



Kenya National Highways Authority

Quality Highways, Better Connections

Feasibility Study in the Mombasa Gate Bridge Construction Project, Mombasa County



**Resettlement Action Plan-RAP
Final Report
Revised March 2019**

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EXECUTIVE SUMMARY

Background

The Government of the Republic of Kenya (GoK), through the Kenya National Highway Authority (KeNHA) and support of the Government of Japan through JICA, is developing the Mombasa Gate Bridge (MGB) Construction Project with the aim of providing a functional road connection between Mombasa Island and Mombasa Mainland South both separated by the Likoni Channel which is currently crossed through ferries operated by the Kenya Ferry Service (KFS).

As part of ongoing Feasibility Study for the MGB and, in keeping with both Kenyan and international requirements for sustainable development, the MGB Project was subjected to Japan International Cooperation Agency (JICA) Guidelines for Environmental and Social Considerations which picked displacement from property and livelihoods as a key possibility in the Project. Subsequently a Resettlement Action Plan (RAP) has been prepared to guide mitigation measure of displacement impacts.

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

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

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

The RAP Team

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

- Mr. Michael Wairagu-EIA Lead Expert
- Ms. Nancy Kanyi-Sociologist
- Prof. Njuguna -Land Economics/Valuer
- Edwin Owino –Statistician/ Field Team Leader

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

APPROACH TO THE RAP STUDY

Objectives in the RAP Study

The Study TORs prescribed objectives as follows:-

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

Scope of the RAP Study

General: The TORs required the Consultant to prepare the Resettlement Action Plan (RAP) in accordance with regulations and guidelines of Kenya and with the JICA Guidelines and World Bank Safeguard Policies as follows.

- The Land Act 2012;
- The Land Registration Act 2012;
- The Environment and Land Court Act 2011;
- JICA Guidelines for Environmental and Social Considerations 2010, and
- World Bank (WB) Safeguard Policies OP 4.12 Annex A Involuntary Resettlement Instruments:

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

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

- Confirmation of the right of way (ROW) and present land use: The Team was to confirm the selected route and required ROW of the Mombasa Gate Bridge Project. And investigate the present land use and land value issued by public agencies and potential project affected persons (PAPs), and confirm any illegal land occupancy.
- Identify involuntary resettlement systems and organizational responsibilities in the Republic of Kenya: The Team was required to identify laws and regulations on land acquisition and involuntary resettlement in the Republic of Kenya (hereinafter referred to as “Kenya”) and assess the gaps with JICA guidelines and WB OP 4.12. Based on the findings, the Local Consultant shall propose a project policy to bridge the gaps.
- The Local Consultant shall also identify the agencies responsible for and related to implementing resettlement activities in Kenya.
- Implement Socio-Economic Surveys including Census Survey, Assets and Land Survey, and Livelihood and Living Survey: This was to include:-
 - ✓ Census Survey conducted on PAPs on the project site to confirm the number of persons/families (including land owners, tenants, business owners, employees and illegal settlers) to be compensated and assisted for the restoration of livelihood. The Team shall enumerate the affected families based on the results of the census survey.

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- ✓ Assets & Land Survey conducted on properties and interest held by all occupants on the project site which will be physically and economically affected by the project to itemize properties and their quantity. This survey shall be conducted along with the Census Survey.
- ✓ Livelihood and Living Survey shall be conducted on the minimum 20% of total occupants on the project site, and collect base data on the project affected households including their characteristics, livelihoods and living standard, as well as information on vulnerable groups or persons. In the case of resettlement sites are provided, PAPs perceptions toward the relocation/resettlement sites shall also be surveyed.

Preparation of the RAP Report

In line with requirements of the TORs, content of the RAP Report was aligned to OP 4.12 Annex A and the World Banks’s “Involuntary Resettlement Source Book Planning and Implementation in Development Projects.” A content for the RAP was stipulated as outlined in Box One below:-

Box One: Contents of the RAP Report

a. Necessity of the resettlement
<ol style="list-style-type: none"> 1) Project outline, project site, and component(s) that require land acquisition. 2) Examined alternatives to avoid or minimize the land acquisition and resettlement shall be stated. Scoping of the Alternatives under the Environmental Impact Assessment will be provided for this purpose.
b. Legislative framework for the Resettlement
<ol style="list-style-type: none"> 1) The laws and regulations on the land acquisition and resettlement in the Kenya and the gaps between JICA Guidelines/WB OP 4.12. 2) The proposed project policy to bridge the gaps, especially on following items: eligibility for the compensation and restoration of livelihood assistance, estimation methods for the compensation, a payment period of the compensation, rehabilitation measures, and grievance redress mechanisms.
c. Socio-economic Surveys and Replacement Cost Study
<ol style="list-style-type: none"> 1) Census Survey Confirm the number of persons/families (including land owners, tenants, business owners, employees and informal settlers) to be compensated and assisted for the restoration of livelihood. The day to commence the survey shall be declared as the cut-off date. Any resident who encroaches on the project sites after the cut-off date shall not be entitled to the compensation nor any other form of resettlement assistance measures. All the Project Affected Persons(PAPs) should be surveyed regardless the extent of the effect. 2) Assets & Land Survey Properties owned by all occupants on the project sites to itemize properties and their quantity which will be physically and economically affected by the project. 3) Livelihood & Living Survey Base data of the project affected households including their characteristics, livelihoods and living standard, as well as information on vulnerable groups or persons. PAPs perceptions toward the relocation/resettlement sites shall be collected and analysed in the case of resettlement sites are provided. At least 20 % of the PAPs should be surveyed. 4) Replacement Cost Study (RCS) Base data to determine the compensation for affected land, structures, improvements

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<p>crops, trees, and other non-land based income (e.g. fishponds) to ensure that PAPs are compensated at current market values at the time of compensation. The RCS report shall be attached to the RAP.</p>
<p>d. Valuation of the Compensation for the Losses and Resettlement Assistance Measures</p>
<ol style="list-style-type: none"> 1) Criteria for the eligibility of compensation and resettlement assistance measures (including land owners, tenants, business owners, employees, and squatters) shall be formulated. 2) Compensation for the eligible people who make livings with land-based activities will be prioritized: the provision of alternative lands with equivalent site location and potential productivity over the pecuniary compensation. If this condition is not achievable, reasons shall be stated. 3) Compensation procedure and responsible agencies in charge shall be stated in accordance with the full replacement cost defined in the WB OP 4.12. In reviewing the compensation procedures, the value of representative properties and assets owned by the eligible people shall be appraised, and a gap of compensation standards developed by the full replacement cost and the domestic laws and regulations shall be examined. If a gap is identified, a compensation procedure for the required replacement cost and responsible agencies shall be examined to bridge the gap. If the physical relocation is involved, relocation cost shall be also provided to the eligible people. 4) Resettlement measure shall be formulated to improve or at least restore their living to the pre-displacement levels. The measures shall include compensation, provision of employment opportunities, compensation of salaries, credit facilities, job training. However, these measures shall be technically and economically feasible, and prepared through consultations with eligible people.
<p>e. Preparation of Resettlement Site Development Plan for Illegal Settlers</p>
<p>Relocation sites are to have higher productive potentials and location advantages as well as in other factors to the acquisition sites. Development plans shall be prepared for housing, infrastructure (e.g., water supply, feeder roads), and social services (e.g., schools, health services). On these issues, the Local Consultant shall implement a feasibility study for the resettlement site development plan. Also, an EIA report, mitigation measures, and an environmental management plan are also prepared.</p>
<p>f. Income Restoration and Livelihood Development Program</p>
<p>The Income Restoration and Livelihood Development Program shall be prepared to assist severely affected and vulnerable persons/families to restore their incomes at pre-project levels. Compensation of lost assets and livelihood restoration program shall be planned based on the result of Socio-Economic Survey (e.g. vulnerable group).</p>
<p>g. Grievance Redress Procedures</p>
<p>Procedures shall be examined in their simplicity, affordability, and reliability to justify an application of either existing procedures or a new procedure for settlement of disputes arising from resettlement. Details of the adapted procedure shall include authorities in charge and their organizational responsibilities, members of the organization, step-by-step process for registering and addressing grievances, review procedures and response time, and communication modes.</p>
<p>h. Implementation Arrangement</p>
<p>Responsible organizations (KeNHA, local authorities, consultants, NGOs, etc.) for the resettlement implementation shall be identified. The authorities and their organizational</p>

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responsibilities shall be described including roles, organization structure, role of departments and staff, employment criteria, and budget. If necessary, examine the capacity the organizations to handle resettlement.
i. Implementation Schedule
Physical relocation shall be scheduled to commence when 1) necessary assistance such as compensation and relocation arrangement has been completed and 2) infrastructure and social services (such as hospitals and schools) of relocation site have been developed.
j. Costs and Budget
A schedule of the entire expenditure shall be prepared by cost and by item, including compensation, development cost for resettlement sites, cost for resettlement assistance measures, and administration fees. Compensation shall be estimated based on the valuation of representative lands and assets of the eligible people. Also potential funding sources are investigated in the case of funds required for land acquisitions and relocation are not stipulated by the laws and regulations of Kenya or KeNHA.
k. Monitoring and Supervision
<ol style="list-style-type: none"> 1) An internal monitoring mechanism of KeNHA and a form required for monitoring the progress of resettlement activities shall be developed. The monitoring form shall include indicators for measuring inputs, outputs, and outcomes for resettlement activities. 2) An external independent monitoring mechanism shall also be examined and its TOR shall also be prepared to set up. 3) Evaluation methods to confirm the completion of resettlement activities as scheduled shall be reviewed. A TOR shall be prepared.
l. Community Participation
Strategies shall be prepared to ensure public involvements through the process of resettlement planning to implementation. The adopted strategies shall include stakeholder analysis, public consultations on the alternatives in the initial design stage, project explanation to each household through the socio-economic survey, focus group discussions with the vulnerable groups or persons, public consultations on the RAP, dissemination of relocation information leaflets, implementation and monitoring mechanism involved the displaced persons.
1 Related Information
<ol style="list-style-type: none"> 1) Land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by locally recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area. 2) The patterns of social interaction in the affected communities, including social networks and social support systems, and how they will be affected by the project. 3) Public infrastructure and social services that will be affected. 4) Social and cultural characteristics of displaced communities, including a description of formal and informal institutions (e.g., community organizations, ritual groups, nongovernmental organizations (NGOs)) that may be relevant to the consultation strategy and to designing and implementing the resettlement activities.

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Stakeholder Meetings and Focus Group Discussions

In order to ensure public involvements in the planning process of the resettlement, the RAP Team was required to hold three rounds of stakeholder meetings as specified in Box Two below.

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

Box Two: Schedule of Stakeholder Meetings

Schedule	Venues	Expected Participants	Agenda
1 st Round	Four locations i) Mombasa Island side ii) Mainland side	- Potential PAPs, - Representatives of the residents, - Local and central government authorities, - NGOs - Relevant authorities	- Present the outline of the Project - Explain the compensation policy of RAP - Explain the socio-economic surveys - Request for the cooperation in the surveys
2 nd Round	Four locations i) Mombasa Island side ii) Mainland side	- ditto -	- Explain the outline of the results of the RAP survey - Explain the eligibility and entitlement matrix - Explain the implementation schedule
3 rd Round	Four locations i) Mombasa Island side ii) Mainland side	- ditto -	- Confirmation on awareness for compensations

FINDINGS FROM THE RAP STUDY

Gross displacement: The MGB will potentially displace 2,589 PAUs bringing together Households, CBEs, landowners and wage earners. Similarly, a total of 3,230 PAPs will potentially be displaced. This number is based on inventory of those that reside within the traverse exclusive of those working there. Commercial and Business Enterprise operators totalling 883 will also be displaced.

Table ES 01: Distribution of PAUs and PAPs by category

	Type of loss	No of PAUs			Number of PAPs		
		Legal	Non-legal	Total	Legal	Non-legal	Total
1	HH (Structure Owner on Gov Land)	944	3	947	1,297	13	1,310
2	HH (Structure Owner on Private land)	9	0	9	51	0	51
3	HH (Tenants)	750	0	750	986	0	986
4	CBEs (Structure owner on Gov land)	179	91	270	179	91	270
5	CBE (Structure owner on Private land)	324	0	324	324	0	324
6	CBEs (Tenant)	271	18	289	271	18	289
	Sub Total	2,477	112	2,589	3,108	122	3,230

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	Non-displaced						
7	Community owned structures & PCR's	19	0	19	0	0	0
8	Land owners	-	-	-	63	0	63
9	Wage earners	-	-	-	439	227	666
10	Fishermen	-	-	-	500	0	500
	Grand Total (1-10)	2,496	112	2,608	4,110	349	4,459

Source: This Study

*Legal refers to those legally occupying land; Non legal means those illegally occupying land

Land assets

From inventory of PAPs undertaken, development of the 13.2 Km Bridge Project inclusive of Approach Roads is likely to affect a total of 725 plots accounting for 62.6 hectares of land. Both Likoni and Shika Adabu Locations account for 73.8% of the plots traversed and 76.8% of the total land to be acquired. Essentially, Likoni sub-county will account for 82.5% of all land to be acquired for the Project.

Table ES 02: Distribution of landed PAPs by project section

SN	Location	Scope of acquisition by admin unit				Scope of acquisition by Land- use category			
		Area (ha)	% share	Total parcels	%share	LUC	Total parcels	Area (ha)	% share
1	Majengo	5.44	8.69	135	18.62	Commercial	125	5.11	8.2
2						Residential	10	0.33	0.5
3	Likoni	26.38	42.15	272	37.52	Commercial	38	2.07	3.3
4						Residential	234	24.31	38.8
5	Mtongwe	3.57	5.7	46	6.34	Residential	46	3.57	5.7
6	Shika Adabu	21.71	34.69	263	36.28	Commercial	68	2.1	3.4
7						Residential	141	7.57	12.1
8						Agricultural	54	12.04	19.2
9	Ngombeni	5.49	8.77	9	1.24	Agricultural	9	5.49	8.8
	Total	62.59	100	725	100		725	62.59	100

Source: This Study

All potentially acquired land in Mombasa Island is privately owned under leasehold. Within Mombasa Mainland South, over 95% of traversed land is formerly GOK land under diverse stages of conversion to private land. Most of the land was surveyed and allotment letters issued implying that, though title vests with government, it is under legal occupation. Overall, 88% of all potential acquisition is government land in transition.

Total structures to be displaced

Total buildings: The entire bridge construction project will displace a total of 1201 housing structures, of which 76.8% are accounted for by Likoni and Shika Adabu Locations of Mainland South. Majengo location of Mombasa Island accounts for 19.2% of all buildings which includes 27 of the 32 single storied buildings, all double storeys, 15 of the 16 3-storeys and all other multi-storied buildings. A total of 691 permanent buildings equivalent to 57.5% of all building structures are

likely to be displaced followed by temporary buildings at 42.5%. Of these, single storied permanent buildings are majority at 51.1%.

The 398 temporary structures in MMS are owned by 250 people (82 land owners and 168 encroachers).

Other assorted privately-owned assets: A total of 1038 assorted assets, majority of which are ancillary to non-affected buildings are likely to be displaced. Among these, septic tanks and gates are majority but also include 68 functional boreholes and 29 wells. Majengo location of Mombasa Sub County accounts for 32.6% of all assorted assets including 41 of the 68 boreholes and 76 of the 77 walls traversed.

Displacement of Commercial Business Enterprises –CBEs

A total of 833 Commercial Business Enterprises (CBEs) both small and large are likely to be displaced by the bridge construction project (Table below). Of these, Majengo in Mombasa County accounts for the bulk at 589 while commercial rentals are dominant at 401 followed by food kiosks at 171. Within the MMS area, CBEs are mainly encountered along both the A14 and Mtongwe roads targeted for expansion. Some of the ancestral assets to be displaced: (a) Kilindini Bar on Mwakilingo Street, (b) A cross-generational pen trap at the mouth of Mweza Creek

Table ES 03: Tally of CBEs traversed

Admin Location	CBEs																				Total									
	Commercial rentals	Restaurants	Hotels	Liquor store	Trading	Whole sale	Retail shops	Hardware	MV garages	MV sales yards	Unisex saloons	Hospital	Tyres	Autospares	C&F	Food processor	Godowns	Furniture	Textiles	Transporters		Pharmaceutical	Scrap metals	Carwash	Advertising	Shops	Schools	Food kiosks	Water kiosks	Gas stations
Majengo	279	2	2	1	79	13	26	0	4	6	2	1	1	1	2	3	3	1	2	1	1	1	3	1	52	3	106	0	1	597
Likoni	52	0	0	0	0	0	5	2	0	0	0	0	0	0	0	0	0	2	1	0	0	0	0	0	5	0	13	2	2	84
Mtongwe	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	3
Shika Adabu	70	0	0	0	0	0	25	2	1	0	0	0	0	0	0	0	0	7	2	0	0	0	0	0	36	3	52	0	1	199
Ng'ombeni	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Totals	401	2	2	1	79	13	56	4	5	6	2	1	1	1	2	3	3	10	5	1	1	1	3	1	96	6	171	2	4	883

Source: This Study



Source: This Study

Common Property Resources (CPRs): A total of 19 CPRs will be affected (Table ES 03) including 3 cemeteries, 7 schools, 3 self-help group facilities and 4 churches.

