0.03
6		3798	0.083	0.03
7		3799	0.094	0.38
8		3807	0.052	0.02
9		3998	0.055	0.02
10		4000	0.110	0.05

11		4 0 2 0	0. 1 1 3	0.05
12		4 0 2 2	0. 2 9 0	0.12
13		4 0 2 3	0. 1 0 3	0.04
	<i>Total Section Two</i>		<i>0. 9 8 4</i>	<i>0.40</i>
	Section Three		0	0
	Section Four			
14	Kivuti Kimutwa	1 8 5 6	0. 2 1 0	0.09
15	Kivuti Kimutwa	7 1 4	0. 4 7 6	0.19
16	Kivuti Kimutwa	7 1 5	0. 3 5 6	0.14
17	Kivuti Kima Kimwe	6 1 3	0. 8 0 2	0.32
	<i>Total for Section Four</i>		<i>1. 8 4 4</i>	<i>0.75</i>
	Total for all Sections		3.365	1.36

Inventory of Assets

There are 7 shops, 3 gates and 2 toilets that are being affected by the road upgrading project. 11 of which belong to encroachers on the ROW and are located in section 4 while 1 is owned by a landed PAP in section 1.

Inventory of trees and crops

A total of 369 assorted trees were found within the road reserve.

Displacement of Infrastructure

Road expansion is likely to occasion major displacement of water, sewerage, street lighting, power and data transmission infrastructure, which though affecting only 0.25% of PAPs, is likely to be the most costly impact of the road. Displacement of such infrastructures will however be arranged between the GOK and Utilities outside of this ARAP. The cost of relocating these utilities is factored in the BOQ as item 1.14 provisioned for KShs 25,000,000 (Read Twenty Five Million Shillings only).

5.1.4 Cost allocation in the ARAP

(a) Costs towards Compensation

Compensation costs have been computed based on the entitlement as applied to the Assets Register to yield to Costed Assets Register issued as Appendix 5.1 to this ARAP. A summary of the Costed assets register is provided in Table 5.5 below. A total of Kshs 29, 488, 444.90 (Read: Kenya Shillings Twenty Eight Million, One hundred and Ninety Seven Thousands, Six hundred and Twenty shillings, cents Fifty) has been identified under this vote. The bulk (55.91%) of costs will go to purchase of the 1.36 ha to be acquired for the road.

Table 5.2: Direct Costs in Compensation

Budget item	Additional Notes	Cost	Remarks
Land	1.36 ha of land or 17 parcels of land	14,337,000	

Structures	12 structures including 7 non-operational shops, 2 toilets and 3 gates	7,880,656	
Trees	Including fruit trees(299) and other trees (70)(both indigenous and exotic)	649,000	
Seasonal crops		84,470	
Restoration cost	An additional 15% markup	6,537,319	
	Trainings on good crop husbandry and environmental conservation as part of CSR.	1,000,000	BOQ Item 1.24. This is however catered for under the ESMP
	Provision of tree seedlings to all PAPs and local reforestation groups as CSR.	2,000,000	BOQ item 1.24. This is provided for under the budget for ESMP
Corporate Social responsibility (CSR)	Support to local reforestation and conservation groups, Trainings on good crop husbandry and environmental conservation as a component of CSR.	1,000,000	BOQ item 1.20. Catered for under the ESMP
Costs towards cushioning the vulnerable	Attachment to the county social services office for counseling and inclusion in the social development projects.	1,000,000	
<i>Total compensation budget</i>		<i>29,488,444.90</i>	
ARAP implementation Costs: 30% of direct costs	External Impact Assessment and Monitoring	6,846,533.47	
	Training on GRM structures	1,000,000.00	
<i>Total Direct Costs</i>		<i>38,334,978.37</i>	
20% Contingency		7,666,995.67	
Total ARAP Budget		46,001,974.04	

(b) ARAP Implementation Costs

This item has been identified a total of **Kshs 8,846,533.47 (Read Kenya Shillings Eight Million, Eight Hundred and Forty Six thousands, Five hundred and Thirty Three, Forty Seven cents five)** equivalent to 30% of the Compensation Cost has been earmarked to facilitate Nairobi Metropolitan Development to implement the ARAP inclusive of Capacity building to the PAPs and management of the GRM structures, and external impact assessment and monitoring.

(c) Contingency:

A 20% Contingency has been allowed to cater for fluctuation in costs and any unforeseen cost elements. Kshs 7,666,995.67 (Read Seven Million, Six Hundred and Sixty Six thousand, Nine Hundred and Ninety Five, Sixty Seven cents only) has been voted for this.

d) Total budget for the ARAP

Table 5.4 provides the gross budget for the ARAP. The total budget for resettlement in the road upgrading project is estimated at Kshs 46,001,974.04 (Read: Kshs Forty Six Million, One thousand Nine hundred and Seventy Four shillings and one cent) will be required in implementing the ARAP.

5.2 Socio economic survey

5.2.1 Focus of the Survey

Socio-economic surveys for ARAP purposes target to document pre-project status of potentially affected individuals to provide a datum against which, project impacts can be monitored in future.

5.2.2 Approach to the Socio-economic Survey

It was recognized that the 31 PAPs will be in need of economic rehabilitation/ relocation and this is the group that was selected to participate in the socio-economic survey. This included 21 landed PAPS and 10 structured PAPs. (Table 5.7). It's worth noting that there are only 17 parcels of land or 1.36 ha being acquired as reflected in the Official Search.

Table 5.3: Livelihoods involved in the socio economic survey

Category	Tally
Landed PAPs	21
Structured PAPs	10
Total	31

5.2.3 Characteristics PAPs participating in the Socio-economic Survey

Vulnerable Groups

Vulnerable groups must be identified and given an opportunity to participate in the process. These are persons that will be in a disadvantaged position. All special groups of persons (widows and elderly above 70 years) have been identified and will be given additional assistance to ensure that they do not undergo suffering and they do not suffer undue disadvantage.

Among the surveyed households, a total of 10 PAPs were identified as vulnerable by being Female Heads of Households by virtue of being widows or single mothers

Table 5.4: The number of female headed households

Household Head	Tally	%
MHH	21	67.74
FHH	10	32.26
Total	31	100.00

Female headed households represent a special category of compensation/resettlement vulnerability. In the case of widows, their rights to land and property are often put out by the death of their spouses. Often the extended family of the deceased husband claims the widow's assets; even in instances of any male children for whom their dead father's assets are held in trust by male members of the extended family or

clan. Special consideration must be given to these vulnerable populations during allocation of compensation.

Education achievement

Table 5.9: Literacy rate of heads of households by sex and age

	Below 30 years		30-40		40-50		50-60		60-70		70 yrs and above		Total			
	w	m	w	m	w	m	w	m	w	m	w	m	w	%	m	%
None	0		0								2	2	2	6.45	2	6.45
Primary		1		1	1	2	1	1	2	1	2		6	19.35	6	19.35
Secondary				1	1	2				5			1	3.23	8	25.81
Tertiary						4	1	1					1	3.23	5	16.13
Total	0	1	0	2	2	8	2	2	2	6	4	2	10	32.26	21	67.74

Key

W-women M-men

A comparison of the education level of male and female heads of households demonstrates that FHH generally have almost the same educational levels and the same number (2) of men as women who have not gone through any formal training. This is depicted in table 5.9 above. The highest population of vulnerable PAPs by age cohorts (70 yrs and above) is women who are 4 as compared to only 2 men.