Table ES 04: Potentially impacted Common Property Resources

Administrative unit	Cemeteries	Shrine	Public Schools	Churches	SHG Structures	Totals
Majengo	1	0	3	0	0	4
Likoni	1	1	4	2	3	11
Mtongwe	0	0	0	1	0	1
Shika Adabu	1	1	0	1	0	3
Ng'ombeni	0	0	0	0	0	0
Totals	3	2	7	4	3	19

Shrines: None of the 4 shrines situated along the traverse of the MGB will be displaced. However, the MGB will traverse the outer (secondary) grounds of Kaya Makame on the shoreline of Port Reitz Creek at Bofu Maskani and entirely displace a minor one owned by the Mwahima family in Shika Adabu. Access to three other minor shrines situated on the cliffs of Mweza Creek could be blocked during construction and operation stages of the project.

Public Schools: A total of 7 public schools occur within the traverse of the MGB and its access roads and are likely to be affected. However, none of the CPRs will suffer total displacement as the Bridge project will only affect minor portions such as perimeter fencing, part of a classroom etc while the rest of the property is left intact.

Water Projects: A total of 3 self help water projects mainly fed by boreholes and wells currently used for community water supply are likely to be displaced in developing the MGB.

Displacement of Infrastructure:

Transport and other infrastructure will be displaced as summarised in tabular form below.

Table ES 05: Potentially impacted infrastructure

Admin Location	Transport system	Others
Majengo	Lumumba Road, Mwakiringo Street, Machakos Road, Moi Avenue, Archbishop Makarios Rd, Mnazi Mmoja Street	Power distribution infrastructure, Telecommunication ducts and wires, sewer lines , storm drainage lines
	Railway infrastructure	
Likoni	Shoreline road through Javi la Wageni,	Bridge passes overhead
Mtongwe	Old Mtongwe Rd and bridges	Power lines
Shika Adabu	New Mtongwe Road	Power lines
Ng'ombeni	None	None

Source: This Study

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Displacement of Trees and crops

A total of 16,713 assorted agroforestry trees are likely to be displaced in the development of the MGB and assorted roads, 63.4% of which occur in Shika Adabu. Timber trees alone account for 51.22% of the trees followed by Fruit trees account for 46.8%. Out of 16,713 trees inventoried 2,835 juvenile trees were considered natural regenerates that have no investment component which can form basis for compensation.

MEASURES TO MITIGATE DISPLACEMENT IMPACT

Preparation of this Resettlement Action Plan has been guided by core principles stipulated by OP 4.12 namely:-

Minimization of Displacement: JICA Guidelines for Environmental and Social Considerations (ii) on Analysis of Measures to Mitigate Impacts require that ‘Multiple alternatives must be examined in order to avoid or minimize adverse impacts and to choose better project options in terms of environmental and social considerations. In the examination of measures, priority is to be given to avoidance of environmental impacts; when this is not possible, minimization and reduction of impacts must be considered next. Compensation measures must be examined only when impacts cannot be avoided by any of the aforementioned measures. JICA Guideline (vii) on Involuntary Resettlement states thus:-

- a) Involuntary resettlement and loss of means of livelihood are to be avoided when feasible by exploring all viable alternatives. When, after such an examination, avoidance is proved unfeasible, effective measures to minimize impact and to compensate for losses must be agreed upon with the people who will be affected.
- b) Appropriate participation by affected people and their communities must be promoted in the planning, implementation, and monitoring of resettlement action plans and measures to prevent the loss of their means of livelihood. In addition, appropriate and accessible grievance mechanisms must be established for the affected people and their communities.
- c) Avoidance or minimization of displacement was achieved by analysis of design alternatives that optimized project benefits while simultaneously minimizing land acquisition requirements, and bringing total project costs down by avoiding or reducing the need for involuntary resettlement. Wherever inhabited dwellings are encountered along the proposed road alignment, re-routing was adopted with a view to avoiding high density settlements thus minimizing potential displacement.

Livelihood Restoration: One of the objectives of this RAP is to ensure that livelihoods are improved or restored to pre-displacement levels. Compensation for affected property therefore sought to facilitate full and smooth recovery without exposing the PAPs to vulnerability and this applies to people who are not necessarily physically displaced but who are affected by a land loss that affects their sustainability, too. The following principles will be followed in effecting payment of compensation for lost assets:-

- Compensation shall be paid prior to acquisition;
- All PAPs will be entitled to compensation at replacement cost for affected assets, incomes and businesses. The only condition is that they must have occupied the land before the declaration of cut-off date.

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- Compensation for structures shall include: the full cost of materials and labour required for reconstructing a building of similar and preferably better quality and standing. In other words, the affected person must be able to have their structure rebuilt in a different location using the compensation paid for the old building. Depreciation will not be taken into account while calculating the cost of affected structures. The Compensation package will also include all applicable taxes and rates, cost of moving, such as transport costs as well as any associated land titling or transfer fees.
- Extensive disclosure to all PAPs.

The need to cushion Vulnerable Groups: This RAP recognizes the need for providing additional support to the vulnerable groups to facilitate faster adjustment in terms of relocating property and re-establishing of any business lost. Vulnerable groups among the PAPs, such as those below the poverty line, the landless, the elderly, physically handicapped female-headed households, require special support to ensure their condition is not worsened. Vulnerable households therefore may have different needs from most households, or needs unrelated to the amount of land available to them. Additional measures for assistance have been identified in the RAP.

Entitlement Matrix: In line with requirements of JICA’s Guidelines and OP 4.12, an Entitlement Matrix has been prepared to guide resolution of all physical and economic displacement in line with JICA Policy. Formulation of the EMP was guided by principles as follows:-

A fair and equitable compensation package must be negotiated: The Kenyan law only recognizes title holders as *bonafide* claimants to land. However, it is JICA’s Guidelines’ requirement that ‘People who must be resettled involuntarily and people whose means of livelihood will be hindered or lost must be sufficiently compensated and supported by project proponents etc. in a timely manner.

Resettlement must be seen as an inevitable upfront cost: This requires that all compensation be effected before ground breaking in line with JICA’s Guidelines that ‘Prior compensation, at full replacement cost, must be provided as much as possible. Host countries must make efforts to enable people affected by projects and to improve their standard of living, income opportunities, and production levels, or at least to restore these to pre-project levels. Measures to achieve this may include: providing land and monetary compensation for losses (to cover land and property losses), supporting means for an alternative sustainable livelihood, and providing the expenses necessary for the relocation and re-establishment of communities at resettlement sites.

COSTS AND BUDGET IN THE RAP

Cost Components in the RAP

A summary of cost components in the RAP is provided in Table ES 06.

Table ES 06 Summary and geographical distribution of components of the Direct Costs

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County	Project section by sub-county	Admin Location	Land (Ha)	Tally of structures									KRC rails and ramps	CBES	CPRs	Trees
				NS	1S	2S	3S	4S	5S	6S	7S	Temp S				
Mombasa	Mombasa Island	Majengo	5.44	47	27	24	15	0	1	1	3	112		597	8	598
	Likoni	Likoni	26.38	298	1	0	1	0	0	0	0	124		84	8	4536
		Mtongwe	3.57	48	0	0	0	0	0	0	0	0		3	2	267
		Shika	21.71	221	4	0	0	0	0	0	0	274		199	6	10602
Kwale	Matuga	Nso'ombe	5.49	0	0	0	0	0	0	0	0	0		0	1	710
	Totals	5	62.59	614	32	24	16	0	1	1	3	510	883	25	16713	

Source: This Study

Key: NS-Non storied; 1-7S-number of Floors; Temp S-Temporary Structure; KRC-Kenya Railways Corporation; CBES Commercial and Business Enterprise; CPRs-Common Property Resources

Gross Budget

The total estimated cost for implementation of the RAP is approximately 9.403 billion Ksh as provided in Table ES 07 below. All resettlement funds will be provided by the KeNHA based on the financing plan agreed by the GoK and the Donor.

Table ES 07: Gross RAP Budget

Item	Component	Cost	Share
Direct Costs	Land	3,054,505,740	33.2%
	Structure Demolition	418,919,100	4.5%
	Structure	2,671,989,100	29.0%
	Other Assets	565,497,340	6.1%
	CBES & Loss of Income	2,366,711,600	25.7%
	CPRs	9,916,500	0.1%
	Trees	30,167,500	0.3%
	Assistance	80,000,000	0.9%
	External Monitoring	20,000,000	0.2%
Sub Total (a)		9,217,706,880	100%
Operation Cost (b) (1% of (a))		92,177,069	
Sub Total RAP Cost (c) ((a)+(b))		9,309,883,949	
Contingency (d) (1% of (c))		93,098,839	
Gross RAP Cost ((c)+(d))		9,402,982,788	

Source: This Study

Direct Costs:

Compensation costs have been computed based on the entitlement as applied to the Assets Register to yield to the Costed Assets Register issued as Appendix 8.1 to this RAP. Cost schedules applied in determination of direct costs have been generated through the Replacement Cost Study reported in Appendix 8.2. A total of Ksh 8,698,787,780 has been identified under this vote, of which compensation for land is the largest share accounting for 33.5% followed by Structures and CBES at 29.3 and 26.0% respectively.

Indirect costs:

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

RAP Implementation Costs/Operation costs: A sum equivalent to 1% of Direct Costs has been provisioned to be drawn by KENHA in implementing the RAP. Expenses envisaged include field costs, capacity building for RAP structures, setting up of a Project Implementation Team, among others.

Monitoring Costs: A lumpsum of Ksh 20 million has been set aside for use by KENHA in the hiring of consultants to undertake external monitoring of RAP implementation.

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

Demolition costs: Demolition costs entail a provision for KeNHA to utilize in demolition of structures in target Right of Way. This amount has been calculated as follows:-

Rationalization of demolition costs

Section	Type of structure	Area (m ²)	Unit cost (USD)	Cost to unit (USD)
MI	HLB	39,301	60	23,58,060
	LRB	22,968	30	689,040
	MS	15,535	10	155,350
	Others	5,000	10	50,000
MMS	MH	64,992	10	649,920
	OH	16,057	10	160,570
	MS	2,291	10	22,910
	Others	2,120	10	21,200
Totals		168,264		4,107,050
KSh equivalent				418,919,100

Key: HLB-Highrise building, LRB- Low-rise building; MS Minor Structure, MH-Main House; OH-Other House

Contingency Costs

An item of Ksh 93,098,839 equivalent to 1% of the total costs including operation cost has been allowed to cater for contingencies in costs and unknown impacts .

Assistance to Vulnerable Groups

Additional measures to assist Vulnerable Groups will be pursued as follows;-

- a. **Creating of special programmes:** While ordinary PAPs will undergo training on modalities of coping either the displacement, elderly and sick PAPs will not be available for such. It will thus require the Resettlement Officer to tailor make special programmes to reach out to such

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people and help them understand and cope with the shock of displacement. If not properly cushioned, such PAPs may find the shock to be too much to handle.

- b. Monitoring management of proceeds from compensation:** If left alone, some PAPs have no capacity to manage monies accruing from compensation and would end up losing the money without replacing lost assets. The Resettlement Officer will require to network with PAPs to establish modalities of how such PAPs can be assisted to re-place lost assets without being exploited.
- c. Project related job opportunities:** Severely affected persons will be prioritized in gaining employment in the works linked to the Project. KENHA will ensure that this is included in the contractors' specifications wherever possible.

Assistance through Corporate Social Responsibility (CSR) Programme: The CSR programme should aim at addressing community felt needs as documented during in the socio-economic survey conducted for this RAP, among which is poverty alleviation. With this in focus, KENHA will explore means of remaining engaged in communities adversely affected by the Project with support to local community infrastructure project and local reforestation and conservation groups providing possible entry points.

INSTITUTIONAL, ADMINISTRATIVE AND MONITORING FRAMEWORK

This RAP will be implemented as part of the Mombasa Gate Bridge Construction Project (MGB) which is a project of the Government of the Republic of Kenya with the financial support of the Government of Japan through JICA. As a project within KeNHA, the MGB will be mainstreamed into the administrative and management infrastructure of this Authority with the Head Office assuming the project management role. A GRM has been put in place to resolve all grievances emanating from land acquisition in Project Development.

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

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

- Provide timely information about all resettlement arising as a result of development of the road upgrading project ;
- Identify any grievances that have not been resolved at local level and require resolution through the involvement of the PMU;
- Document the timely completion of project resettlement obligations for all permanent and temporary losses;

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- Evaluate whether all PAPs have been compensated in accordance with the requirements of this RAP and that PAPs have higher living standards in comparison to their living standards before physical or economic displacement.
- Evaluate whether all PAPs have been compensated in accordance with the requirements of this RAP and that PAPs have higher living standards

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

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

Comprehensive TORs to guide recruitment and conduct of the External Monitoring Expert are provided in Appendix 9.2.

PROCEDURE FOR RAP IMPLEMENTATION

Implementation Phase activities will entail the following: -

Due process by KeNHA Through MOTID

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

- i) Section 107(1) of the Land Act 2012 requires the acquiring body to obtain prior approval from their respective Cabinet Secretary before the Commission commences the acquisition process
- ii) Cadastral drawings showing how the infrastructure excises each land parcel, the parcel list table detailing land parcel numbers, total area of land parcels and acreage affected by the infrastructure for each parcel. These drawings shall be submitted to the Commission for scrutiny and records
- iii) Provide a listing for parcel numbers indicating the plot reference number, registered owner and affected acreage column in acres (for easy appreciation by project affected persons). This should be submitted in both soft and hard copy

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- iv) Official searches of affected land parcels. The Commission shall assist where necessary.
- v) The Environmental Impact Assessment Report (EIA) and appropriate approvals/certification for the project.
- vi) The Resettlement Action Plan (RAP) report.
- vii) Acknowledgement on availability of funds to allow prompt compensation as provided in the Constitution. The Commission will request the entities to remit compensation money into the Land Compensation Fund (Section 153 of the Land Act 2012) to be administered by the Commission. This is in the purview that in previous acquisitions, the compensation payments were delayed as opposed to the promptness required by the Law
- viii) All applicants will have to take the Land Acquisition and Committee sub-committee members on a site tour for general appreciation of the project in respective locations that will be affected. This will enable informed decision making.
- ix) A final survey for vesting of the acquired land to the National or County Government will have to be done by the acquiring authority. The Commission can assist in this exercise at costs borne by the acquiring body.

Due Process by the NLC

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

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

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

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

Final Award and Signing of Contracts: Upon finalization of the assets register, and revaluation by the NLC, the final compensation sum will be computed and adjusted for inflation and other processes. Based on this sum, offers /contracts will be issued to PAPs who will sign their approval witnessed by their respective chairmen of LPCs and the area chief. Within this contract, each PAP will undertake

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to remove affected assets within one month of accepting payment. The PAPs will then be required to open bank accounts through which, payments will be made directly to PAPs.

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

Mobilization of LPCs institutions: Once funding has been procured, the RO will move to mobilize the LPCs by ascertaining that there is one for each location Majengo, Likoni, Mtongwe, Shika Adabu/ Ng’ombeni and the Fishermen and that they have been appropriately constituted, and are adequate. Following this, the RO will arrange training schedules with a view to focusing activities of the PAPs and such training will cover aspects such as leadership qualities, roles, responsibilities and limits of the LPC, grievance registration procedures, approach to conflict resolution, need for impartiality, etc. Upon successful training, LPCs will be equipped with standard stationary including grievance registers, foolscaps, filing material etc.

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

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

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

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CONCLUSION AND RECOMMENDATIONS

Overview: This study set out to prepare a legally anchored framework to guide resolution of all displacement impact occasioned by the GOK and JICA funded project to develop the Mombasa Gate Bridge. Mombasa Gate Bridge Project aimed at providing a functional road connection between Mombasa Island and the Mombasa Mainland South. Development of the Project was guided by an overriding goal of minimizing displacement impact coupled with formulation of a RAP to resolve any inevitable displacement.

Displacement impact: A major observation of this RAP Report is that by far, the greatest impact of the Project Design Works is the pre-emptive minimization of displacement through selection of an alignment that traverses the least populated areas, position manifested by the fact that, though the 13.2-kilometre long MGB Project which will traverse and acquire 62.59 hectares of land in a traverse where population densities sometimes exceed 12,000 persons per square kilometre, the total potential displacement was computed at only 3,230 people.

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

Most of the PAPs will only suffer partial displacement of land-based assets while the non-affected portions remain viable in which case, a resettlement site was not considered necessary for investigation under the RAP. All such potentially displaced people have been engaged either in person all collectively during public barazas and, except for one family, all are united in support of the Project and are unanimous in favour of cash compensation provided that such payment is just, adequate and prompt to enable them to relocate affected assets and move on with their lives. For some few, Ganjoni-based PAPs considered vulnerable because of very advanced age, the wish is to be allowed peaceful transition which still in their current homes. Others, such as proprietors of the Kilindini Bar are considered vulnerable on grounds of potential loss of family heritage that has changed hands down generations and the impending sentimental loss will require careful restitution.

Recommendations:

Fair, Just and prompt compensation: This RAP recommends that fair and just compensation be paid promptly for all livelihoods, shelter and assets marked for displacement by the Project. Article 40(4) of the Constitution should be invoked to allow compensation for land and developments to non-title deed holders and squatters who have not access to any other land and shelter.

In all cases, compensation will be paid upfront of site hand-over to contractors in order to allow all aggrieved parties adequate time to amicably resolve disputes. Payments should further be extended to compensate for all project neighbouring assets which, though not directly displaced are likely to

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be damaged by construction activity. This includes all assets within detours, diversion points and on the edge of construction areas.

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

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

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

The Question of Fishermen, the BMU and County Fisheries Office: Between, these three groups, it has not been possible to establish who the genuine fishermen are, which fishermen are likely to be displaced by the MGB and, who indeed merits compensation. Though the BMU insists that all the Likoni fishermen totalling 500 stakeholders will be displaced, our estimates put this number at 200 to comprise the Bofu Maskani and Kokoni Landing sites which are deemed likely to be displaced by the MGB. As such, as at the time of compensation, a comprehensive, multi-agency vetting process should employed to weed out impostors from genuine fishermen.

Abbreviations

Asl	Above sea level
BMU	Beach Management Unit
Cap	Chapter of the Laws of Kenya
CBE	Commercial Business Enterprise
CPR	Common Property Resources
CRO	Coast Regional Office of KeNHA
CSR	Corporate Social Responsibility
DCC	Deputy County Commissioner
EHS	Environment Health and Safety
EMCA	Environment Management and Coordination Act
EM	Entitlement Matrix
ESIA	Environmental and Social Impact Assessment
FY	Financial Year
GoK	Government of Kenya
GPS	Global Positioning System
GRC	Grievance Redress Committee
GRM	Grievance Redress Mechanism
Ha	Hectare
HRB	High-rise building
JICA	Japan International Cooperation Agency
JST	JICA Study Team
CAA	Kenya Airports Authority
KeNHA	Kenya National Highway Authority
KFS	Kenya Ferry Service
KMA	Kenya Maritime Authority
KPA	Kenya Ports Authority
Ksh	Kenya Shilling
LN	Legal Notice
LEC	Location Elders Committee
LPC	Location PAP Committee
LRB	Low-rise building
m	meter
MCG	Mombasa County Government
MGB	Mombasa Gate Bridge
MH	Main House
MI	Mombasa Island
MMS	Mombasa Mainland South
MOTID	Ministry of Transport and Infrastructure Development
M&E	Monitoring & Evaluation
MS	Minor Structure
NEMA	National Environment Management Authority
NLC	National Land Commission
O&M	Operation and Maintenance
OP/BP	Operating/Bank Policy of World Bank
OS	Other Structure

PAH	Project Affected Households
PAPs	Project Affected Persons
PAU	Project Affected Unit
PIT	Project Implementation Team
PMU	Project Management Unit
RAP	Resettlement Action Plan
RR	Road Reserve
RO	Resettlement Officer
ROW	Right of Way
SGPs	Safe Guard Policies
TORs	Terms of Reference
US\$ /USD	United States of America Dollar
WB	World Bank

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CHAPTER ONE: INTRODUCTION

1.1: Background

The Government of the Republic of Kenya (GoK), through the Kenya National Highway Authority (KeNHA) and support of the Government of Japan through JICA, is developing the Mombasa Gate Bridge (MGB) Construction Project with the aim of providing a functional road connection between Mombasa Island and Mombasa Mainland South both separated by the Likoni Channel which is currently crossed through ferries operated by the Kenya Ferry Service (KFS). Overtime, increase in volume of passenger and vehicular traffic across the channel have challenged the viability of the ferry service especially during peak demand hours which are characterised by huge backlogs of humanity and motor vehicles traffic waiting to cross. Expansion of the ferry service is constrained by the need to keep the Channel free for use by vessels calling into the Kilindini harbour, and whose movement requires interruption of the Ferry Service thus constraining time-efficient demand management. Provision of a bridge connecting Mombasa Island to the Mainland South Coast as anticipated in the Mombasa Gate Bridge Construction Project is targeted at eliminating this bottleneck and further underpinning on-going initiatives aimed at opening up Kenya's South Coast for economic development.

A recently concluded pre-feasibility Study for the Mombasa Gate Bridge Construction Project defined the project in terms of site location, engineering scope, social and environmental impacts, physical and economic displacement impacts, among others thus paving the way for Feasibility Study (F/S) and Detailed Design (D/D). As part of the Feasibility Study and, in keeping with both Kenyan and international requirements for sustainable development, the MGB Project was subjected to Japan International Cooperation Agency (JICA) Guidelines for Environmental and Social Considerations which picked displacement from property and livelihoods as a key possibility in the Project. Subsequently a Resettlement Action Plan (RAP) has been prepared to guide mitigation measure of displacement impacts (Appendix 1.1 for TORs). This Report unveils the findings and recommendations of the Resettlement Action Plan process and was prepared under contract by Lead Experts from Repcon Associates, an Environmental Firm of Experts duly registered and licensed by NEMA (NEMA Registration No. 0002) and other Government of Kenya (GoK) agencies. Profiles of the key staff who undertook the study is presented in Appendix 1.2.

1.2: Scope of the RAP Study

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

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

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1.3: Justification for the RAP

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

1.4: The RAP Team

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

- Mr. Michael Wairagu-EIA Lead Expert
- Ms. Nancy Kanyi-Sociologist
- Prof. Njuguna -Land Economics/Valuer
- Edwin Owino –Statistician/ Field Team Leader
- Eunice Njunge –Logistics
- Egal Kombo-Field Technician

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

1.5: Principles of this RAP

Preparation of this Resettlement Action Plan has been guided by core principles stipulated by OP 4.12 namely:-

1.5.1: Minimization of Displacement

In line with OP 4.12, displacement under the project has been minimized through adoption of design procedures which are also consistent with JICA Safeguards as follows:-

- i) *JICA Guidelines for Environmental and Social Considerations (ii)* on Analysis of Measures to Mitigate Impacts require that 'Multiple alternatives must be examined in order to avoid or minimize adverse impacts and to choose better project options in terms of environmental and social considerations. In the examination of measures, priority is to be given to avoidance of environmental impacts; when this is not possible, minimization and reduction of impacts must be considered next. Compensation measures must be examined only when impacts cannot be avoided by any of the aforementioned measures.
- ii) *JICA Guideline (vii) on Involuntary Resettlement states that'*
 - d) Involuntary resettlement and loss of means of livelihood are to be avoided when feasible by exploring all viable alternatives. When, after such an examination, avoidance is proved unfeasible, effective measures to minimize impact and to compensate for losses must be agreed upon with the people who will be affected.
 - e) Appropriate participation by affected people and their communities must be promoted in the planning, implementation, and monitoring of resettlement action plans and measures to prevent the loss of their means of livelihood. In addition, appropriate and accessible grievance mechanisms must be established for the affected people and their communities.

f) For projects that will result in large-scale involuntary resettlement, resettlement action plans must be prepared and made available to the public. In preparing a resettlement action plan, consultations must be held with the affected people and their communities based on sufficient information made available to them in advance. When consultations are held, explanations must be given in a form, manner, and language that are understandable to the affected people. It is desirable that the resettlement action plan include elements laid out in Annex A of OP 4.12. The first directive of OP 4.12 is to avoid or minimize physical or economic displacement of people to the extent possible (see the World Bank Operational Policy (OP) 4.12) on Involuntary Resettlement, Para. 2a). Avoidance or minimization is achieved by analysis of design alternatives that will optimize project benefits while simultaneously minimizing land acquisition requirements, and bringing total project costs down by avoiding or reducing the need for involuntary resettlement. Wherever inhabited dwellings are encountered along the proposed road alignment, re-routing was adopted with a view to avoiding high density settlements thus minimizing potential displacement.

In line with these principle, a total of 11 alignment options were investigated (Fig 1.1) leading to selection of one (Option D) that had most minimal displacement and other impacts.

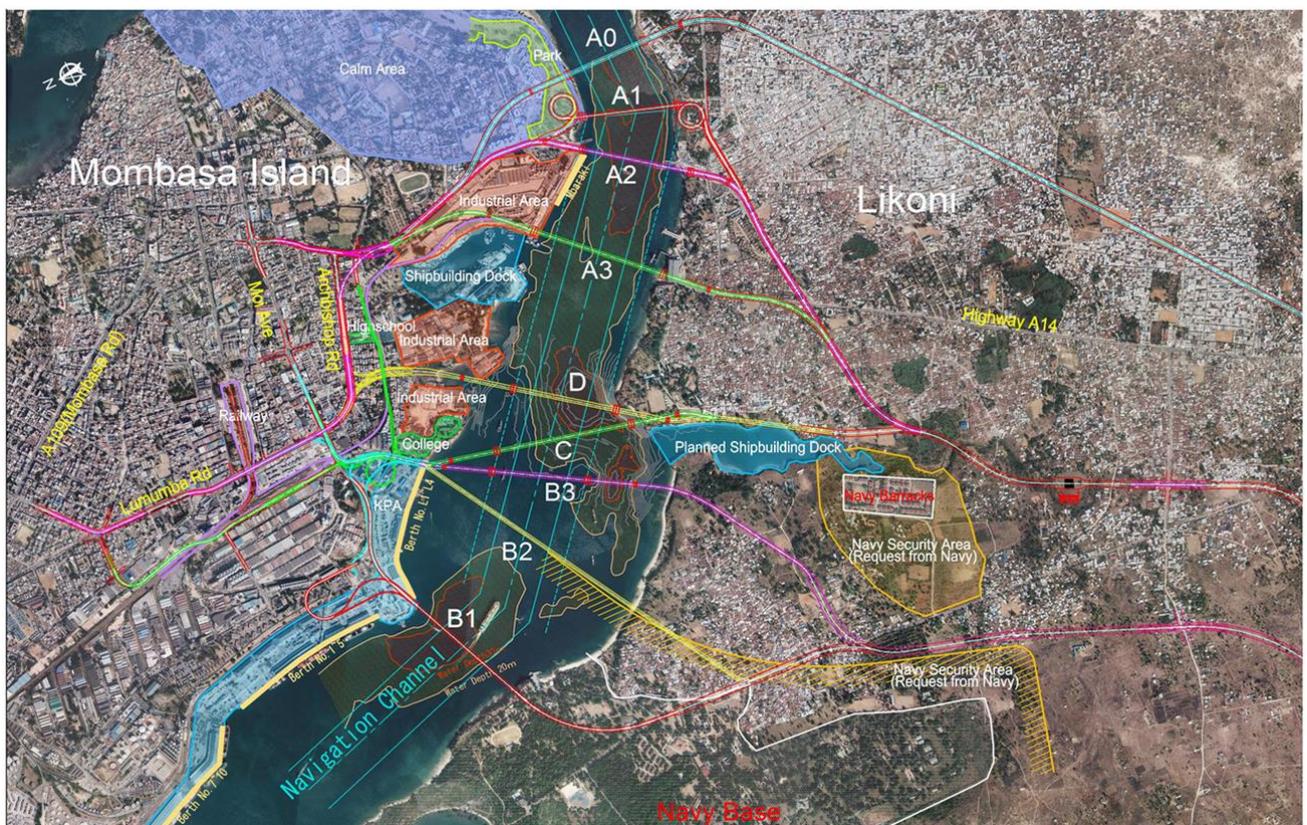


Fig 1.1: The Alternatives investigated

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1.5.2: Need to identify and scope socio-economic, demographic and cultural baseline of affected persons

The second directive of OP 4.12 demands that, where population displacement is unavoidable, to identify the nature and extent of the socio-economic impacts of a project which will require involuntary resettlement, such as the taking of land, shelter, assets and/or other means of livelihood (see OP 4.12, Para. 3). Such impacts may affect persons with formal legal rights to land and other assets, persons with no such rights but whose claims to land and other assets are recognized in other ways under national laws, and persons who have no recognizable legal right or claim to the land or other assets upon which they depend (see OP 4.12, Para 15). The first two categories of displaced persons are to be provided compensation for their losses and other assistance to resettle and re-establish their livelihoods under the terms of the RAP. The third type of displaced persons is provided assistance to resettle and re-establish their livelihoods under the terms of the RAP in lieu of compensation for the land and assets they occupy (see OP 4.12, Para 16). International good practice calls for resettlement assistance for those who lack formally recognized land rights because, in many cases, these people have had no viable, legal avenue to assert formal land claims, for example those living in areas where long-standing communal or customary tenure regimes operate but where the state has failed to formalize their rights.

A Social Impact Analysis in the context of involuntary resettlement was prepared to encompass: -

- Identification of stakeholders and interests,
- Baseline demographic data including the census of population and properties affected, and
- Identification of socio-economic incomes levels and cultural production and distribution systems that generate such incomes.

1.5.3: Livelihood Restoration

One of the objectives of this RAP is to ensure that livelihoods are improved or restored to pre-displacement levels. Compensation for affected property therefore sought to facilitate full and smooth recovery without exposing the PAPs to vulnerability and this applies to people who are not necessarily physically displaced but who are affected by a land loss that affects their sustainability, too. The following principles were followed in effecting payment of compensation for lost assets:-

- Compensation shall be paid prior to acquisition;
- Given the socio-economic baseline within the traverse, majority of PAPs subsist below the poverty line- a fact clearly manifested by the poor state of their dwellings. Thus, many of the houses to be affected by the road upgrading project are in very miserable state and replacing them to the current status cannot be a goal for any objective RAP. Subsequent to this observation, valuation of houses has aimed at providing better housing to all affected PAPs as a major strategy to uplifting the standards of living. That way, PAPs become voluntary collaborators to the project. This position has been taken in line with aspirations of OP4.12 and that of the GoK as far as poverty alleviation is concerned.
- All PAPs will be entitled to compensation at replacement cost for affected assets, incomes and businesses. The only condition is that they must have occupied the land before the declaration of cut-off date.
- Compensation for structures shall include: the full cost of materials and labour required for reconstructing a building of similar and preferably better quality and standing. In other words, the affected person must be able to have their structure rebuilt in a different location using the

compensation paid for the old building. Depreciation will not be taken into account while calculating the cost of affected structures. The Compensation package will also include all applicable taxes and rates, cost of moving, such as transport costs as well as any associated land titling or transfer fees.

- Extensive disclosure to all PAPs.

1.5.4: The need to cushion Vulnerable Groups

This RAP recognizes the need for providing additional support to the vulnerable groups to facilitate faster adjustment in terms of relocating property and re-establishing of any business lost. Vulnerable groups among the PAPs, such as those below the poverty line, the landless, the elderly, physically handicapped female-headed households, require special support to ensure their condition is not worsened. Vulnerable households therefore may have different needs from most households, or needs unrelated to the amount of land available to them. Additional measures for assistance have been identified in the RAP.

1.5.5: A fair and equitable compensation package must be negotiated

The Kenyan law only recognizes title holders as *bonafide* claimants to land. However, it is JICA's Guidelines' requirement that 'People who must be resettled involuntarily and people whose means of livelihood will be hindered or lost must be sufficiently compensated and supported by project proponents etc. in a timely manner.

1.5.6: Resettlement must be seen as an inevitable upfront cost

This requires that all compensation be effected before ground breaking in line with JICA's Guidelines that 'Prior compensation, at full replacement cost, must be provided as much as possible. Host countries must make efforts to enable people affected by projects and to improve their standard of living, income opportunities, and production levels, or at least to restore these to pre-project levels. Measures to achieve this may include: providing land and monetary compensation for losses (to cover land and property losses), supporting means for an alternative sustainable livelihood, and providing the expenses necessary for the relocation and re-establishment of communities at resettlement sites.

In line with requirements of JICA's Guidelines and OP 4.12, the entitlement matrix has provision to ensure fair compensation to squatters and encroachers. As well, the social-economic survey conducted as part of this RAP identified Orphans, some female headed households, elderly people as being vulnerable and in need of cushioning.

1.6: Project Description

1.6.1: Ownership

The MGB is a project of the Government of Kenya implemented by the Kenya National Highways Authority (KeNHA) with support of the Government of Japan through JICA at an estimated cost of Ksh 82 Billion. The Project will however largely be implemented within Mombasa County under jurisdiction of Mombasa County Government. Other core stakeholders to the project are summarised in tabular form in Table 1.1.