83.9% of the households are taking their children to public primary schools while 100% end up in Public secondary schools within a distance of 600m.

Table 5.5: Preferred schools among PAPs

	Primary	%	Secondary	%
Private school	5	16.1	0	
Public school	26	83.9	31	100%
Total	31	100	31	

Source of income

Table 5.11: Source of income for the heads of households by sex and age

	Below 30 years		30-40		40-50		50-60		60-70		70 and above		Total			
	w	m	w	m	w	m	w	m	w	m	w	m	w	%	m	%
Employed					1	2	1	4					2	6.45	6	19.35
Business				1	2	1		1	2				2	6.45	5	16.13
Farmer		1			2			1	1	3	3	2	6	19.35	7	22.58
Quarry operators				1	1					1				0.00	3	9.68
Total		1		2	3	5	2	5	2	6	3	2	10	32.26	21	67.74

Key

W-women M-men

Most of the female heads of households (6) are earning their livelihoods through farming which is rain fed and quite unreliable out of which 3 are in the age cohort of 70 years and above as shown in table 5.11 above.

There are 5 elderly (70 years and above) cases as reflected by the socio economic survey and these are cases if not properly cushioned are prone to suffer the shock of displacement. The elderly (like young children) are disproportionately vulnerable to disease and even death in resettlement operations. Special programmes will be organized with the County Department of social services for counseling and inclusion in the social development projects.

Income profiles

The unemployed active labour force in Machakos County is 9.4% (Weismann et al, 2014) this means that the number which does not have a job but are available for one is quite substantial. In the light of this the road development is seen as an additional source of income either directly or indirectly for the locals as they are accorded first priority before non locals are absorbed. At economic levels, female headed households are poorer than male headed households since most male heads have spouses whom they share the household roles thus lightening the burden.

Over 90% of the PAPs earn less than 20,000 every month as depicted in 5.1.2 below with over 50% of the PAPs falling within the income bracket of between Kshs 5,000-10,000 per month. Thus, in addition to losing their land and property to road construction they require to be adequately compensated as outlined in Chapter 6 below.

Table 5.6: Income profiles for PAPs

Income profiles	Female headed households	Male headed households	Total
below 5,000	3	3	6
5,000-10,000	5	13	18
11,000-15,000	2	3	5
16,000-20,000		2	2
	10	21	31

Size of households

Only one respondent has a family size of 1 child. The highest number of children is within the age cohort of between 2-5 children with 8 and 11 for female headed households and male headed households respectively most of which are not dependent on the parents.

Table 5.13: Household sizes amongst the PAPs

Family size	Female Headed household (FHH)	Male headed household (MHH)	Total
1	1		1
2-5	8	11	19

6-8	1	5	6
above 8		5	5
Total	10	21	31

5.2.4 Household basic needs

Water Sources

The affected household's source their water from tap water, water pan, borehole or river. The distance to the water source is on average 300m away. The degree to which households use one or more of these water sources is dependent upon their proximity to a market centre where there is either a borehole or tap water. Water pans and river source have been recorded among the households further away from market centres.

Cooking Fuel

Majority of the households interviewed (51.6%) use both charcoal and firewood for cooking, while 32.2% uses firewood. Both Charcoal and firewood are popular since they are locally available. Only 9.7% of the respondent use both gas and charcoal.

Table 5.7: Preferred cooking fuel

Type of fuel	Tally	%
Charcoal	2	6.5
Firewood	10	32.2
Charcoal and firewood	16	51.6
Paraffin	0	0
Gas and Charcoal	3	9.7
Total	31	100.0

Lighting Fuel

71% of the respondent use paraffin for lighting while 16.1% use both electricity and paraffin. Paraffin is for backup in case of power blackout. Only 12.9% of the households use solar and paraffin while the torch is used for moving around at night by all the households.

Table 5.8: Preferred Source of lighting fuel

Type of fuel	Tally	%
Paraffin	22	71.0
Electricity and paraffin	5	16.1
Solar and paraffin	4	12.9
Total	31	100.0

Health facilities

The health facilities are accessible within 3km radius on average and all the PAPs interviewed indicated prevalence for public hospitals. Initially, travelling through section 1,2 and 3 during the rains was a challenge, the roads were impassable with vehicle charges being too high, thus compounding movement to health facilities. The road upgrading project is thus a welcome project enjoying 100% support.

6 RESETTLEMENT MEASURES AND ENTITLEMENT MATRIX

6.1 ELIGIBILITY

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

6.1.1 Principle Authorities

The involuntary taking of land has potential to occasion relocation or loss of shelter, loss of assets and loss of means to livelihood through displacement or curtailed access to productive/ live supporting resources. It is important therefore, to establish criteria by which displaced persons will be deemed eligible for compensation and other resettlement assistance. The core distinguishing aspect of this Abbreviated Resettlement Action Plan is that, it will allocate for compensation of all people irrespective of physical displacement and status of tenure to land and assets. This working philosophy is based on policies of diverse authorities as follows:-

(i) The National Constitution:

Under Section 40 of the new National Constitution, land ownership and acquisition are enshrined as follows:-

- 1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property— (a) of any description; and (b) in any part of Kenya.
- 2) Parliament shall not enact a law that permits the State or any person— (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).
- 3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation— (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that— (i) requires prompt payment in full, of just compensation to the person; and (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- 4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(ii) The World Bank Safeguard Policies:

OP 4.12 of the World Bank (which is accepted as the Universal Pace Setter in resettlement) suggests the following three criteria for eligibility;

- (a) those who have formal rights to land (including customary/communal land, traditional and religious rights);
- (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 national and local laws;
- (c) Those who have no recognizable legal right or claim to the land they are occupying, using or

getting their livelihood but are acknowledged as having lived on the same land before declaration of the Cut-off Date.

6.1.2 Criteria for Eligibility

In the view of this ARAP, OP 4.12 offers the most comprehensive eligibility criteria and the same has been applied in the determination of who to extend compensation. Subsequent to this, two broad categories have been recognized in the proposed road upgrading project as follows:-

(i) Landed Persons

These are defined as persons with claim to land irrespective of tenure situation and include those who may not own the land but have claim to assets such as structures and trees. This ARAP however recognizes all as bona-fide PAPs with or without legal title to land and a compensation package and other resettlement measures has been computed for each eligible PAP towards achieving the objectives of the diverse policies governing this ARAP. Additionally, the Replacement Cost Approach method preferred for determining compensation packages in this ARAP is only achievable where the land base is factored into the compensation. Within the landed persons are 17 parcels of land or 3.36 acres (1.36ha) that will be acquired for compensation.

(ii) Non-Landed Stakeholders

This category includes individuals whose livelihoods are likely to be affected either through denied access to productive resources, trade opportunities etc. The following are the PAPs under this category including;

- a. Owner of the structures: 12 structures are being affected including 7 shops, 3 gates and 2 toilets
- (i) Vulnerable groups: out of the 31 PAPs who have been interviewed 32.3% (10) are female headed households and 6 are elderly (70 years and above).