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Table 1.1: Summary analysis of stakeholders in development of the MGB Project

SN	Stakeholder	Main Stake
1	Ministry of Transport and Infrastructure Development	Project Owner
2	Kenya National Highway Authority-KeNHA	Executing Agency under direction of the Ministry of Transport and Infrastructure
3	Government of Japan through JICA	Project Funder
4	National Land Commission	Is the designated National Land Acquiring Agency under the Land Act 2012
5	Mombasa County Government	Enjoys political, administrative and planning jurisdiction
6	Kenya Ports Authority	Legal jurisdiction over Likoni Channel

Source: This Study

For purposes of this RAP Study, KeNHA in capacity of Executing Agency is the designated Acquiring Agency while the National land Commission-NLC is the designated National Acquiring Agency.

1.6.2: Administrative jurisdiction

In terms of administrative jurisdiction, the Project starts in Mombasa County and terminates in Kwale County (Fig 1.2) in the process, traversing three (3) sub-Counties and Five (5) Administrative Locations (Table 1.2).

Table 1.2: Administrative jurisdiction of MGB

County	Sub county	Location	Components
Mombasa	Mombasa Island	Majengo	KM00-King'orani Prison
			Moi Avenue junction
			Liwatoni Interchange
			Archbishop Makarios interchange at Mnazi Moja road
			Main Pier
	Likoni	Likoni	Likoni Pier
			Touchdown point
			Mtongwe
Shika Adabu	Shika Adabu	Mtongwe Rd Interchange	
		Mtongwe Road widening	
A7 Road interchange	A7 Road interchange	A7 Road interchange	
		Ziwani interchange with MSBR	
Kwale	Matuga	Ng'ombeni	Ziwani interchange with MSBR

Source: This Study

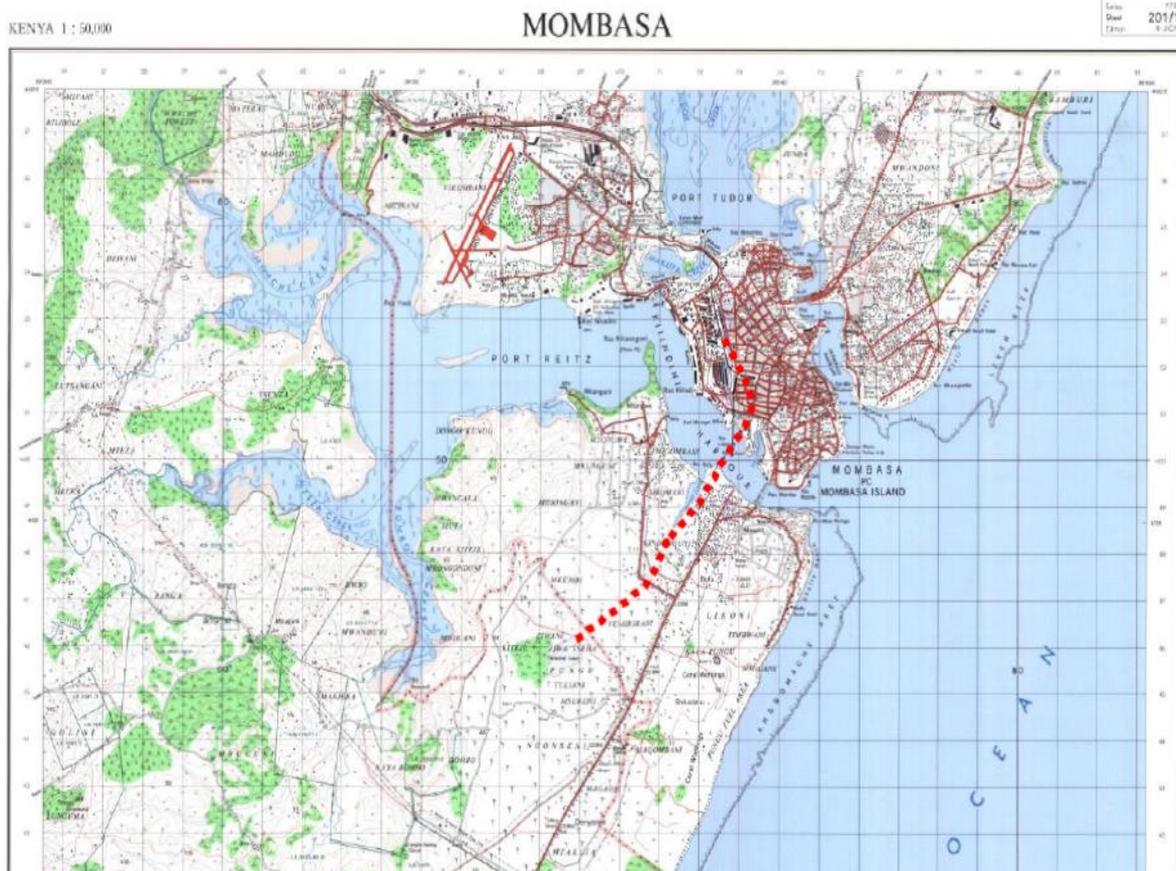


Fig 1.2: Travers of the MGB Project Through Mombasa and Kwale Counties

1.6.3: Project Components

Detailed components of the MGB deemed to have displacement impact and which are the subject of the RAP Study are summarized in Table 2.3 below while Figure 1.3 below traces the entire traverse of the 10.4-Kilometer-long MGB Project including associated developments. The entire bridge assembly has 2 major components namely the main bridge and approach roads (Figure 1.1 and 1.2). Bridge design also allows for six interchanges through which traffic will access the bridge.

In the Mombasa Island side, the bridge structure starts on Lumumba Road near King'orani Prison in rising gently to cross over the Mombasa Railway Station, then overhead Moi Avenue to the west of Canon Towers. Henceforth, the bridge precedes overhead Archbishop Makarios Rd to Ganjoni, turns right overhead Liwatoni and crosses Likoni Channel to enter Likoni side at the ruins of the abandoned Sultan of Zanzibar Place near Puma Primary school. The bridge then proceeds along the eastern shoreline of Mweza creek and starts descending ultimately touching down near the Javi la Wageni Primary School from where it proceeds as a 4 lane highway to cross Mtongwe Rd at the Post Office then joining the Mombasa Southern Bypass at Ziwani on the boundary with Kwale County.

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Table 1.3: Possible sources of displacement in the MGB Construction project:

Sector	Intervention	Scope	Specification
Roadworks	Main approach road	Lumumba, over Mwakiringo Street, overhead Archbishop Makarios Rd, turns right at Liwatoni proceeding southwards to cross creek between COMACO and Yatch club.	2.8Km
	Branch access road	Archbishop Makarios Rd to join the main bridge at Liwatoni	
	Main approach road	Bridge enters Likoni at Bofu Maskani, proceeds southwards to cross Mtongwe road, curves to the SW in Shika Adabu and continues to join the Southern Bypass at Ziwani	4.7Km
	Widening works	Widening of Mtongwe Rd and A14 Road	1.6Km
Other interventions	Interchanges	3 interchanges at Moi Avenue, Liwatoni and Archbishop Makarios/Mnazi Mmoja roads	6
		3 interchanges at Mtongwe Rd crossing A14/ Mtongwe Rd Junction and the Ziwani Junction with Mombasa Southern Bypass	
	Weigh Bridge Station	There is proposal to acquire 30 acres land at Mtongwe for construction of a weighbridge	30 acres

Source: This Study

In section below, design specification (mainly with) that have displacement impacts have been outlined.

1.6.4: Design specifications for the bridge structure

Bridge dimensions: Figure 1.1 provides a schematic layout of the bridge structure. A 1.4 kilometer-long steel cable-stayed comprised of three spans supported by 4 piers on both the Mombasa Island and Likoni sides of the channel is proposed. The main span is 660 meters long and will be anchored by 2 piers mounted at the shallow shore line on Mombasa side and in front of the Zanzibar Palace Ruins on the Likoni side. Side spans will be 330m long and will be supported on 2 additional piers on either side.

multiple uses. A bridge across the over 600m wide channel must make provision for vessels to access and leave the Kilindini Harbour while vehicles pass overhead and then on into Mombasa City roads must therefore be quite high with appropriate slopes at reasonable cost. Given such considerations, clearances have been provided for as schematically indicated in Figure.2.2 above.

Provision for vertical navigation clearance: A clearance of 69m above the highest water level has been provided to allow for the highest draft vessels to enter and leave the Kilindini harbour. Any vessels taller than this calling into the Port in future have the option of docking in the Mbaraki area.

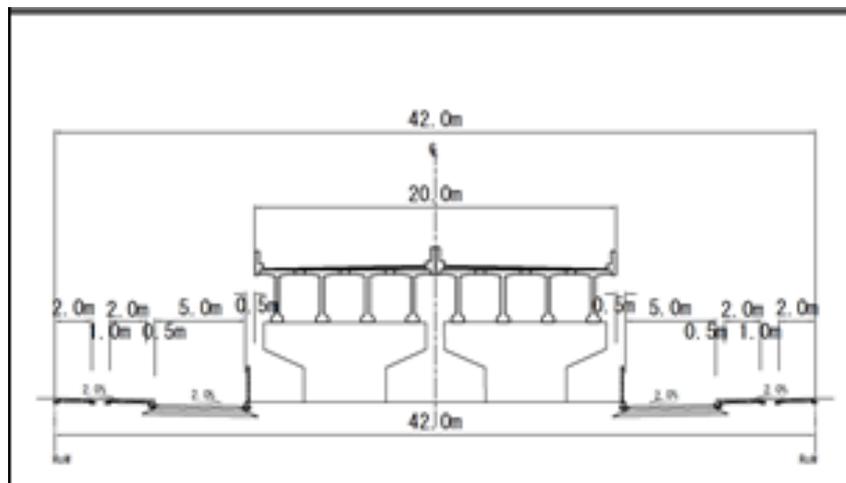
Provision for lateral navigation clearance: Out of the 600 m of span width at the proposed bridge construction site, 300m on the deeper, Likoni side have been identified for use by vessels navigating into and out of the Harbour with a 150m allowance on either side in case of vessels going out of control. There is therefore, a whole 600m clearance in between the 2 bridge piers, the Island side of which will be protected with rubber fenders as an anti-collision measure for small vessels navigating the shallow waters.

Provision for aeronautical clearance: Bridge elevation at the top has been set at 204m *asl* (2.2) in conformity with the 210m aeronautical capping imposed by the Kenya Civil Aviation Authority.

1.6.5: Design specifications for approach roads

Three categories of approach roads are anticipated as follows:-

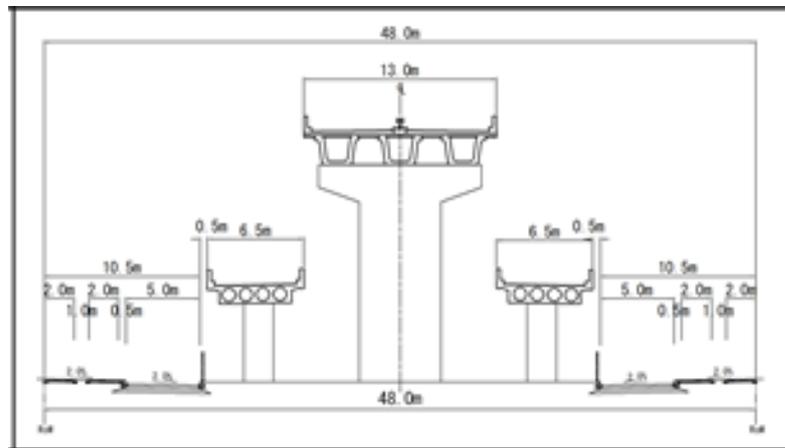
Two-lane carriage way/viaduct: At Km00 start point, the bridge will take off from Lumumba road as a 2-lane elevated viaduct (Figure 1.4) side roads/ service lanes. The viaduct will proceed till Moi Avenue interchange where it will acquire 2 ramps to serve Moi Avenue. This section has an ROW of 42 meters.



Source: JICA Survey Team
Figure 1.4: Two lane carriage

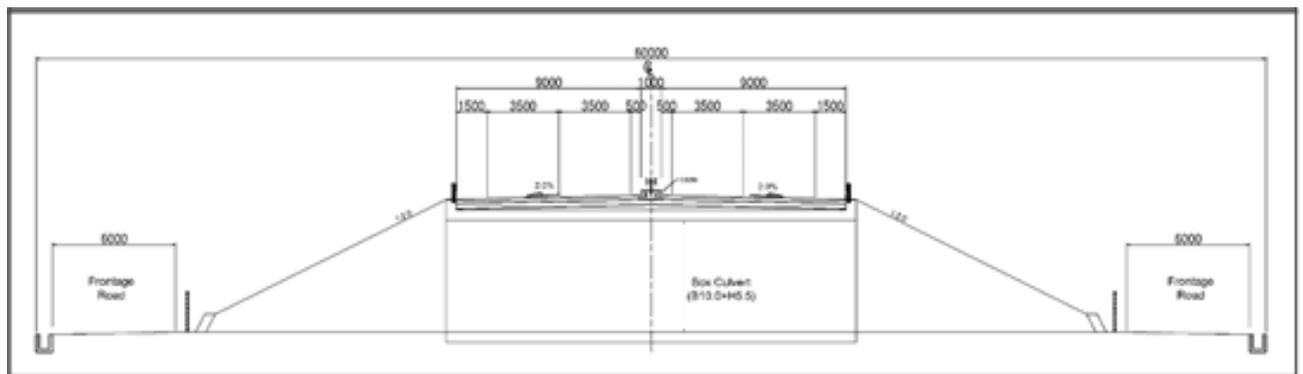
Two lane double carriage roads with ramps: At Moi Avenue, the Viaduct road will receive two ramps to now comprise a 2 lane main line and single lane ramp ways on either side (Figure 1.5). The side lanes will be used to either direct or discharge traffic to and from the main bridge into

Archbishop Makarios and Moi Avenue roads in Mombasa. This is the widest section of the Project at 48 meters.



Source: JICA Survey Team
Figure 1.5: A 2-lane carriage way with ramp roads

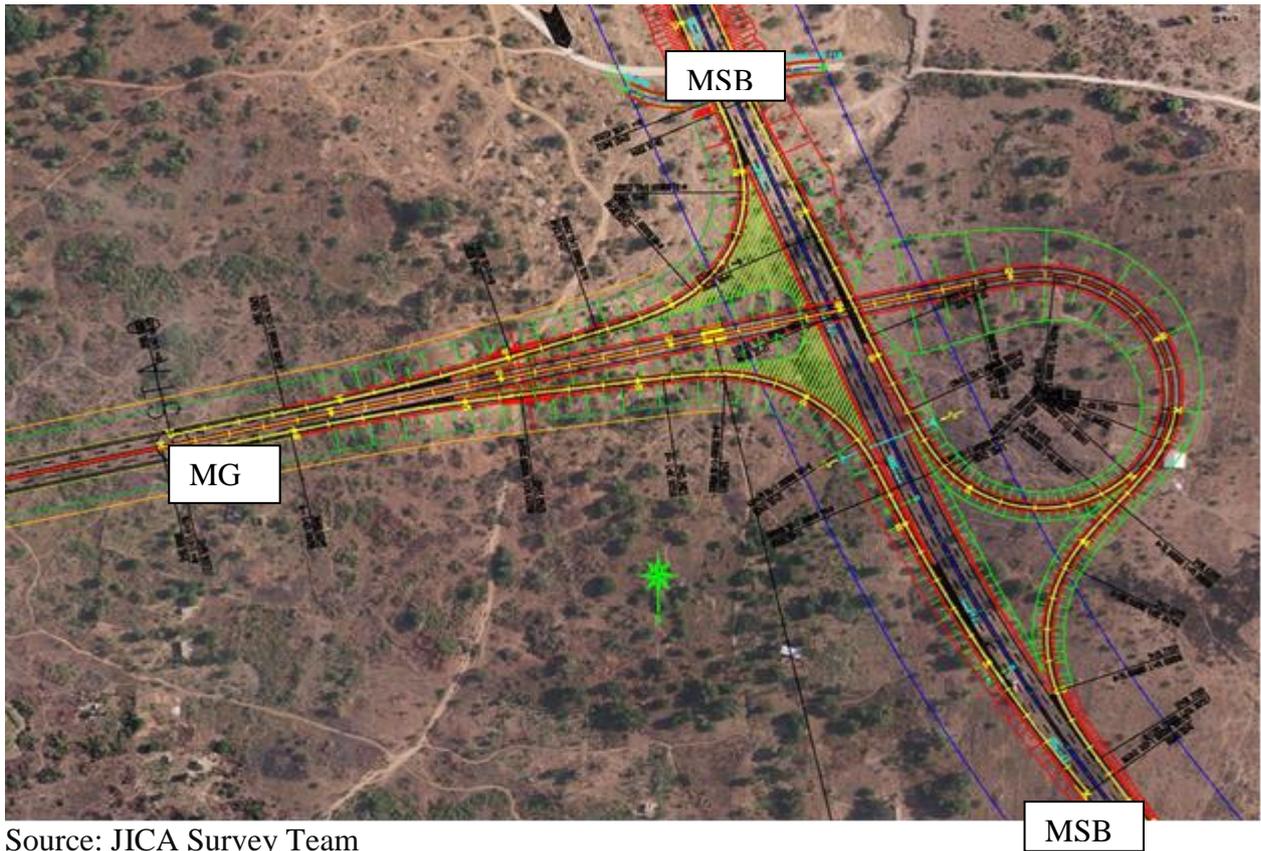
4-lane double carriage roads: Figure 1.6 presents a cross section of a four-lane single carriage road which will be used to connect directly to the bridge on the Likoni side, thereafter proceeding for 4.7 kilometers till the project end at the interchange with the Southern Bypass Road. This main line will be franked by 5m wide service lanes on either side to serve the traverse area requiring a total ROW equivalent to 60 meters.