6.2.3: The Cut -off Date

The Cut-off Date is the date the census began. The initial cut-off date was fixed in November 2014 but due to changes in design this was revised and fixed in January 2017 which is the date the final census began. Persons who encroach on the area after the cut-off date are not entitled to compensation or any other form of resettlement assistance.

6.3: THE ENTITLEMENT MATRIX

An entitlement matrix detailing out (i) eligibility and (ii), entitlement in compensation is provided in **Table 6.1** below.

Table 6.1: The Entitlement Matrix

Category of PAPs	Type of loss	Entitlements	Tally
Property Owners (title holders)	Loss of land	100% cash compensation for land taken for road construction. Disturbance allowance 15%	17 parcels of land

		Capacity building on environmental conservation and Provision of tree seedlings	
	Loss of structure (Toilet belonging to one landed PAP)	<p>Compensation at full replacement value not considering depreciation, taking into account market values for structures and materials</p> <p>Advance notice to vacate(one month after compensation)</p> <p>Disturbance allowance is 15% of the replacement value of the cost of construction of affected structures</p> <p>right to salvage materials without deduction from compensation</p> <p>Capacity building on environmental conservation and Provision of tree seedlings</p>	1
	Loss of Trees	<p>100% Compensation for any trees removed based on economic value</p> <p>Disturbance allowance of 15%</p> <p>Planting of trees in the buffer zone of the developed roads to replace the removed ones and protect exposed grounds along the roads.</p>	70 trees
	Loss of crops (including tree crops)	<p>100% Compensation for any trees removed based on economic value for cash crops</p> <p>Disturbance allowance of 15%</p> <p>Capacity building on environmental conservation and Provision of tree seedlings</p>	299 fruit trees
	Loss of food crops(perennial crops)	<p>100% Compensation for any trees removed based on economic value for cash crops</p> <p>Disturbance allowance of 15%</p> <p>Capacity building on environmental conservation and Provision of tree seedlings.</p>	

Encroachers/those without formal legal rights	Loss of Structures	<p>Cash compensation at full replacement value for structures not considering depreciation, taking into account market values for structures and materials.</p> <p>Advance Notice to vacate(one month)</p> <p>Right to salvage materials without deduction from compensation</p> <p>Capacity building on environmental conservation and Provision of tree seedlings.</p> <p>Disturbance allowance of 15%</p>	(7 shops, 3 gates and 1 toilet)
Vulnerable groups		<p>Capacity building (in addition to their entitled compensation) on environmental conservation and Provision of tree seedlings</p> <p>Attachment to the country social services office for counseling and inclusion in the social development projects.</p>	32.3% (10) are female headed households and 6 elderly PAPs (70 years & above)

6.4: THE RESETTLEMENT BUDGET

This ARAP recognizes two costs regimes as follows:-

(a) Costs towards Compensation

Compensation costs have been computed based on the entitlement as applied to the Assets Register to yield to Costed Assets Register issued as **Table 6.2** below. A total of **Kshs Kshs 29,488,444.90 (Read: Kenya Shillings Twenty Nine Million, Four hundred and Eighty Eight Thousands, Four hundred and four shillings, Ninety cents only)** has been identified under this vote.

(b) ARAP Implementation Costs

This item has been identified a total of **Kshs 8,846,533.47 (Read Kenya Shillings Eight Million, Eight Hundred and Forty Six thousands, Five hundred and Thirty Three, Forty Seven cents five)** equivalent to 30% of the Compensation Cost has been earmarked to facilitate Nairobi Metropolitan Development to implement the ARAP inclusive of Capacity building to the PAPs and management of the GRM structures, and external impact assessment and monitoring of the ARAP.

(c) Contingency:

A 20% Contingency has been allowed to cater for fluctuation in costs and any unforeseen cost elements.

d) Total budget for the ARAP

Table 6.2 provides the gross budget for the ARAP. The total budget for resettlement in the road upgrading project is estimated at **Kshs 46,001,974.04 (Read: Kshs Forty Six Million, One thousand Nine hundred and Seventy Four shillings and one cent)** will be required in implementing the ARAP.

Table 6.2: Gross budget for the ARAP in the road upgrading project

Budget item	Additional Notes	Cost
Land	1.36 ha of land or 17 parcels of land	14,337,000.00
Structures	12 structures including 7 non operational shops, 2 toilets and 3 gates	7,880,656.00
Trees	Including fruit trees (299) and other trees (70)(both indigenous and exotic)	649,000.00
Seasonal crops		84,470.00
Restoration cost	An additional 15% markup under every PAP budget	6,537,318.90
	Trainings on good crop husbandry and environmental conservation as part of CSR. This is taken care of in the BOQ item 1.24 which has allowed for a PC sum of Kshs 43,000,000 for implementation of the ESMP	1,000,000.00 (Not included in the ARAP Budget)
	Provision of tree seedlings to all PAPs and local reforestation groups as CSR. This is taken care of in the BOQ item 1.24 which has allowed for a PC sum of Kshs 43,000,000 for implementation of the ESMP	2,000,000.00 (Not included in the ARAP Budget)
Corporate Social responsibility (CSR)	Support to local reforestation and conservation groups, Trainings on good crop husbandry and environmental conservation as a component of CSR. This is taken care of in the BOQ in item 1.20 which has allowed for a PC sum of Kshs 10,000,000 for off road environments	1,000,000.00 (Not included in the ARAP Budget)
Costs towards cushioning the vulnerable (Female Heads and elderly)	Attachment to the county social services office for counseling and inclusion in the social development projects.	1,000,000.00
Cost in Compensation		29,488,444.90
ARAP implementation which is 30% of ARAP cost in compensation	External impact assessment and monitoring of the ARAP	6,846,533.47
	Training on GRM structures	1,000,000.00
Total Direct Costs		38,334,978.37

Contingency 20% of total direct cost		7,666,995.67
Total ARAP Budget		46,001,974.04

6.5: OTHER ASSISTANCE MEASURES

Assistance to Vulnerable groups: Additional measures will be pursued as follows;-

- **Creating of special programmes:** While ordinary PAPs will undergo training on modalities of coping either the displacement, elderly and sick PAPs will not be available for such. An outreach programme in which they have been linking with the County Social Development Office for assistance either under the Cash Transfer Program, relief assistance among others has been put in place.
- **Monitoring management of proceeds from compensation:** If left alone, some PAPs have no capacity to manage monies accruing from compensation and would end up losing the money without replacing lost assets. The Resettlement Officer will require to network with PAPs to ensure such PAPs have re-placed lost assets.
- **Assistance through Corporate Social Responsibility (CSR) Programme:** Under the CSR programme, training on conservation and crop husbandry have been mounted under the Environmental and Social programme of the in construction supervision. Other components of the CSR already underway include:-
 - Euphorbia fencing of all water pans (BOQ Item 1.20)
 - Allowing communities access to water dammed for road construction during drought season
 - Support to local reforestation groups (BOQ Item 1.24)
 - Engagement of local communities in reforestation and grassing of cut and fill areas

• • •

7 THE INSTITUTIONAL ARRANGEMENTS FOR ARAP IMPLEMENTATION

7.1 AGENCIES RESPONSIBLE FOR RESETTLEMENT ACTIVITIES

i) Overview of the Institutional Framework

This ARAP will be implemented as part of the DoNMED Programmes and Work Plans which is partly financed by the Government of the Republic of Kenya. As a project within DoNMED, the development of the proposed road will be mainstreamed into the administrative and management infrastructure of this Institution with the Technical Services Department assuming the project management role. In sections below, roles and responsibilities within this framework including requisite capacity building are analyzed.

ii) Levels of Project Implementation

Project implementation will take place in three tiers namely: -

- National level
- DoNMED level
- Project level

Activities at each level has drawn participation of diverse players all basically coordinated by the roads sector-namely the Ministry of Transport and infrastructure Housing and Urban Development and DoNMED. It has become necessary to create new structures to address emerging needs especially at project implementation level and below. In sections below, the roles and responsibilities of institutions at each level are analyzed.

7.2 ROLES AND RESPONSIBILITIES IN ARAP IMPLEMENTATION

National Level Institutions

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

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

The road upgrading project is a project of the Kenya government through the Ministry of Transport and infrastructure, Housing and Urban Development, the latter of which is providing an oversight supervision and technical direction to the Implementing Agency. The MoTIH&UD also interface with other ministries such as Ministry of Finance on issues pertaining to project funding to ensure smooth flow of both internal and external funding. MoTIH&UD also communicates directly with Financier on all issues related to project implementation including financial, procurement and physical progress and all such communication will take place under the signature of the Principal Secretary (or his designated representative) as the overall accounting officer for the Ministry.

(b) The Directorate of Nairobi Metropolitan Development (DoNMED)

DoNMED is tasked with managing the development and implementation of all aspects of the proposed road upgrading project including environmental and social mitigation.

(c) National Land Commission

The National Land Commission (NLC) is an independent constitutional agency that has statutory powers to undertake compulsory acquisition of private or community land for public purposes or public interest. It performs these functions on behalf of the national government and county

governments. The specific powers and functions of the NLC are set out in the National Land Commission Act 2012, and the Land Act 2012.

Key roles of NLC in the implementation of this ARAP will include:

- *Provide approval to request made by DoNMED to acquire land for the project;*
- *Notify landholders in writing of the intention to acquire land;*
- *Assist in resolving disputes related to compensation;*
- *Acquire land on behalf of DoNMED;*
- *Undertake public consultation on intended acquisition;*
- *Undertake actual payment of entitlement awards to PAPs*

(c) Project Implementation Team

For a project of this magnitude, it is expected that a fully-fledged Project Implementation Unit PIT will be formed within DoNMED to take charge of project affairs. In this respect, it is recommended that the PIT to operate under the control of the Head of Technical Services Department who will double up as the Project Coordinator supported by a complement of staff selected and committed entirely to this project. Such staff will include an Civil Engineer (Supervisor of Works), Way leaves Officer/ Resettlement Officer, Social Scientist, Environmental Scientist, Land Surveyor/ GIS Expert, among others. With regard to the implementation of the ARAP, **the PIT** has the following responsibilities

i. Communication and Coordination

- Communication and cooperation with County administrations as key actors with implementation of livelihood restoration programs
- Communication and cooperation with local resettlement committees as key actors with implementation processes (i.e. compensation process, monitoring, identification of vulnerable people)
- Communication and cooperation with the institutions involved in the compensation process and into training measures for affected people:
- Overall coordination with national and county government and with local authorities and funding agency with regard to the Project's social and environmental issues

ii. Management of ARAP Implementation

- Ensure and monitor overall social and environmental due diligence within ARAP implementation (national requirements, lenders requirements)
- ARAP Key Implementation Processes
 - Oversee and coordinate compensation process
 - Operate Grievance Mechanism
 - Operate Monitoring

-
- Design of overall training plan for ARAP implementation staff, oversee and coordinate implementation of plan
 - Manage staff recruitment processes and contracting processes of external service providers

iii. Change Management

Communicate necessary changes of approach, particularly where substantial and material changes to the ARAP might be envisioned or necessary.

iv. Capacity Building

Facilitate and guide capacity building for authorities on different levels with regard to due diligence of Project management and due consideration of environmental and social safeguards

The Environmental and Social Unit of **DoNMED** will serve as the primary point of contact between communities of the project affected area and the project, and will have the following primary areas of responsibility inter alia:

- Liaise with County and Sub County government with regard to local community liaison and issues and in consultation with appropriate **DoNMED** personnel
- Log and respond to grievances lodged by members of the community
- Organize and facilitate compensation payment actions
- Obtain prior written permission from community leaders/affected members for any intended damage to any infrastructure, crops or land as a result of construction and compensation to be paid.

v. Liaison with the Government of Kenya

The project is owned by the Government of Kenya through the Ministry of Transport and Infrastructure Housing & Urban Development who jointly with **DoNMED**. MOTIH&UD shall be responsible for mobilization of financing from The National Treasury for this ARAP. MOTIH&UD will request The National Treasury to allocate funds for this ARAP and will thereafter give the funds to NLC to compensate all the identified PAPs.

(vi.) Grievance Redress Committee (GRC)

The PIT will set up a Grievance Redress Committee to be coordinated by the DoNMeD Project Coordinator for purposes of resolving all grievances arising from acquisitions and compensation. The Constitution of the GRC is outlined in Chapter 8.1 below.

Roles Related to Implementation Arrangements

The overall coordination of the implementation of the ARAP will be provided by jointly by DoNMED, which will oversee all resettlement planning and coordinate all issues relating to the compensation. Given the importance of the activities under the various sub-components, DoNMED will collaborate with the County Government falling in coordination and implementation.

DoNMED will be also responsible for implementation of the ARAP. Other roles will include;

- Constitute the GRM committees and provide their operational budget;
- Collect all the needed documentation for compensation;
- Make funding request from MOTIH&UD to undertake compensation of the PAPs;
- Compile all the grievances and document for future reference
- Send copies of all the documents to the MOTIH&UD;

-
- Besides this, DoNMED will have overall responsibility of monitoring and evaluation of the resettlement process. Specialist consultants will support the DoNMED, including: an M&E consultant to collect data to transfer to DoNMED, which will be responsible for overall project M&E; and a social/environmental safeguards specialist for implementation of the ARAP and Environmental and Social Management Plan (ESMP), working under the supervision of DoNMED.

(a) Public Participation with the PAPs

This will initiate the compensation process as part of an ongoing process that would have started at the planning stages when the technical designs are being developed and at the land selection/screening stage. The process therefore seeks the involvement of PAPs in a participatory approach from the beginning.

(b) Notification of land resource holders

In cases where there is clearly no identified owner or user, the respective local authorities and leaders will notify the community leaders and representatives who will help to identify and locate the land users. These leaders and representatives will also be charged with the responsibility of notifying their members about the established cut-off date and its significance. The users will be informed through formal notification in writing and by verbal notification delivered in the presence of the all the relevant stakeholders.

(c) Agreement on Compensation and Preparation of Contracts

All types of compensation will be clearly explained to the individual and households involved. NLC jointly with the client will draw contracts listing all property and land being surrendered, and the types of compensation selected. The compensation contract and the grievance redress mechanisms will be read aloud in the presence of the affected party and the Local Community Elder prior to signing.

(e) Compensation Payments

All handing over of property such as land and buildings and compensation payments will be made in the presence of the affected party, DoNMED staff, County Government representatives and local administration, representative of the PAPs and the community local leaders.