Source: JICA Survey Team

Figure 1.6: 4-lane double carriage road

Interchanges: A total of six interchanges will be used to link the bridge to local roads. All have diverse dimensions and land requirements,



Source: JICA Survey Team

Figure 1.7: The Ziwani Interchange connecting MGB to the Mombasa Southern Bypass Road

1.7: Presentation of this RAP Report

This RAP is presented in 10 chapters and 8 Appendices. A glossary of terms is issued as Annex One to this report.

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CHAPTER TWO: THE POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

2.1: Overview of the Policy Framework

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

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

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

Sessional Paper No. 3 of 2009 on National Land Policy

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

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

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

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

Evictions and Resettlement Guidelines-2009 (Towards Fair and Justifiable Management of Evictions and Resettlements):- The guidelines are addressed to all forced evictions carried out in contravention of the law and outside of International Covenants on Human Rights. The prime case of the Guidelines is that No one may be evicted from their home, or have their home demolished without following the procedures laid down the guidelines or without a court order after considering all the relevant circumstances. The Guidelines further require the Government to take all appropriate steps to prohibit, prevent and provide remedies in all cases of

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forced evictions whether carried out or threatened by State or non-State actors. No legislation may permit arbitrary evictions.

2.3: Legal Framework in compulsory land acquisition

2.3.1: Legal basis for land ownership in Kenya

(i) Provision of the National Constitution

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) The Land Laws (Amendment) Act, 2016 (No. 28 of 2016)

The Land Laws (Amendment) Act, 2016 received presidential assent on 31st August 2016 and came into force on 21st September 2016. The Act brings about amendments to the Land Act, 2012, Land Registration Act, 2012 and the National Land Commission Act, 2012 and also introduced some fundamental changes to land law and conveyancing in Kenya. Some of the more salient amendments include:-

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

Introduction of a Controlled Land Category: The Act has introduced the new concept of “controlled land” which is land within a zone of 25 kilometres from the inland national boundary of

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Kenya, within the first and second row beach plots in the Coast Region and any other law that may be declared controlled land by statute. The Act requires that “transactions” in controlled land can only proceed with the prior written approval of the Cabinet Secretary and that in considering an application for approval, the Cabinet Secretary must seek approval of the relevant authorities.

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

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

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

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

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

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

- **The Land Registration (General) Regulations, 2017** which are to regulate the registration of various instruments relating to land. They include ninety four (94) prescribed forms that range from the form of Power of Attorney, Application for Registration, Application for replacement of lost Title and Application for Official Search etc;
- **The Land Regulations, 2017** which give guidelines and regulate various procedures to transactions in land. Included are forty (40) prescribed forms that range from Application for Consent to transfer, Application for Land Rent Clearance Certificate and Notice of intention to compulsorily acquire etc; and
- **The Land (Extension and Renewal of Leases) Rules, 2017** which are meant to guide officers of the Ministry of Lands and Physical planning, County Governments, the National Land Commission, Lessees, Professionals and any other persons dealing with matters relating to the extension and renewal of Leases and contains various prescribed forms that range from Application of extension of Lease and Application for renewal of lease etc;

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- **Land (Assessment of Just Compensation) Rules, 2017 (No. 283 of 2017):** These Rules of the National Land Commission implement provisions of the Land Registration Act 2012 in respect of the amount of compensation to be awarded for land acquired under the Act. It among other things, sets out factors to be taken into consideration when assessing compensation. Factors to be considered in assessment of compensation shall include:-
 - ✓ (a) the market value of the land;
 - ✓ (b) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of severing the land from his or her other land;
 - ✓ (c) damage sustained or likely to be sustained by persons interested at the time of the Commission's taking possession of the land by reason of the acquisition injuriously affecting his or her other property, whether moveable or immovable, in any other manner or his or her actual earnings;
 - ✓ (d) reasonable expenses incidental to the relocation of any of the persons interested or who will be compelled to change residence or place of business as a consequence of the acquisition; and
 - ✓ (e) damage genuinely resulting from diminution of the profits of the land between the date of publication in the Gazette of the notice of intention to acquire the land and the date the Commission takes possession of the land.

2.3.2: Statutory mechanism for compulsory land acquisition in Kenya

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

(i) The National Land Policy

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

(ii) Provision of the National Constitution

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

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

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

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

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

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

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(iii) Provisions of the Land Act of 2012

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

(iv) Roads Act 2007

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

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

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

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

2.3.3: Systematic procedure in compulsory land acquisition

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

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

The respective Cabinet Secretary or Government agency or the County Executive Committee Member must submit a request for acquisition of private land to the NLC to acquire the land on its behalf. The Commission will prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land. It is important to note that if the NLC is constituted prior to conclusion of land acquisition, it could prescribe criteria and guidelines necessitating variations or revisions to the current RAP. Similar, the Commission has powers to reject a request of an acquiring

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authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed.

(iii) Inspection of land to be acquired

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

(iv) Publication of notice of intention to acquire

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

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

(v) Serve the notice of inquiry

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

(vi) Holding of a public hearing

NLC then convenes a public hearing not earlier than 30 days after publication of the Notice of Intention to Acquire. On the date of the hearing, NLC must conduct a full inquiry to determine the number of individuals who have legitimate claims on the land, the land value and the amount of compensation payable to each legitimate claimant. Besides, at the hearing, the Commission shall—make full inquiry into and determine who are the persons interested in the land; and receive written claims of compensation from those interested in the land. For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Commission (NLC) of documents of title to the land. The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry. It will also provide opportunity to land owners to hear the justification of the public authority in laying claims to acquire the land.

(vii) Valuation of the land

Part III of the Land Act 2012, section 113 (2a) states that “the Commission shall determine the value of land with conclusive evidence of (i) the size of land to be acquired; (ii) the value, in the opinion of the Commission, of the land; (iii) the amount of compensation payable, whether the owners of land have or have not appeared at the inquiry.” This can be interpreted that NLC must determine the value of the land accordingly and pay appropriate just compensation in accordance with the principles and

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formulae that it will develop. Nonetheless, just compensation could also be interpreted as market rate. The final award on the value of the land shall be determined by NLC and shall not be invalidated by reason of discrepancy, which may be found to exist in the area.

2.3.4: JICA's Policy on Involuntary Resettlement

The key principle of JICA policies on involuntary resettlement is summarized below.

- I. Involuntary resettlement and loss of means of livelihood are to be avoided when feasible by exploring all viable alternatives.
- II. When, population displacement is unavoidable, effective measures to minimize the impact and to compensate for losses should be taken.
- III. People who must be resettled involuntarily and people whose means of livelihood will be hindered or lost must be sufficiently compensated and supported, so that they can improve or at least restore their standard of living, income opportunities and production levels to pre-project levels.
- IV. Compensation must be based on the full replacement cost* as much as possible.
- V. Compensation and other kinds of assistance must be provided prior to displacement.
- VI. For projects that entail large-scale involuntary resettlement, resettlement action plans must be prepared and made available to the public. It is desirable that the resettlement action plan include elements laid out in the World Bank Safeguard Policy, OP 4.12, Annex A.
- VII. In preparing a resettlement action plan, consultations must be held with the affected people and their communities based on sufficient information made available to them in advance. When consultations are held, explanations must be given in a form, manner, and language that are understandable to the affected people.
- VIII. Appropriate participation of affected people must be promoted in planning, implementation, and monitoring of resettlement action plans.
- IX. Appropriate and accessible grievance mechanisms must be established for the affected people and their communities.

Above principles are complemented by World Bank OP 4.12, since it is stated in JICA Guideline that "JICA confirms that projects do not deviate significantly from the World Bank's Safeguard Policies". Additional key principle based on World Bank OP 4.12 is as follows.

- X. Affected people are to be identified and recorded as early as possible in order to establish their eligibility through an initial baseline survey (including population census that serves as an eligibility cut-off date, asset inventory, and socioeconomic survey), preferably at the project identification stage, to prevent a subsequent influx of encroachers of others who wish to take advance of such benefits.
- XI. Eligibility of Benefits include, the PAPs who have formal legal rights to land (including customary and traditional land rights recognized under law), the PAPs who don't have formal legal rights to land at the time of census but have a claim to such land or assets and the PAPs who have no recognizable legal right to the land they are occupying.
- XII. Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based.
- XIII. Provide support for the transition period {between displacement and livelihood restoration.

XIV. Particular attention must be paid to the needs of the vulnerable groups among those displaced, especially those below the poverty line, landless, elderly, women and children, ethnic minorities etc.

XV. For projects that entail land acquisition or involuntary resettlement of fewer than 200 people, abbreviated resettlement plan is to be prepared.

In addition to the above core principles on the JICA policy, it also laid emphasis on a detailed resettlement policy inclusive of all the above points; project specific resettlement plan; institutional framework for implementation; monitoring and evaluation mechanism; time schedule for implementation; and, detailed Financial Plan etc.

*Description of “Replacement Cost” is as follows.

Land	Agricultural Land	The pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes.
	Land in Urban Areas	The pre-displacement market value of land of equal size and use, with similar or improved public infrastructure facilities and services and located in the vicinity of the affected land, plus the cost of any registration and transfer taxes.
Structure	House and Other Structures	The market cost of the materials to build a replacement structure with an area and quality similar or better than those of the affected structure, or to repair a partially affected structure, plus the cost of Structures transporting building materials to the construction site, plus the cost of any labor and contractors' fees plus the cost of any registration and transfer taxes.

Source: JICA Survey Team

2.4: Gap between JICA’s Guidelines and Law in Kenya

As earlier mentioned, Resettlement Policy is not available in Kenya so far. Relevant laws and regulations provide the legal framework for compensation and resettlement in Kenya under the absence of resettlement policies.

Table 2.1 presents policy gap analysis between JICA’s Guidelines and Kenya's Country System in regard to land acquisition and resettlement, including measures to fulfil the gaps.

2.5: Land acquisition and resettlement policy in the MGB Project

Table 2.1 provides an analysis of gaps between JICA requirements for environmental and social considerations and provisions of the GoK. Though the analysis review is absence of major gaps, for avoidance of doubt, and for purposes of implementation of this RAP, JICA Guidelines will prevail in situations.

Table 2.1: Gap analysis between JICA’s Guidelines and Law in Kenya

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	JICA's Guidelines (2010)	Laws of Kenya	Gap Between JICA's Guidelines and Laws in Kenya	Proposed Gap Filling Measures
1	Involuntary resettlement and loss of means of livelihood are to be avoided when feasible by exploring all viable alternatives.	No specific provisions on preventing involuntary resettlement and loss of means of livelihood.	There is no provisions in this regard, while the JICA's Guidelines require to avoid/minimize resettlement/loss of livelihood	The project shall explore various alternatives and select the most viable option where involuntary resettlement is minimized, while optimizing the alignment of the bridge.
2	When population displacement is unavoidable, effective measures to minimize impact and to compensate for losses should be taken.	The Land Act Section 111. (1) Requires just and full compensation to be paid promptly to the land owner for compulsorily land acquisition for public purpose.	There is no specific provision for compensation for "effective measures", while JICA's Guidelines acknowledges all affected persons whether legally residing or not, are eligible for compensation.	The RAP will be prepared incorporating the following: (i) evaluation of the impacts of the project to the PAPs, and (ii) formulation of the entitlement and the compensation for the losses incurred in terms of land, structures, improvements and crops and trees.
3	People who must be resettled involuntarily and people whose means of livelihood will be hindered or lost must be sufficiently compensated and supported, so that they can improve or at least restore their standard of living, income opportunities and production levels to pre-project levels.	The Land Act Section 134. (1) The National Government shall implement settlement programmes to provide access to land for shelter and livelihood.	There is no provision for maintaining living standard of affected people at the same or above pre-project levels in Kenyan Laws, while JICA's Guidelines require that no one is worse off as a result of resettlement and would maintain their living level at least at original levels	Livelihood restoration is not clearly set out in Kenyan laws; the RAP will cover "improve or at least restore their standard of living, income opportunities, and production level to pre-project levels".
4	Compensation must be based on the full replacement cost as much as possible.	The Land Act Section 113. (2), an award shall be based on (i) the size of the land; (ii) the value (opinion of the Commission); (iii) the amount of the compensation payable. The Land (Assessment of Just Compensation) Rules, 2017 sets out factors to be taken into consideration when assessing compensation.	The related provisions on regarding replacement cost is not clear in Kenyan Laws, while JICA's Guidelines require that the replacement cost plus tax and remittance charge shall be included in compensation.	The Project Policy on compensation is based on the full replacement cost for land, structures and other improvements in line with JICA's guidelines. The Survey Team will carry out Replacement Cost Survey (RCS) to figure out the full replacement cost.
5	Compensation and other kinds of assistance must be provided prior to displacement	The Land Act, National Land Policy specifies the quick compensation; however, its timing to disburse is not clear.	Compensation and other assistance are made regardless of whether it is before or after construction, while JICA Guidelines requires paying	The resettlement plan addresses all these issues and spells out a mechanism for all the compensation to be paid prior to possession of the acquired land and prior to displacement.

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	JICA's Guidelines (2010)	Laws of Kenya	Gap Between JICA's Guidelines and Laws in Kenya	Proposed Gap Filling Measures
			compensation prior to relocation.	
6	For projects that entail large-scale involuntary resettlement, resettlement action plans must be prepared and made available to the public.	There is no legal basis on the preparation of resettlement plan; however the schedule of EMCA, 1999, identifies projects those subjected to EIAs including large-scale involuntary resettlement.	There is no gap in principle. Both EIA and RAP are disclosed to the public prior to issue the License.	Preparation of the RAP is indispensable for EIA clearance. EIA and RAP are subjects for the public disclosure before granting the license.
7	In preparing a resettlement action plan, consultations must be held with the affected people and their communities based on sufficient information made available to them in advance.	There is no specific law on preparing a resettlement plan.	There is no provision in the law for consulting the stakeholders or communities.	Kenyan Land Law stipulates contents of meeting with PAPs. Based on the JICA Guidelines, the Survey Team will organize at least three round of public consultation: (i) introduction of the project and announcing cut-off date, (ii) sharing the findings from RPA related survey and draft of RAP, and (iii) presentation of RAP, with the affected people in their communities by preparing materials written and spoken in a local language used by the PAPs.
8	When consultations are held, explanations must be given in a form, manner, and language that are understandable to the affected people.			
9	Appropriate participation of affected people must be promoted in planning, implementation, and monitoring of resettlement action plans.	There is no provision for the monitoring related activities with the participation of affected people	There is no provisions in Kenyan Laws, while JICA Guidelines recommend participation of affected people in planning, implementation and monitoring of the RAP	The RAP has been prepared by following a consultation process with all stakeholders. The consultation will be a continuous process at all stages of the project development, such as project formulation, feasibility study, design, implementation, and post-implementation, including the monitoring phase.
10	Appropriate and accessible grievance mechanisms must be established for the affected people and their communities.	The Land Act provides a mechanism for dealing with grievances including lodging complaints to the Environment and Land Court (Section 150)	There is no definite gap.	The substantial gap does not exist. The Survey Team will consult with the public to confirm appropriateness and accessibility of a proposed grievance mechanism from community's viewpoint.
11	Affected people are to be identified and recorded as early as possible in order to establish their eligibility through an initial baseline survey (including population census that serves as an eligibility cut-off date, asset inventory, and socioeconomic survey), preferably at the project identification stage, to prevent a subsequent influx of	Based on the Land Act section 134 (1), resettlement program is required, but no description of census and cut-off-date.	There is neither census nor cut-off date requirement in Kenyan Laws.	The Survey Team will announce the cut-off date complying with the JICA Guidelines. Population census and asset inventory, and the socio-economic survey will be undertaken as processes to compile an RAP.