Project Level Institutions

Resettlement and Compensation Committees

Since Sub County is fairly large, further decentralized resettlement units will be formed in each location of the project affected area. Locational Resettlement and Compensation Committees (LRCCs), based in each administrative location affected by the project will be established. DoNMED will constitute the LRCCs with the assistance of local administration. The LRCCs will work under guidance and coordination of SCRCC. LRCCs will be formed two to three weeks after the formation of the SCRCC. Their membership will comprise of the following:

- *The locational Chief, who is the Government administrative representative at the locational unit and who deals with community disputes will represent the Government in LRCC*
- *Assistant Chiefs, who support the locational Chief and Government in managing local community disputes in village units, will form membership of the team.*

-
- *Female PAP, elected by women PAPs, will represent women and children related issues as regards resettlement and compensations*
 - *Youth representative, elected by youths, will represent youth related concerns in the LRCCs*
 - *Vulnerable persons representative, will deal and represent vulnerable persons issues in the LRCC.*
 - *Business representative, will represent business people concerns*

Membership to LRCCs will be elected by each category of PAPs except the locational Chief and assistant chiefs who will automatic members of the team by virtue of their positions. Each LRCC will elect their chairperson and a secretary. The roles of LRCCs will include among others the following:

- *Conducting extensive public awareness and consultations with the affected people.*
- *Help ensure that local concerns raised by PAPs as regards resettlement and compensation among others are promptly addressed by relevant authorities.*
- *Resolve manageable disputes that may arise relating to resettlement and compensation process. If it is unable to resolve, help refer such grievances to the SCRCC.*
- *Ensure that the concerns of vulnerable persons such as the disabled, widowed women, affected by the project are addressed.*
- *Help the vulnerable during the compensation and restoration for their livelihoods*
- *Ensure that all the PAPs in their locality are informed about the content of the ARAP.*
- *Validate inventories of PAPs and affected assets;*
- *Monitor the disbursement of funds;*
- *Guide and monitor the implementation of relocation;*
- *Coordinate activities between the various organizations involved in relocation;*
- *Facilitate conflict resolution and addressing grievances; and*
- *Provide support and assistance to vulnerable groups.*
 - *This committee meets on a regular basis (as determined by the needs of the project) to ensure that resettlement activities are appropriately designed and executed..*

• • •

8 GRIEVANCE MANAGEMENT AND REDRESS

8.1 OVERVIEW

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

Grievance procedures may be invoked at any time, depending on the complaint and no person or community from whom land or other productive assets are to be taken will be required to surrender those assets until any complaints he/she has about the method or value of the assets or proposed measures are satisfactorily resolved. In order to deal with the grievance that may rise during the implementation, this ARAP has identified procedures to allow affected people to lodge a complaint or a claim (including claims that derive from customary law and usage) without cost and with the assurance of a timely and satisfactory resolution of that complaint or claim in which case, dialogue is a vital element. The grievance redress mechanisms is designed with the objective of solving disputes at the earliest possible time which will be in the interest of all parties concerned and therefore implicitly discourages referring such matters to the Courts which would otherwise take a considerably longer time. The grievance procedure will be simple, administered as far as possible at the local levels to facilitate access, flexible and open to various proofs. Fig. 8.1 is a schematic presentation of the overall grievance procures recommended.

8.2 Anticipated Types of Grievances

In the context of the Project, grievances could arise from;

- Misidentification of owner/occupier of eligible property and assets;
- Errors in asset assessments;
- Disputes over plot limits, either between the affected person and the Project, or between two neighbors;
- Complaints about entitlement policy of the project;
- Disagreement of asset valuation;
- Disagreement on entitlement and ownership;
- Disputed ownership of businesses (for example if the owner and the operator are different persons);
- In the case of Vulnerable and Marginalized Groups, disputes about free, prior and informed consultation, adverse impacts, culturally appropriate benefit-sharing, protection of traditional rights related to natural resources management and land tenure;
- Disagreement of time and manner of compensation.

8.3 Management Mechanism

8.3.1 General Principles and Key Aspects

The Project will put in place an extra-judicial mechanism for the management of grievances and disputes, based on explanation and on 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.

The mechanism will be based on the following principles:

-
- Each affected person will have easy access to deliver grievances and complaints;
 - Grievances can be submitted orally (and will be recorded) or in written form;
 - Any grievance will be registered, acknowledged receipt of, and tracked until it is closed;
 - The grievance management arrangement will include two tiers of extra-judicial, amicable review and settlement, with the first one internal to DoNMED in cooperation with the local resettlement committee (village level), and the second one with involvement of external parties;
 - The third tier of the mechanism is the judicial system, for those grievances that cannot be resolved; the overall objective is to avoid resorting to Justice for as many grievances as possible.

Key aspects of the grievance mechanism are:

- The public and especially PAPs need to be informed about the grievance mechanism and how they can make use of this process. The public will be informed via ARAP disclosure process and through community meetings conducted by DoNMED in cooperation with the local resettlement committees:
- Grievances will be recorded by using a Grievance Form (in local language, also available in English). Grievance Forms are available for recording complaints and will contain details regarding the grievance as well as the name and address of the applicant, application date, type of application and the name of the persons receiving the grievance. The forms will be logged in a register where they will be tracked through to a suitable resolution.
- DoNMED will maintain a digital grievance database, containing the logs and records of all grievances received, with an indication of the respective status of a grievance (i.e. resolved, not resolved, pending).
- Resolution options will be developed through unilateral proposal, bilateral discussion and/or third party mediation. If a complaint is not legitimate the case will be closed without agreement with the complainant. Any response will be communicated clearly either orally or in writing, and a grievance case will only be closed when an agreement with the complainant is reached.
- Affected people will be offered access to third party legal advice, through a qualified lawyer a regular base; legal advice will be at no costs; information on the possibility of access to legal advice will be communicated to the affected people;

8.3.2 Grievance Registration and Monitoring

The grievance mechanism shall be accessible to all affected parties, including vulnerable people. Hence, it is of key importance that grievances can be submitted on the village level.

Grievance registration will be possible:

- At the village level, registration through the resettlement committees;
- A Community Liaison Office, to be established at the Project site;
- Grievance registration will be possible as of the commencement of compensation and resettlement activities. For each grievance, a grievance file will be opened, containing:
- Grievance form (recording complaints, details regarding the grievance, name and address of the applicant, application date, type of application and the name of the persons receiving the grievance);
- Receipt with acknowledgement of registration, to be handed back to the complainant;
- Grievance monitoring sheet (actions taken, corrective measures);

-
- Closure sheet, copy of which will be handed to the complainant after he/she has agreed to the resolution and signed off.

Grievances will be registered within 7 days of receipt and a response will be provided to the aggrieved party in 30 days or less.

Closure of a grievance does not automatically mean that the complainant is satisfied with the action taken (i.e. in cases where a complaint is not justified). Closure means that the complainant agrees that action has been taken by DoNMED to address the grievance without being necessarily satisfied with the outcome.

These committees will seek to resolve PAPs issues quickly in order to expedite the receipt of entitlements, without resorting to expensive and time-consuming legal process in the Environment and Land Court⁶¹ or high court that may delay the implementation of project. Appeals to the court will only be occasioned if the grievance procedure fails to provide a result.