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	JICA's Guidelines (2010)	Laws of Kenya	Gap Between JICA's Guidelines and Laws in Kenya	Proposed Gap Filling Measures
	encroachers of others who wish to take advance of such benefits. (WB OP4.12 Para.6)			
12	Eligibility of benefits includes, the PAPs who have formal legal rights to land (including customary and traditional land rights recognized under law), the PAPs who don't have formal legal rights to land at the time of census but have a claim to such land or assets and the PAPs who have no recognizable legal right to the land they are occupying. (WB OP4.12 Para.15)	Constitution Article 40 (4) states compensation to be paid to occupants who may not hold title to the land in good faith. On the other hand, Article 40 (6) states that the rights under this Article do not extend to any property that has been found to have been unlawfully acquired.	Although the statements under the same article conflict, it could be interpreted as eligibility of squatters who do not have legal rights is recognized.	Based on the JICA's Guidelines, appropriate entitlements are discussed in a RAP. In principle, both formal and informal settlers are eligible for compensation and other conditions.
13	Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based. (WB OP4.12 Para.11)	No specific provisions in the Kenyan Law.	Preference to the land-based resettlement strategies is not confirmed in Kenyan laws.	Land-based resettlement policy should be reselected to RAP considering the socioeconomic status and needs of the PAPs.
14	Provide support for the transition period (between displacement and livelihood restoration). (WB OP4.12 Para.6)	No specific provisions on The Land Act.	The Kenyan law does not mention the provision of support during the transition.	During the process of RAP discussion, compensation for temporary business disturbance, income restoration in an early stage, or any other allowance are considered.
15	Particular attention must be paid to the needs of the vulnerable groups among those displaced, especially those below the poverty line, landless, elderly, women, and children, ethnic minorities, etc. (WB OP4.12 Para.8)	According to The Land Act Section 134. (4), representatives of persons with special needs, women, youth, and elders shall be members of committee of beneficiary's identification.	The Kenyan Land Act provides particular attention to persons with special needs, women, youth, and elders.	Based on the needs assessment through the stakeholder meetings, socio-economic survey, focus group discussion, etc., Special considerations for vulnerable groups will be discussed and taken into RAP.
16	For a project that entails land acquisition or involuntary resettlement of more than 200 people, a resettlement action plan is to be prepared (WB OP4.12 Para.25)	There is no provision	As shown in the left.	The RAP has been prepared since the displaced people are estimated to be more than 200.

Source: Compiled by the JICA Survey Team

CHAPTER THREE: SCOPE OF RESETTLEMENT IMPACT

This chapter unveils the outcome of the socio-economic survey and the impact survey (inventory of likely damage) all of which form the foundation on which the compensation package has been crafted. As observed elsewhere above, some sections of the MGB have no existing reserves, while those existing will require expansion thus occasioning the need for land acquisition and attendant displacement of people from land, shelter, livelihoods and investments. That is the core motivation for this RAP Study.

3.1: Census Survey

3.1.1: Diversity of potential PAPs

An outline of diversity of PAPs likely to be created by the Mombasa Gate Bridge Project based on the Census Survey is provided in Table 3.1 below. A total of 34 PAP categories falling in seven (7) broad groups are likely to be encountered within the 13.2 Km traverse.

Table 3.1: PAP categories in the MGB Project

SN	PAP Category	Entitled Persons	Description
1	Land Owners	Legally recognized owner	Those under any tenure systems recognized in the National Constitution and Lands Act 2012
		Landless settler	Those whose only residence is the plot occupied
		Tenants	Those renting land from legal land owners
		Illegal settler	Utilize the plot for commercial purpose but reside elsewhere or have bought from illegal owners
2	Owners of residential property	Legal Owner	Owens both the land and standing property
		Tenant owning structures	Has structures on rented/leased land
		Tenant renting premises	Has rented premises from other 2 categories above
3	Owners of CPR- Schools, Water project, Shrine	Utilities belonging to State Corporations	These include power, water, fibre optic, drainage and sewerage infrastructure
		Schools and standing structures	Either community or County Government owned
		Water Projects	Mainly community owned.
		Communal Cemetery	Mainly community or County Government owned
		Shrines	Community owned
4	Owners of CBEs	Mombasa County Government	MCG is likely to suffer loss of revenue earned from rates levied on property and business
		Landlords on own land	Likely to suffer loss of rental income
		Landlords on squatted land	
		Tenants	Likely to lose business premises and outstanding lease
		All businesses	Likely to suffer loss of business or reduced cash flow
		Informal traders	Likely to suffer loss of livelihoods from businesses in road reserve
		Billboards	Income loss to both advertising company and MCG
		Fishing based livelihoods	Loss of assets, landing site and access to fishing grounds
5	Owners of Crops	Commercial trees	Fruit and timber trees
		Ornamental tree	Non timber and fruit trees
		Permanent and biannual crops	Sugarcane, cassava, banana, cowpeas, etc
		Seasonal crops	Grains and vegetables
6	Owners of Other	Boreholes and wells	Mainly owned by individuals
		Individual graves	Owned by families and individuals

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	Assets	Shrines	Owned by family or individuals
		Communication masts	Owned by individuals and companies
7	Employees	Formally employed	Those on permanent terms as per labour laws
		Casual employment	Those on daily wage
Totals	7	34	

Source: This Study

3.1.2: Distribution of Project affected households and persons

Gross displacement: The comprehensive inventory of PAPs is provided in Appendix 3.1 with a summary in Table 3.2 below. The MGB will potentially displace 2,589 PAUs bringing together Households, CBEs, landowners and wage earners. Similarly, a total of 3,230 PAPs will potentially be displaced. This number is based on inventory of those that reside within the traverse exclusive of those working there. Commercial and Business Enterprise operators totalling 883 will also be displaced.

Table 3.2: Distribution of PAUs and PAPs by category

	Type of loss	No of PAUs			Number of PAPs		
		Legal	Non-legal	Total	Legal	Non-legal	Total
1	HH (Structure Owner on Gov Land)	944	3	947	1,297	13	1,310
2	HH (Structure Owner on Private land)	9	0	9	51	0	51
3	HH (Tenants)	750	0	750	986	0	986
4	CBEs (Structure owner on Gov land)	179	91	270	179	91	270
5	CBE (Structure owner on Private land)	324	0	324	324	0	324
6	CBEs (Tenant)	271	18	289	271	18	289
	Sub Total	2,477	112	2,589	3,108	122	3,230
	Non-displaced						
7	Community owned structures & PCRs	19	0	19	0	0	0
8	Land owners	-	-	-	63	0	63
9	Wage earners	-	-	-	439	227	666
10	Fishermen	-	-	-	500	0	500
	Grand Total (1-10)	2,496	112	2,608	4,110	349	4,459

Source: This Study

Breakdown of displacement: Tables 3.2 (a-d) provide a breakdown of the displacement of PAHs and PAPs. A total of 1706 Households will be affected.

Table 3.2(a): Distribution of PAHs

Admin Location	PAHs (Structure owners on Gov. land)		PAHs (Structure owners on Private land)		Tenants		Total
	<i>Legal</i>	<i>Non-legal</i>	<i>Legal</i>	<i>Non-legal</i>	<i>Legal</i>	<i>Non-legal</i>	
Majengo	0	3	7	0	117	0	127
Likoni	386	0	1		267	0	654
Mtongwe	32		0		22	0	54
Shika Adabu	526	0	1		344	0	871
Ng'ombeni	0		0		0		0
Total	944	3	9	0	750	0	1706

Source: This Study

Table 3.2(b): Distribution of PAPs

Admin Location	PAPs (Structure owners on Gov. land)		PAPs (Structure owners on Private land)		Tenants		Total
	<i>Legal</i>	<i>Non-legal</i>	<i>Legal</i>	<i>Non-legal</i>	<i>Legal</i>	<i>Non-legal</i>	
Majengo	0	13	51	0	246	0	310
Likoni	459	0		0	358	0	817
Mtongwe	54	0		0	0	0	54
Shika Adabu	784	0		0	382	0	1166
Ng'ombeni	0	0		0	0	0	0
Total	1297	13	51	0	986	0	2347

Source: This Study

Table 3.2 (c): Breakdown of above Table 3.2 (Distribution of CBEs)

Admin Location	CBEs Structure owners on Gov. land		CBEs: Structure owners on private land		Tenants		Total
	<i>Legal</i>	<i>Non-legal</i>	<i>Legal</i>	<i>Non-legal</i>	<i>Legal</i>	<i>Non--legal</i>	
Majengo	0	88	323	0	160	18	589
Likoni	47	0	1	0	44		92
Mtongwe	0	3	0	0	0		3
Shika Adabu	132	0	0	0	67		199
Ng'ombeni	0	0	0	0	0		0
Total	179	91	324	0	271	18	883

Source: This Study

Table 3.2 (d): Breakdown of above Table 3.2 (Distribution of PAHs)

Admin Location	CBEs (Structure owners on Gov. land)		CBEs (Structure owners on Private land)		Tenants		Total
	<i>Legal</i>	<i>Non--legal</i>	<i>Legal</i>	<i>Non--legal</i>	<i>Legal</i>	<i>Non--legal</i>	
Majengo	0	88	323	0	160	18	589

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Likoni	47	0	1	0	44		92
Mtongwe	0	3	0	0	0		3
Shika Adabu	132	0	0	0	67		199
Ng'ombeni	0	0	0	0	0		0
Total	179	91	324	0	271	18	883

Source: This Study

3.2: Land and Inventory Survey

3.2.1: Land assets

Outcome of the Census Survey/ inventory of potential PAPs in the MGB is provided in Appendix 3.1 and summarized in Table 3.3. From inventory of PAPs undertaken, development of the 13.2 Km Bridge Project inclusive of Approach Roads is likely to affect a total of 725 plots accounting for 62.59 hectares of land. With the exception of the last part of Shika Adabu and Ng'ombeni locations in the tail end of project which are essentially rural, the Project traverse is essentially through urban and peri urban high-density settlements which explains the high number of plots traversed. Both Likoni and Shika Adabu Locations account for 73.87% of the plots traversed and 76.8% of the total land to be acquired. Essentially, Likoni sub-county will account for 82.50% of all land to be acquired for the Project.

Table 3.3: Distribution of landed PAPs by project section

SN	Location	Scope of acquisition by admin unit				Scope of acquisition by Land- use category			
		Area (ha)	% share	Total parcels	%share	LUC	Total parcels	Area (ha)	% share
1	Majengo	5.44	8.69	135	18.62	Commercial	125	5.11	8.2
2						Residential	10	0.33	0.5
3	Likoni	26.38	42.15	272	37.52	Commercial	38	2.07	3.3
4						Residential	234	24.31	38.8
5	Mtongwe	3.57	5.7	46	6.34	Residential	46	3.57	5.7
6	Shika Adabu	21.71	34.69	263	36.28	Commercial	68	2.1	3.4
7						Residential	141	7.57	12.1
8						Agricultural	54	12.04	19.2
9	Ngombeni	5.49	8.77	9	1.24	Agricultural	9	5.49	8.8
	Total	62.59	100	725	100		725	62.59	100

Source: This Study

3.3: Displacement of investments on land

3.3.1: Total structures to be displaced

From the below-listed schedule of impacts (Table 3.4), inference can be made as follows;-

Total buildings: The entire bridge construction project will displace a total of 1201 housing structures, of which 76.8% are accounted for by Likoni and Shika Adabu Locations of Mainland South. Majengo location of Mombasa Island accounts for 19.2% of all buildings which includes 27 of the 32 single storied buildings, all double storeys, 15 of the 16 3-storeys and all other multi-storied buildings. A total of 691 permanent buildings equivalent to 57.5% of all building structures are

likely to be displaced followed by temporary buildings at 42.5%. Of these, single storied permanent buildings are majority at 51.1%. The 398 temporary structures in MMS are owned by 250 people (82 land owners and 168 encroachers).

Table 3.4: Inventory of potentially displaced buildings

Admin Location	Main structures (masonry)								Temporary Structures (wooden)	Total Structures	
	NS	1S	2S	3S	4S	5S	6S	7S		Tally	%
Majengo	47	27	24	15	0	1	1	3	112	230	19.2
Likoni	298	1	0	1	0	0	0	0	124	424	35.3
Mtongwe	48	0	0	0	0	0	0	0	0	48	4.0
Shika Adabu	221	4	0	0	0	0	0	0	274	499	41.5
Ng'ombeni	0	0	0	0	0	0	0	0	0	0	0
Totals	614	32	24	16	0	1	1	3	510	1,201	100
<i>Allocation (%)</i>	<i>51.1</i>	<i>2.7</i>	<i>2.0</i>	<i>1.3</i>	<i>0.0</i>	<i>0.1</i>	<i>0.1</i>	<i>0.2</i>	<i>42.5</i>	<i>100.0</i>	
	<i>(691) 57.5%</i>								<i>42.5%</i>	<i>100%</i>	

Source: This Study

Key: NS-Non-storied, 1-7S-Total Storeys

Other assorted privately-owned assets: A total of 1038 assorted assets, majority of which are ancillary non affected buildings are likely to be displaced (Table 3.5). Among these, septic tanks and gates are majority but also include 68 functional boreholes and 29 wells. Majengo location of Mombasa Sub County accounts for 32.6% of all assorted assets including 41 of the 68 boreholes and 76 of the 77 walls traversed.

Table 3.5: Inventory of assorted assets

Admin Location	Assorted assets							Total	Share (%)
	Fences	Walls	Verandas	Gates	Wells	Boreholes	Septic tanks		
Majengo	22	76	19	152	6	41	22	338	32.6
Likoni	10	0	6	17	11	10	298	352	33.9
Mtongwe	0	1	0	1	0	3	48	53	5.1
Shika Adabu	18	0	26	0	12	14	225	295	28.4
Ng'ombeni	0	0	0	0	0	0	0	0	0
Total	50	77	51	170	29	68	593	1,038	100

Source: This Study

3.3.2: Displacement of Commercial Business Enterprises –CBEs

A total of 833 Commercial Business Enterprises (CBEs) both small and large are likely to be displaced by the bridge construction project (Table 3.6 below). Of these, Majengo in Momba County accounts for the bulk at 597 while commercial rentals are dominant at 401 followed by food kiosks at 171. Within the MMS area, CBEs are mainly encountered along both the A14 and Mtongwe roads targeted for expansion.

Table 3.6: Tally of CBEs traversed

Admin Location	CBEs																				Total									
	Commercial rentals	Restaurants	Hotels	Liquor store	Trading	Whole sale	Retail shops	Hardware	MV garages	MV sales yards	Unisex saloons	Hospital	Tyres	Autospares	C&F	Food processor	Godowns	Furniture	Textiles	Transporters		Pharmaceutical	Scrap metals	Carwash	Advertising	Shops	Schools	Food kiosks	Water kiosks	Gas stations
Majengo	279	2	2	1	79	13	26	0	4	6	2	1	1	1	2	3	3	1	2	1	1	1	3	1	52	3	106	0	1	597
Likoni	52	0	0	0	0	0	5	2	0	0	0	0	0	0	0	0	0	2	1	0	0	0	0	0	5	0	13	2	2	84
Mtongwe	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	3
Shika Adabu	70	0	0	0	0	0	25	2	1	0	0	0	0	0	0	0	0	7	2	0	0	0	0	0	36	3	52	0	1	199
Ng'ombeni	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Totals	401	2	2	1	79	13	56	4	5	6	2	1	1	1	2	3	3	10	5	1	1	1	3	1	96	6	171	2	4	883

Source: This Study

Some CBEs have been operated by families for generations and therefore have huge sentimental value attached. Typical of these include the Kilindini Bar on Mwakilingo Street (Plate 3.1) and the prestige furniture shop on Lumumba Road.



Source: This Study

Figure 3.1: (a) Kilindini Bar on Mwakilingo Street, (b) A cross generational pen trap at the mouth of Mweza Creek

Figure 3.2 below illustrates some of the major CBEs likely to be displaced by the MGB Project in Mombasa Island.



Source: This Study

Figure 3.2: Some of the main CBEs in the MGB Project

3.3.3: Common Property Resources : A total of 19 CPRs will be displaced as follows:-

Cemeteries: Three public cemeteries will be affected to varying degrees.

Shrines: Great care was taken to align the MGB away from major shrines and kayas in line with requirements of OP 4.11. However, as currently aligned, the MGB will traverse the grounds of Kaya Makame on the shoreline of Port Reitz Creek at Bofu Maskani and entirely displace a second one owned by the Mwahima family in Shika Adabu. Access to three other minor shrines situated on the cliffs of Mweza Creek could also be blocked during construction and operation stages of the project.

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

Table 3.7: Occurrence of Common Property Resources (CPRs)

Administrative unit	Cemeteries	Shrine	Public Schools	Churches	SHG Structures	Totals
Majengo	1	0	3	0	0	4
Likoni	1	1	4	2	3	11
Mtongwe	0	0	0	1	0	1
Shika Adabu	1	1	0	1	0	3
Ng'ombeni	0	0	0	0	0	0
Totals	3	2	7	4	3	19

Source: This Study

Public Schools: A total of 7 public schools occur within the traverse of the MGB and its access roads and are likely to be affected as follows:-

Table 3.8: Potentially impacted schools

Admin Location	Name of School	Nature of impacts
Majengo	Gabra School	3 metres of store clipped
	Sacred Heart Primary (Catholic Archdioceses of Mombasa)	Frontage wall, verandah and water reservoir affected by Archbishop Makarios Rd expansion
	Ganjoni Integrated Primary School	Perimeter wall, ewer line and kitchen affected
Likoni	Puma Primary	Bridge passes overhead
	Bridge Primary	Part of classrooms clipped
	Peleleza Primary	Part of the Classroom clipped
	Consolata Primary along A14 Road	Perimeter wall and classrooms clipped 1.8 metres by expansion of A14 road

Water Projects: A total of 3 water projects mainly fed by boreholes and wells currently used for community water supply are likely to be displaced in developing the MGB.