8.3.3 Village level in Cooperation with DoNMED

In practice, in similar compensation and resettlement activities, grievances arise from misunderstandings of the Project policy, or result from conflicts between neighbors, which can usually be solved through adequate mediation using customary rules or local administration at the lowest level.

Furthermore, grievances are expected to arise in the context of construction activities. For this reason, the cooperation with the construction contractor's grievance management – and community liaison staff is of key importance. Grievances related to construction should be resolved through cooperation of DoNMED and the construction contractors' staff in charge for grievances. During construction, reports should be issued to senior management DoNMED that highlight grievances with potential to affect the construction schedule. These reports should include grievances where resolution is pending for long periods.

Aggrieved people will have the opportunity to submit their grievances at the village level. This setting provides maximum accessibility to the grievance mechanism for all affected people and the possibility to resolve grievances in a practical and direct manner.

Local resettlement committees/village leaders as members of the resettlement committees will record grievances in oral or written form. It is expected that a large part of grievances can be resolved directly through explanation and information to the claimant. Grievances, which were not resolved on the village level, will be reviewed. Village Resettlement Committees will perform the reviews, typically with the following steps:

- Review of existing relevant documentation on the individual case (household issues, potential plot disputes, initial measurements and counts, etc); construction related disturbance-or other issue
- Review of disputed properties, disputed boundaries, or property characteristics in the field, as applicable, and hearing of interested parties (the complainant(s) and third parties (resettlement committee members);
- Agreement on proposed resolution within the grievance management team and the local resettlement committee/village leader; representative of construction contractor
- Response to complainant.

For these cases, the grievance management team will cooperate with representatives of the local resettlement committees and with representatives of the construction contractor and will meet directly

with the complainant in order to provide in depth explanations and if necessary, combine the explanation with a field visit to the disputed area/ the location related to a construction related grievance.

The grievance management team will:

- Maintain, check and file the registered grievances and log all grievances in a central database of grievances at village level;
- Ensure that grievances are acknowledged receipt of in the agreed timeframe (7 days);
- Collect files of grievances submitted at local levels on a regular basis (twice a month) to make sure that all grievances are dealt with in a timely manner; check that receipts for grievance registration were issued by the local levels (resettlement committees, cell and ward administrations)
- Make sure that local authorities and Village Resettlement Committees are duly consulted when reviewing the grievance; construction contractor's representatives will be consulted when applicable
- Make sure that closure letters proposing a resolution to the complainant are timely sent to the complainant and acknowledged receipt of;
- Ensure that all steps of grievance management are properly documented.

The village level grievance redress committee will include

1. One Village Elder from affected village
2. Chief and Assistant Chief of Area
3. County Ward Administrator
4. Youth representative
5. Women representative
6. Vulnerable group representative

8.3.4 Mediation Committee (Sub County)

The second tier aims at processing grievances that the first tier is unable to resolve, and coming up with solutions, which if agreed will be binding to both the implementing agency and the complainant(s). The objective is to avoid resorting to Justice and try to reach amicable settlements wherever possible. No grievance will be considered by the second tier unless it has already been reviewed by the first tier and the resolution proposed by the committee was not acceptable to the complainant.

The second tier of grievance management shall be based on a Mediation Committee established at Sub County level, which will include:

- One representative of the Administration;-National Government
- One representative of Sub County Administration; - County Government
- Sub County Land Officer
- One representative of the DoNMED, 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, customary authorities.

The Mediation Committee will meet as needed, depending on the inflow of registered complaints and disputes. Minutes of meetings, including proposed resolution arrangements, records of decisions, agreements reached would be prepared.

8.3.5 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).

8.3.6 National Land Commission Grievance Mechanism

The Land Act 2012 and National Land Commission Act 2012 obligate the NLC to manage grievances and disputes related to resettlement or land amicably. NLC will be expected to arbitrate or negotiate with PAPs or landowners that have any grievances concerning their compensation. The cascading structures they put in place are also expected to take up this responsibility.

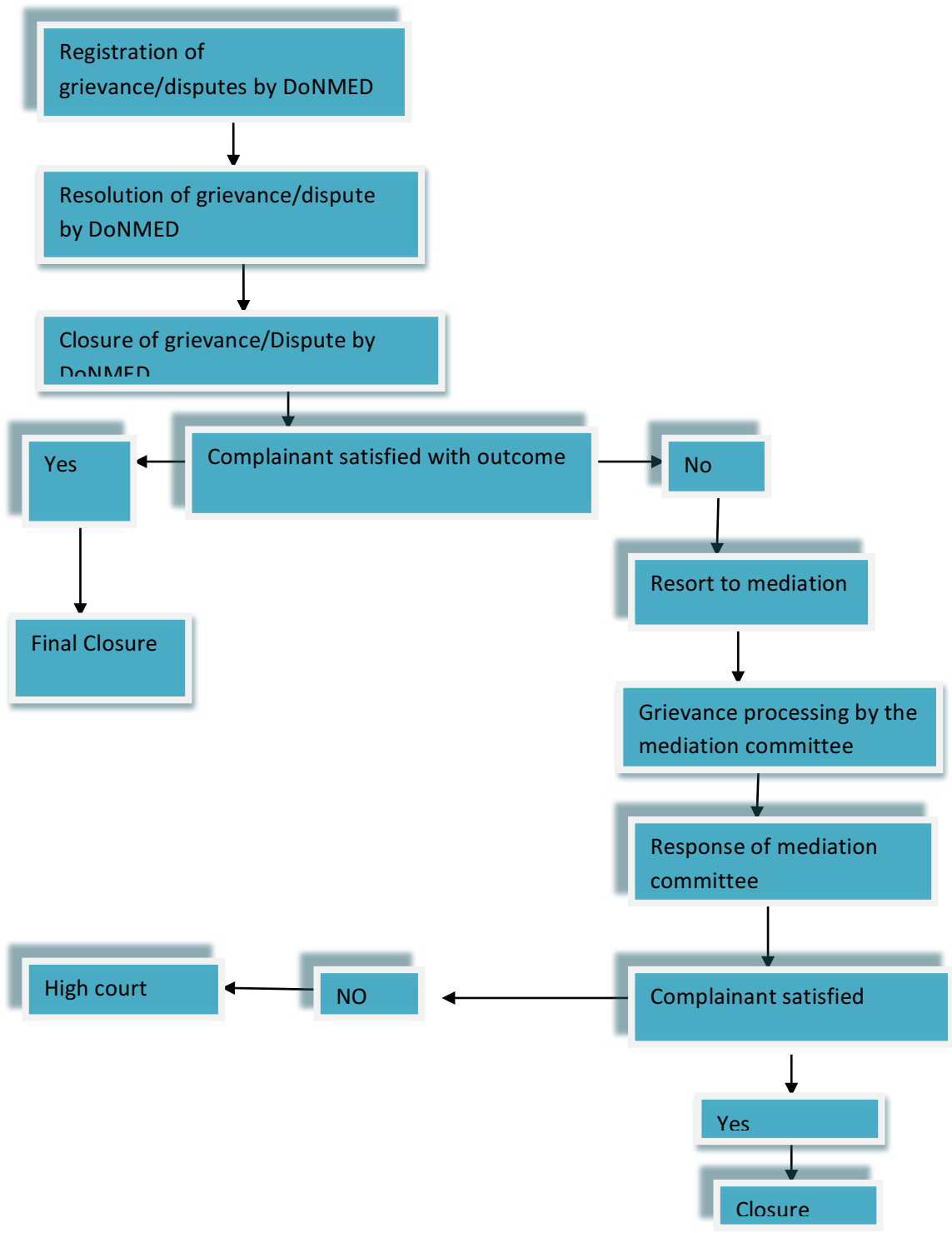


Figure 8.1: Grievance Redress Procedure

...

9 IMPLEMENTATION SCHEDULE

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

9.1 LOAN EFFECTIVENESS AND IMPLEMENTATION PLANNING

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

(a) Constitution of a PIT at the DoNMED

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

(b) Planning for Implementation

This has been ongoing through the environment and Social experts in collaboration with the DoNMeD. The ARAP has been under review. The grievance redress in respect to land compensation has however not yet been constituted.

(c) Orientation to the Project Affected Area

The PIT will take advantage of this Phase to familiarize with the people likely to be displaced.

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

Project implementation will be guided by a project Implementation manual to be developed by the PIT and approved by the DoNMED. Thus, part of planning, the PIT will develop a Project Implementation Manual detailing the roles and responsibilities of PIT officers, operating procedures and rules, etc. In case of the ARAP, the PIM will include guidelines on constitution of core institutions namely the LRCCs, GRC, respective training modules, etc.

(e) Constitution of LRCCs and the GRC

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

9.2 IMPLEMENTATION PHASE ACTIVITIES

Implementation Phase activities will entail the following:-

(a) Mobilization of LRCCs institutions

The RO will move to mobilize the LRCCs by ascertaining that there is one for each Road Section, they have been appropriately constituted, and are adequate. Following this, the RO will arrange training schedules with a view to focusing activities of the PAPs and such training will cover aspects such as leadership qualities, roles, responsibilities and limits of the LRCC, grievance registration procedures, approach to conflict resolution, need for impartiality, etc. Upon

successful training, LRCCs will be equipped with standard stationary including grievance registers, foolscaps, filing material etc.

(b) Mobilization of the GRC

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

9.3 COMPENSATION PROCESS

(a) Confirmation of the Assets Register

At the beginning of the implementation phase, the final alignment of the road upgrading project will be made following which, the Assets register will be crosschecked on the ground to ascertain the final list of PAPs and the status of their assets. The final Assets Register will then be assembled and contracts issued to all PAPs.

(b) Sensitization/Counseling for PAPs

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

(c) Consensus building among Families

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

(d) Final Award and Signing of Contracts

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

(e) Release of Cheques

The PIT will then arrange a schedule for release of cheques on a location basis. Account Payee cheques will be released publicly to each respective PAPs in the presence of respective SCRCCs. The process will be repeated until all PAPs have received their monies to usher in the next phase.

9.4 REMOVAL OF ASSETS

(a) Removal of Economic Assets

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

(b) Replacement of Community Assets

Replacement of community Assets such as infrastructure and water projects will take place under the contract for civil works. Subsequent to this, therefore, the budget for replacement will be computed at the pre-bidding stage and allowed for in the Bills of Quantities for Civil Works. The Contract for Civil Works will bear clauses binding the Contractor for such works to replace all such assets though provision of similar if not better facilities. The contractor will endeavor to minimize disruption of assets that communities rely on for livelihood or social life through ensuring that alternative passage is provided where access roads and foot paths are blocked, alternative landings are provided where public crossing points are blocked, among others. All these will be sealed in the contract and will be monitored through the Monthly Site Meetings.

9.5 COSTS IN THE ARAP IMPLEMENTATION SCHEDULE

Facilitation of the Resettlement Process will require funding channeled to the PMU. In the estimate of this ARAP, a sum equivalent to 30% of the Resettlement Budget has been allocated for this purpose. Details are in Chapter 6 above.

10 PROCEDURE FOR MONITORING AND EVALUATION

10.1 THE CONCEPTS

10.1.1 Monitoring

Monitoring involves the collection and analysis of data on project activities with the applying accruing information to correct and redirect project implementation and management towards target project objectives. Monitoring allows project participants to keep track of project activities, to determine whether project objectives are being achieved, and to make whatever changes are necessary to improve project performance.

10.1.2 Project Evaluation

Project Evaluation is an assessment of project performance and results in light of stated project objectives. Evaluation for purposes of this ARAP is proposed to include a participatory component allowing the project participants to comment on their experience of the project. To be successful, monitoring and evaluation begins with clear project design followed by identification and elaboration of appropriate criteria and indicators. This document provides guidance about incorporating monitoring and evaluation elements in each stage of the project cycle.

10.1.3 Indicators And Means For Verification

Indicators form the key elements of any monitoring and evaluation system. The advantage of identifying indicators is that it provides management and staff with a clear set of targets at each level of performance and ensures that progress can be measured against the targets. Indicators also make possible the comparison of inputs with the completion of outputs and achievement of objectives and goals, thus providing the basis for performance evaluation. For purposes of this ARAP, four categories of indicators have been formulated to facilitate monitoring of Progress, Outputs, Effects, Impacts and Compliance in implementing the project.

10.1.4 Progress/Output Monitoring

For purposes of this ARAP, deliverables (outputs) have been clearly outlined in the Entitlement Matrix and the Assets Register which will form the basis for payment of compensation. Progress will be monitored on the basis of periodic outputs as per the Implementation Schedule and Annual Work Plan while outputs will be monitored on the basis of actual number of PAPs compensated.

Output monitoring will be reported through periodic reports produced by the PIT and backed up by signed consent certificates by PAPs. These reports will form the basis for routine external monitoring by both GOK agencies and the Financier.

10.1.5 Effect Monitoring

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

10.1.6 Impact monitoring

This is the process through which, assessment of the overall achievement of the project goal will be made. Specifically, this is the system that will generate data to gauge success towards

implementation of this ARAP in terms of impact of the resettlement on the PAPs. The basis for impact monitoring is the baseline social-economic survey data against which the wellbeing of PAPs will be compared. Internal monitoring will employ criteria as outlined in **Table 10.1** below. Monitoring will take place based on four broad themes against which, 26 criteria have been formulated.

Table 10.1: Criteria and Indicators for Internal Monitoring

Criteria for Internal Monitoring	Indicators for Monitoring	Yes/ No	Provide data	Recommended Action	New deadline	Responsibility
Budget and Time Frame	Has the PIT been constituted?					
	Have all land acquisition and resettlement staff been appointed and mobilized for the field and office work on schedule?					
	Have capacity building and training activities been completed on schedule?					
	Are resettlement implementation activities being achieved against agreed implementation plan?					
	Are funds for resettlement being allocated on time?					
	Have resettlement offices received the scheduled funds?					
	Have funds been disbursed according to ARAP?					
	Has the social preparation phase taken place as scheduled?					
	Has all land been acquired and occupied in time for project implementation?					
Delivery of PAP Entitlements	Have all PAPs received entitlements according to numbers and categories of loss set out in the Entitlement Matrix?					
	Are assistance measures being implemented as planned for host communities?					
	Is restoration proceeding for social infrastructure and services?					
	Are PAPs able to access schools, health services, public transport, cultural sites and activities?					
	Are income and livelihood restoration activities being implemented as set out in the income restoration plan, for example utilizing replacement land, commencement of production, numbers of PAPs trained and provided with jobs, micro-credit disbursed, number of income generating activities assisted?					