Displacement of Infrastructure: Transport and other infrastructure will be displaced as summarised in tabular form below.

Table 3.9: Potentially impacted infrastructure

Admin Location	Transport system	Others
Majengo	Lumumba Road, Mwakiringo Street, Machakos Road, Moi Avenue, Archbishop Makarios Rd, Mnazi Mmoja Street	Power distribution infrastructure, Telecommunication ducts and wires, sewer lines , storm drainage lines
	Railway infrastructure	
Likoni	Shoreline road through Javi la Wageni,	Bridge passes overhead
Mtongwe	Old Mtongwe Rd and bridges	Power lines
Shika Adabu	New Mtongwe Road	Power lines
Ng'ombeni	None	None

Source: This Study

3.3.4: Displacement of Trees and crops

A total of 16,713 assorted agroforestry trees are likely to be displaced in the development of the MGB and assorted roads (Table 3.10), 63.4% of which occur in Shika Adabu. Timber trees alone account for 51.22% of the trees followed by Fruit trees account for 46.8%. Out of 16,713 trees inventoried 2,835 juvenile trees were considered natural regenerates that have no investment component which can form basis for compensation. As such, Table 3.10 has only factored the 13,878 mature trees.

Table 3.10: Distribution of trees likely to be displaced

Admin Location	Type of trees by age category						Total by location	
	Fruits		Timber		Ornamental		Tally	Share (%)
	M	J	M	J	M	J		
Majengo	119	36	141	19	248	35	598	3.6
Likoni	1435	26	3008	44	16	7	4536	27.1
Mtongwe	50	0	217	0	0	0	267	1.6
Shika Adabu	4046	2032	3844	666	14	0	10602	63.4
Ng'ombeni	72	5	613	9	11	0	710	4.2
Totals	5722	2099	7823	738	289	42	16713	100.0
Total Tree type	7821		8561		331			
Share by Tree (%)	46.80		51.22		1.98			

Source: This Study

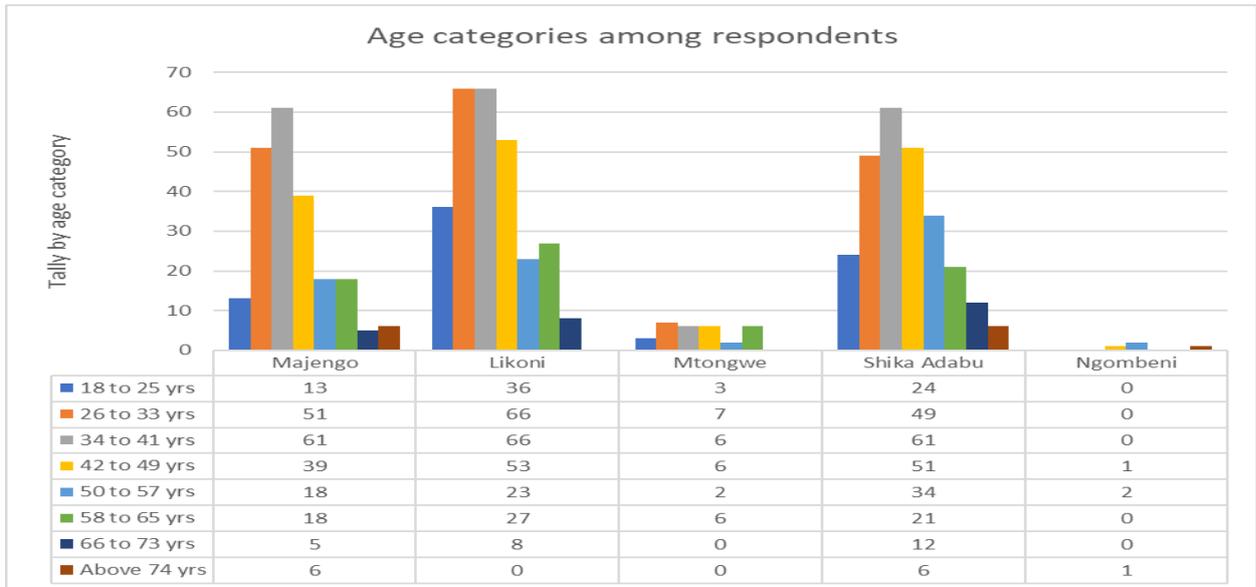
M-Mature; J-Juvenile

3.4: Income and Expenditure Survey

This section provides the basic socio-economic profile for potential PAPs based on a sample size of 791 respondents, equivalent to 33.9% of all potentially displaced households (PAHs).

3.4.1: Age of respondents:

Fig 3.2 provides age categories for potential PAPs in the MGB project where age categories ranged from 18 to above 74 years. The bulk of potential PAPs (75.8%) are of age 49 years and below implying that most PAPs are still in the economically productive category. Majengo Location in Mombasa Island has relatively younger population with the age category of 50 years and below accounting for 81.4% of the respondents. Majengo, Likoni, Shika Adabu and Ngombeni have PAPs who are above 70 years of age and are therefore potentially vulnerable.



Source: This Study

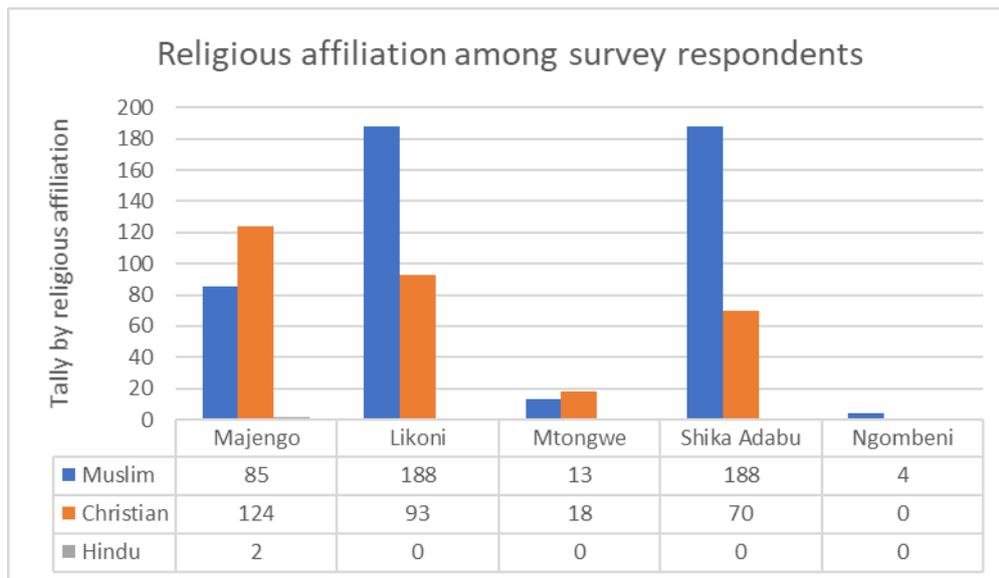
Figure 3.2: Age categories for PAPs in the traverse

Table 3.11: Tally per age categories for respondents

Age Composition	Majengo	Likoni	Mtongwe	Shika Adabu	Ngombeni	Total	Share (%)
18 to 25 yrs	13	36	3	24	0	76	9.7
26 to 33 yrs	51	66	7	49	0	173	22.1
34 to 41 yrs	61	66	6	61	0	194	24.8
42 to 49 yrs	39	53	6	51	1	150	19.2
50 to 57 yrs	18	23	2	34	2	79	10.1
58 to 65 yrs	18	27	6	21	0	72	9.2
66 to 73 yrs	5	8	0	12	0	25	3.2
Above 74 yrs	6	0	0	6	1	13	1.7
Total Reply	211	279	30	258	4	782	100.0
No Reply	0	4	1	4	0	9	
Total	211	283	31	262	4	791	

Source: This Study

Religion of Potential PAPs: The Islamic faith predominates at 64.4% with Christians accounting for 35.42% of potential PAPs (Fig 3.3).



Source: This Study

Figure 3.3: Religious practice within the traverse

Table 3.12: Tally per religious category

Respondent Religion	Majengo	Likoni	Mtongwe	Shika Adabu	Ngombeni	Total
Muslim	85	188	13	188	4	478
Christian	124	93	18	70	0	305
Hindu	2	0	0	0	0	2
<i>Total reply</i>	<i>211</i>	<i>281</i>	<i>31</i>	<i>258</i>	<i>4</i>	<i>785</i>
<i>No reply</i>	<i>0</i>	<i>2</i>	<i>0</i>	<i>4</i>	<i>0</i>	<i>6</i>
Total	211	283	31	262	4	791

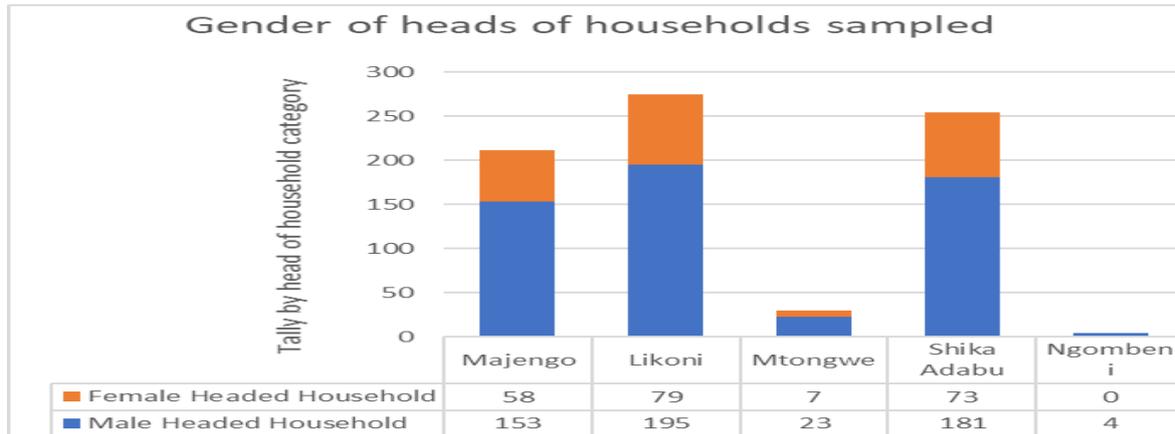
Source: This Study

Composition of Households: The male gender is the dominant head among PAP households at 71.9%.

Table 3.13: Tally per gender of HHH category

Head of Household	Majengo	Likoni	Mtongwe	Shika Adabu	Ngombeni	Total	Share (%)
Male Headed Household	153	195	23	181	4	556	71.9
Female Headed Household	58	79	7	73	0	217	28.1
<i>Total respondents</i>	<i>211</i>	<i>274</i>	<i>30</i>	<i>254</i>	<i>4</i>	<i>773</i>	<i>100</i>
<i>No rreply</i>	<i>0</i>	<i>9</i>	<i>1</i>	<i>8</i>	<i>0</i>	<i>18</i>	
Total	211	283	31	262	4	791	

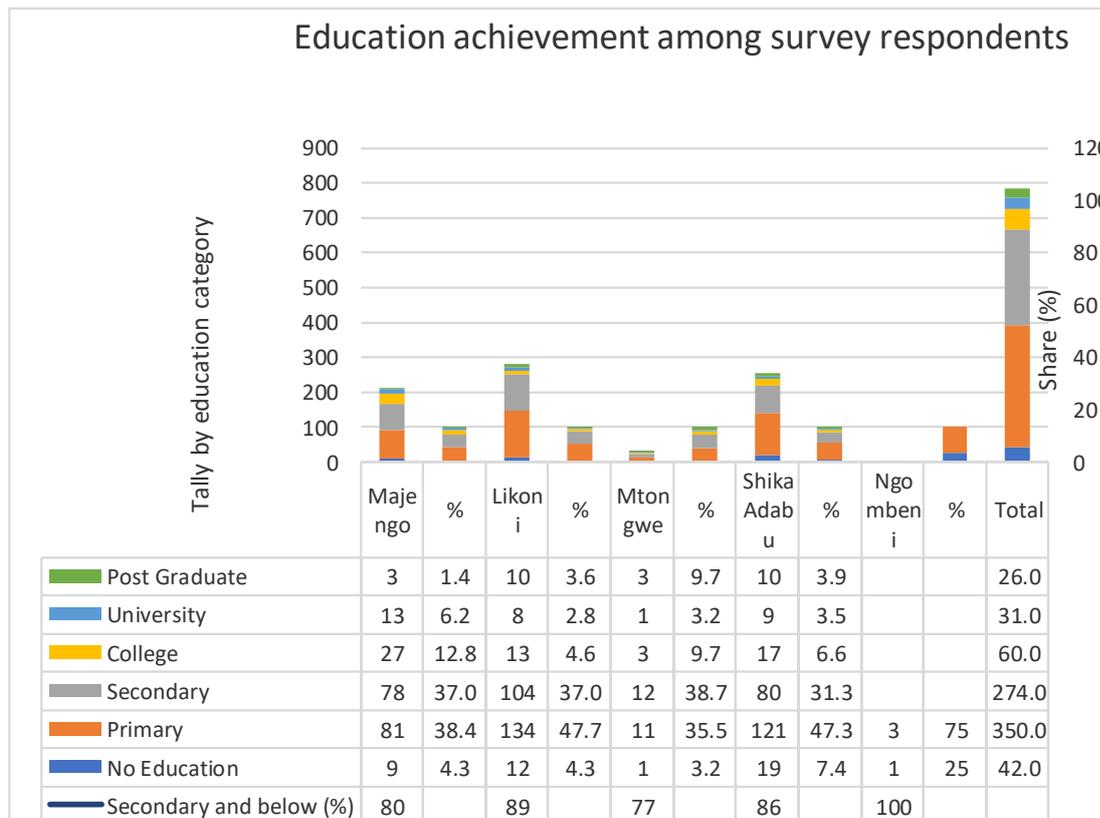
Source: This Study



Source: This Study

Figure 3.4: Gender of head of households in the MGB traverse

Education achievement: Levels of literacy within the traverse of the MGB is generally low (Fig 3.5) with over 80% of respondents being of secondary education and below. The situation is worst at Likoni where 81% of respondents are of secondary level and below with primary level and below accounting for 42.3%.



Source: This Study

Figure 3.5: Education achievement among survey respondents

Table 3.14: Breakdown of education achievement among PAP representatives

Respondent Education	Majengo	%	Likoni	%	Mtongwe	%	Shika Adabu	%	Ng'ombeni	%	Total	%
No Education	9	4.3	12	4.3	1	3.2	19	7.4	1	25	42	5.4
Primary	81	38.4	134	47.7	11	35.5	121	47.3	3	75	350	44.7
Secondary	78	37.0	104	37.0	12	38.7	80	31.3			274	35.0
College	27	12.8	13	4.6	3	9.7	17	6.6			60	7.7
University	13	6.2	8	2.8	1	3.2	9	3.5			31	4.0
Post Graduate	3	1.4	10	3.6	3	9.7	10	3.9			26	3.3
<i>Total respondents</i>	<i>211</i>	<i>100</i>	<i>281</i>	<i>100</i>	<i>31</i>	<i>100.0</i>	<i>256</i>	<i>100</i>	<i>4</i>	<i>100</i>	<i>783</i>	<i>100</i>
<i>No reply</i>	<i>0</i>		<i>2</i>		<i>0</i>		<i>6</i>		<i>0</i>		<i>8</i>	
Total	211		283		31		262		4		791	

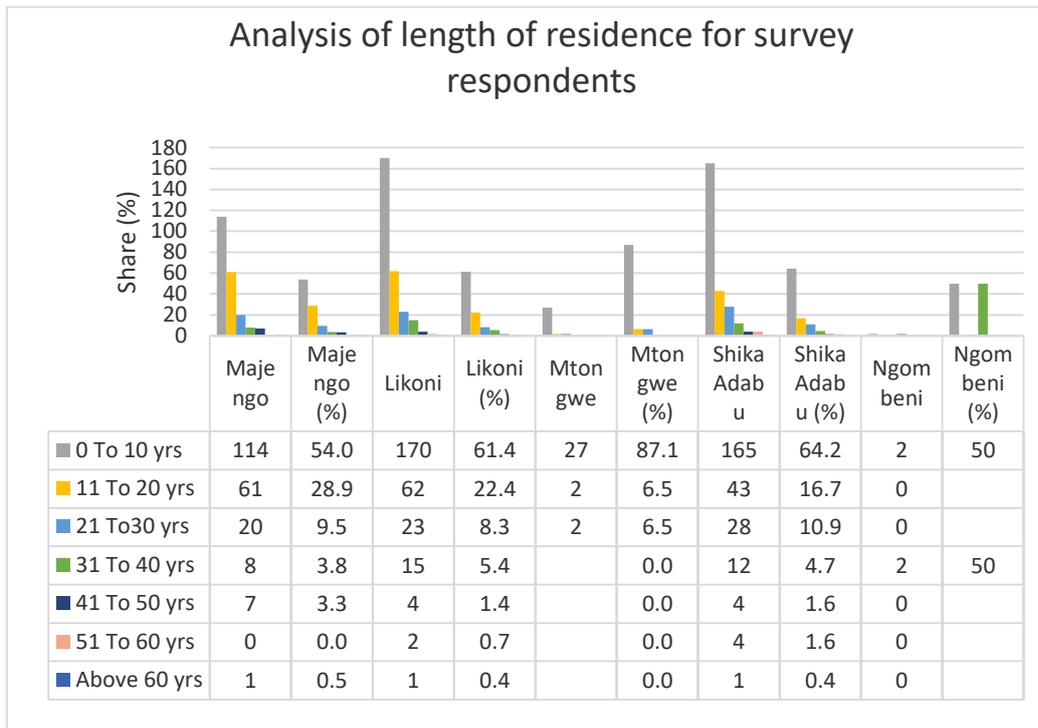
Source: This Study

Length of residence among respondents: A time line analysis for the MGB traverse based on recorded length of residence for heads of households is presented in Fig 3.6 below. At 61.3%, majority of potential MGB PAPs are newly settled with less than 10 years of residence. Both Mtongwe and Ng'ombeni are newly settled with none of the residents reporting more than 20 years of residence in comparison with Majengo (Mombasa Island), Likoni and Shika Adabu where some respondents reported length of stays more than 60 years.