Criteria for Internal Monitoring	Indicators for Monitoring	Yes/ No	Provide data	Recommended Action	New deadline	Responsibility
	Have affected businesses received entitlements including transfer and payments for net losses resulting from lost business and stoppage of production?					
Consultation, Grievance and Special Issues	Have consultations taken place as scheduled including meetings, groups, community activities? Have disclosure meetings taken place?					
	How many PAPs know their entitlements? How many know if they have been received?					
	How many LRCC and LECs been constituted?					
	Has a GRC been set up within DoNMED?					
	Have any PAPs used the grievance redress procedures? What were the outcomes?					
	Have conflicts been resolved?					
	Was the social preparation phase implemented?					
Benefit Monitoring	What changes have occurred in patterns of occupation, production and resource use compared to the pre-project situation?					
	What changes have occurred in income and expenditure patterns compared to pre-project situation? What have been the changes in cost of living compared to pre-project situation? Have PAP incomes kept pace with these changes?					
	What changes have taken place in key social and cultural parameters relating to living standards?					
	What changes have occurred for vulnerable groups?					

10.2 Procedure For Internal Monitoring

10.2.1 Development of Criteria and Indicators for Monitoring

Criteria and indicators for the three categories of monitoring will be detailed and elaborated in the Project Implementation Manual. As well, the monitoring frequency and content of monitoring reports will all be detailed in the PIM. It is however expected that monitoring will be reported in quarterly and annual reports of the PMU.

10.2.2 Responsibility for Internal Monitoring

Routine monitoring and reporting will be the responsibility of the PIT reporting to DoNMED: Indeed, for project monitoring will fit in the overall monitoring plan of the entire project under auspices of the DoNMED. Figure 10.1 outlines the schematic procedure for internal monitoring proposed for the road upgrading project .

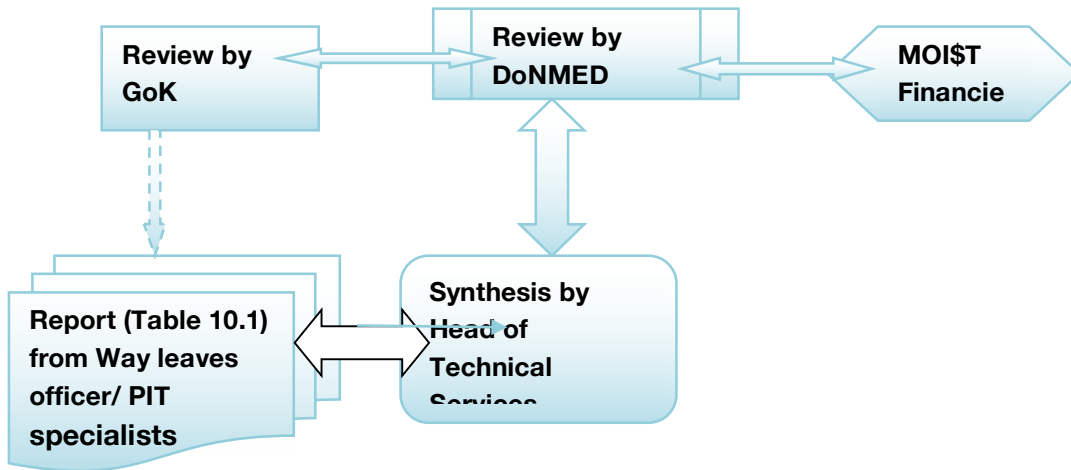


Figure 10.1: Procedure for Internal Monitoring

Within the internal monitoring framework, subject matter specialists (including the Resettlement Officer) of the PIT will file monitoring reports to the Project Coordinator who will review, collaborate and submit to the DoNMED Head office. The latter will review and synthesize monitoring reports to:-

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

Upon internal verification of all reports, DoNMED will submit the same to both GoK and the Financier for review and advice through a feedback mechanism **Figure 10.1** provides a format

through which, monitoring output will be reported by the DoNMED Board.

10.3 EXTERNAL MONITORING

External monitoring of the ARAP will be undertaken alongside that of other project components. It is expected that DoNMED will mount routine monitoring in response to PIT reports. Other External Monitoring will take place as follows:-

- **Monitoring by the Financier** In the capacity of Strategic Partner to the project, the Financier will routinely field monitoring teams who will screen the project for overall adherence to conditions for effectiveness.
- **Post Project Monitoring:** In order to determine final impacts of the resettlement activity, a final evaluation cum an impact assessment will be undertaken 6 -12 months after conclusion of resettlement to evaluate whether the intended objectives were realized. For this, suitable baseline indicators related to income, assets, land ownership, expenditure pattern of key activities, housing conditions, access to basic amenities, demographic characteristics, indebtedness, etc will be applied. Table 10.2 outlines the criteria that will be applied towards gauging and documenting project impacts.

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

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

Comprehensive TORs to guide recruitment and conduct of the External Monitoring Expert are provided in **Appendix 10.1** below. Essentially, the TORs outline the core pillars of the evaluation studies namely:-

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

- Time frame for M&E
- Reporting requirements

Table 10.2: Criteria (Themes) in External Monitoring

Criteria for monitoring	Indicators for monitoring
Basic Information on PAP Households	Location
	Composition and structure, ages, educational and skill levels and gender of household head
	Access to health, education, utilities and other social services
	Housing type
	Land and other resource owning and using patterns
	Occupations and employment patterns , income sources and levels
	Agricultural production data (for rural households)
	Participation in neighbor-hood or community groups and access to cultural sites and events
	Value of all assets forming entitlements and resettlement entitlements
Livelihood Restoration programme	Were house compensation payments made free of depreciation, fees or transfer costs to the PAP?
	Have perceptions of “community” been restored?
	Have PAPs achieved replacement of key social and cultural elements?
	Were compensation payments free of deductions for depreciation, fees or transfer costs to the PAP?
	Was compensation payment sufficient to replace lost assets?
	Did income substitution allow for re-establishment of enterprises and production?
	Have enterprises affected received sufficient assistance to re-establish themselves?
	Have vulnerable groups been provided income earning opportunities? Are these effective and sustainable?
	Do jobs provided restore pre-project income levels and living standards?
Levels of satisfaction	How much do PAPs know about resettlement procedures and entitlements? Do PAPs know their entitlements?
	Do they know if these have been met?
	How do APs assess the extent to which their own living standards and livelihoods have been restored?

	How much do PAPs know about grievance procedures and conflict resolution procedures?
Effectiveness of resettlement planning	Were the PAPs and their assets correctly enumerated?
	Was the time frame and budget sufficient to meet objectives?
	How did resettlement implementers deal with unforeseen problems?
	Were there unintended environmental impacts?
Other Impacts	Were there unintended impacts on employment or incomes?

• • •

APPENDICES

Appendix 5.1: Minutes of meeting with the PAPs and County Leaders

Appendix 6.1(a): Costed Inventory of Landed PAPs with photographs

Appendix 6.1(b): Inventory of PAPs with structures with photographs

Appendix 10.1: TORs for External Monitoring