Table 3.15: Analysis of length of residence for PAPs

Length of Residence	Majengo	Likoni	Mtongwe	Shika Adabu	Ng'ombeni	Total	%
0 to 10 yrs	114	170	27	165	2	478	61.3
11 to 20 yrs	61	62	2	43	0	168	21.5
21 to 30 yrs	20	23	2	28	0	73	9.4
31 to 40 yrs	8	15		12	2	37	4.7
41 to 50 yrs	7	4		4	0	15	1.9
51 to 60 yrs	0	2		4	0	6	0.8
Above 60 yrs	1	1		1	0	3	0.4
<i>Total respondents</i>	<i>211</i>	<i>277</i>	<i>31</i>	<i>257</i>	<i>4</i>	<i>780</i>	<i>100.0</i>
<i>No reply</i>	<i>0</i>	<i>6</i>	<i>0</i>	<i>5</i>	<i>0</i>	<i>11</i>	
Total	211	283	31	262	4	791	

Source: This Study

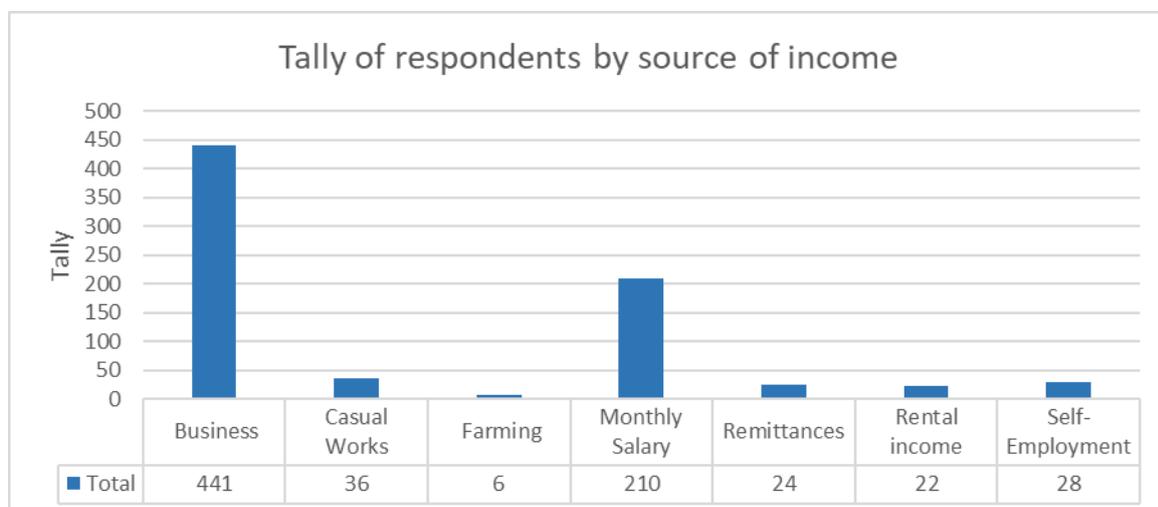


Source: This Study

Figure. 3.6: Analysis of length of residence among PAPs

Size of households: Households vary in size and range from 1 (single person HHs) upto 6.5.

Analysis of sources of income: Trading/Business is the most predominant means to livelihood within the MGB traverse followed by salaried employment (Fig 3.7 and Table 3.18).



Source: This Study

Figure 3.7: Analysis of income patterns along the MGB traverse

Table 3.16: Income patterns for respondents

Kenya National Highway Authority- KeNHA	Resettlement Action Plan-RAP in the Mombasa Gate Bridge Construction Project-Final Report	2018
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Sources of Income	Majengo	Likoni	Mtongwe	Shika Adabu	Ngombeni	Total	Share (%)
Business	112	160	13	155	1	441	57.5
Casual Works	11	19	1	4	1	36	4.7
Farming	1	1	1	2	1	6	0.8
Monthly Salary	51	70	9	79	1	210	27.4
Remittances	13	5	3	3	0	24	3.1
Rental income	4	13	0	5	0	22	2.9
Self-Employment	9	11	4	4	0	28	3.7
<i>Total respondents</i>	<i>201</i>	<i>279</i>	<i>31</i>	<i>252</i>	<i>4</i>	<i>767</i>	<i>100.0</i>
<i>No reply</i>	<i>10</i>	<i>4</i>	<i>0</i>	<i>10</i>	<i>0</i>	<i>24</i>	
Total	211	283	31	262	4	791	

Source: This Study

Business: Commercial business enterprises (CBEs) such as real estate, trading, services, manufacturing etc.

Casual Works: Employees on daily wage

Farming: Agriculture/cultivation

Monthly Salary: Office worker, civil servant

Remittances: Money transfer from other family member or relatives etc.

Rental income: Rental income from property such as structure and land

Self-Employment: Self-employment in small scale trade

Income patterns and status of well-being: Income levels for the MGB traverses for the base year 2018 are analyzed below. Outcome of analysis of the status of wellbeing for PAPs is summarized in Table 3.19 below based on comparison of computed monthly and daily per capita incomes with the national poverty cutoff lines. A monthly income in the range of Ksh 20,000 translates into a per capita monthly income of Ksh3333 which is above the official monthly poverty threshold of Ksh 2,913 per adult equivalent in urban areas as published in 2005/6. This further translates into a daily per capita income of Ksh 111 which is above the one dollar (Ksh 100 per day) poverty cut off line. Going by this cutoff, any PAP with a monthly income of below Ksh 15,000 is considered below the poverty line and is therefore income poor. By extension, 28.5% of MGB PAPs are considered poor with poverty prevalence being highest in Likoni and Mtongwe at 32 and 26.7%. By extension, 71.5% of MGB PAPs subsist above the poverty line

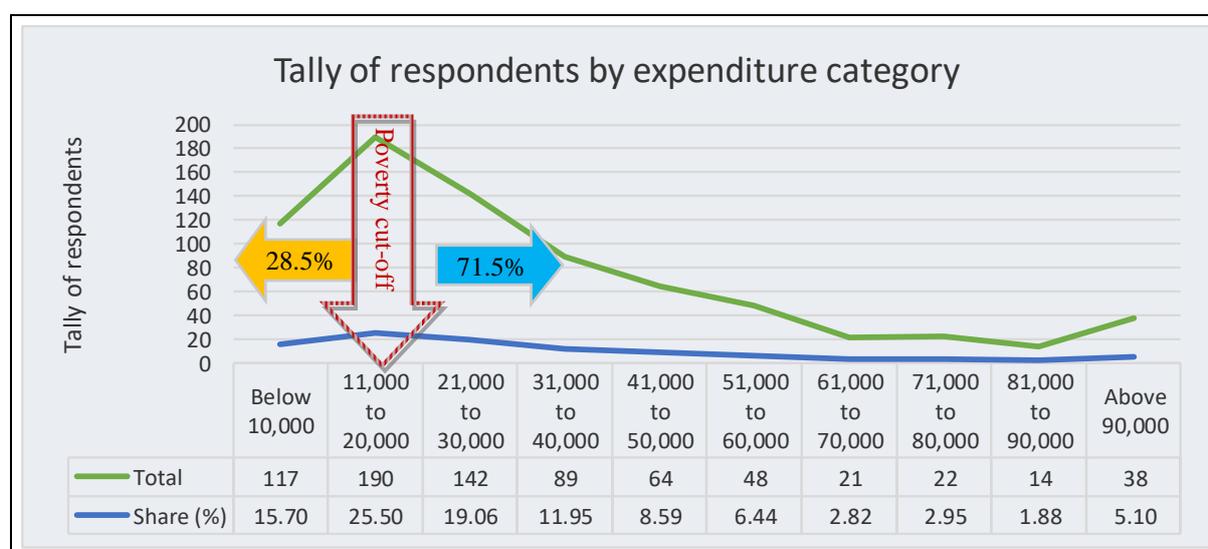
Table 3.17: Tally of respondents by income category

Expenditure Profile	Majengo	Likoni	Mtongwe	Shika Adabu	Ng'ombeni	Tally by category	Share (%) by category	Position on poverty line
Below 10,000	13	59	6	36	3	117	15.70	28.5%
11,000 to 20,000	28	91	9	62		190	25.50	↑
Poverty Cutoff line: Ksh 15,000 equivalent to Pa capita daily income of One US Dollar								
21,000 to 30,000	40	40	5	57		142	19.06	71.5%
31,000 to 40,000	31	22	2	34		89	11.95	
41,000 to 50,000	23	16	3	21	1	64	8.59	
51,000 to 60,000	12	18	4	14		48	6.44	
61,000 to 70,000	8	8		5		21	2.82	

71,000 to 80,000	8	7		7		22	2.95
81,000 to 90,000	4	5		5		14	1.88
Above 90,000	24	5	1	8		38	5.10
Total Reply	191	271	30	249	4	745	100.00
No Reply	20	12	1	13	0	46	
Total	211	283	31	262	4	791	

Source: This Study

Expenditure patterns: Both Table 3.20 and Fig 3.8 indicate the tally of respondents per monthly expenditure categories. Clearly, the bulk of respondents spend Ksh 40, 000 and below. More particularly, 307 of the respondent’s equivalent to 41.2% of the respondents spend below Ksh 20,000 per month which is on the borderline of the pa capita poverty line of Ksh 100 per day.



Source: This Study

Fig 3.8: Tally of respondents per expenditure category

Table 3.18: Tally of respondents by spending category

Expenditure Profile	Majengo	Likoni	Mtongwe	Shika Adabu	Ngombeni	Total
Below 10,000	13	59	6	36	3	117
11,000 to 20,000	28	91	9	62		190
21,000 to 30,000	40	40	5	57		142
31,000 to 40,000	31	22	2	34		89
41,000 to 50,000	23	16	3	21	1	64
51,000 to 60,000	12	18	4	14		48
61,000 to 70,000	8	8		5		21
71,000 to 80,000	8	7		7		22
81,000 to 90,000	4	5		5		14
Above 90,000	24	5	1	8		38
Total Reply	191	271	30	249	4	745
No Reply	20	12	1	13	0	46
Total	211	283	31	262	4	791

3.5: Vulnerability mapping

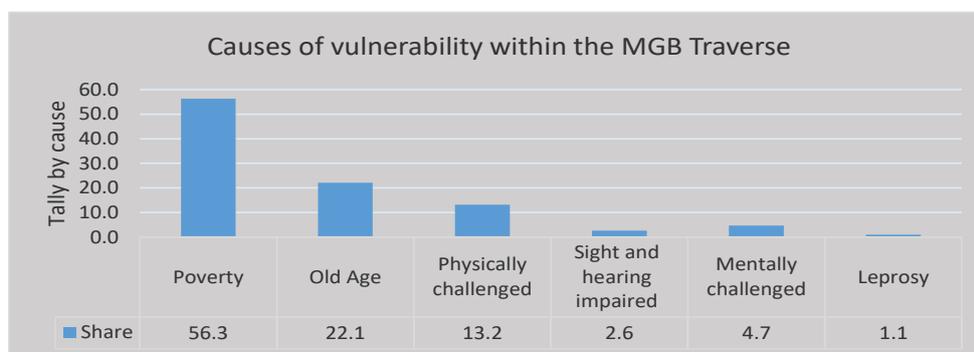
3.5.1: Criteria for vulnerability mapping

A PAP was considered vulnerable if they displayed any of the following traits; - old age, terminal diseases, other diseases, orphans, physical disability, mental disability, poor female headed households, and others.

3.5.2: Outcome of the vulnerability mapping

Total vulnerability: Fig 3.8 and Table 3.21 provide an analysis of the scope of vulnerability in the MGB Project. In addition to the 23.5% of PAPs who are considered vulnerable on account of poverty another 82 cases of vulnerability were encountered within 72 PAP households in the MGB traverse.

Causes of vulnerability: Essentially, old age is the predominant cause accounting for 56.2% of all vulnerability within the MGB traverse followed by physical disability at 30.7%. Old age is most severely felt within Majengo location in Mombasa Town where it accounts for 86.4% of all vulnerability.



Source: This Study

Figure 3.8: Vulnerability mapping within the MGB

Table 3.20: Tally of respondents by cause of vulnerability

Category	Majengo	Likoni	Mtongwe	Shika Adabu	Ng'ombeni	Total	Share
Hearing	2	1		1		4	2.1
Leprosy		1		1		2	1.1
Mentally Challenged		5		4		9	1.1
Old Age	19	11	2	9	1	42	22.2
Paralyzed		1		1		2	1.1
Physical Challenged	1	7	1	13		22	11.6
Poverty	13	59	6	26	3	107	56.6
Visually Challenged	0	1				1	0.5
<i>Total</i>	35	86	9	55	4	189	100
<i>No Reply</i>	189	257	28	233	3	710	
Total	211	283	31	262	4	791	

Kenya National Highway Authority- KeNHA	Resettlement Action Plan-RAP in the Mombasa Gate Bridge Construction Project-Final Report	2018
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3.5.3: Affected vendors around Likoni Ferry Jetties

Around the Likoni Ferry jetties, a lot of vendors are running their vending activities. The number of the vendors is approximately 1,200, including 800 with some stall and 400 with no stall. (as of 20th February, 2019) Due to the operation of the project, the vendors may lose their customers and their livelihoods may be affected.

CHAPTER FOUR: RESETTLEMENT MEASURES AND ENTITLEMENT MATRIX

4.1: Eligibility

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

4.1.1: Criteria for Eligibility

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

Thus, for purposes of the RAP for MGB Project, JICA Guidelines clearly identify involuntary displacement and loss of means to livelihood to be the core criteria in determining eligibility for compensation. Subsequent to this view, as a policy, this RAP will make provision to compensate all aspects of involuntary displacement. Some of the priority displacement impacts to be compensated include:-

Table 4.1: Categories of displacement recognised by this RAP

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

Source: This Study

4.1.2: The Cut -off Date

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

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

Administrative Location	Meeting where Cut -off date was declared			
	Date	Venue	Total Attendance	Presiding Officer
Likoni Location	9 th Dec 2017	Peleleza Primary school	94	Local Chief
Shika Adabu Location	13th Dec 2017	Kibaki Estate	72	Local Chief
Mtongwe Location	19th Dec 2017	Mtongwe polytechnic	69	Local Chief

Source: This Study

The meeting of 18th March 2018: The RAP Team concerned a meeting on 18th March at Peleleza Primary School at the invitation of PAPs whose properties had been inventories. Through this meeting which was chaired by the local DO representing the DCC, many matters pertaining to entitlement on displacement were raised. All matters were addressed by the RAP Team leader and later on amplified by all leaders among them the Senator for Mombasa. The matter of cut-off date was raised and re-emphasised for all to take note. Indeed, the PAPs for Likoni have already formed a committee and will be meeting monthly to raise any matters emerging.

4.2: Restoration of livelihoods

4.2.1: Dominant livelihoods within the MGB traverse

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

Table 4.3: Measures in income restoration

Sub County	Location	Main livelihood systems	Proposed restoration
Mombasa Island	Majengo	Commercial:- Real Estate, Trading, Services, Manufacturing	Compensation for loss of property and business including relocation costs
		Employment	Cash hand-out for lost opportunities
		Self-employment in small scale trade	Cash compensation for loss of premises and business
Mombasa Mainland	Likoni /Mtongwe	Small Scale Trade	As above
		Employment in	Design measures to ensure non restricted

Sub County	Location	Main livelihood systems	Proposed restoration
South	and Shika Adabu	Mombasa Town	access to the Kenya Ferry Service and other means to transport
		Rental Income	Compensation for loss of property and one year equivalent for lost rental income
		Horticulture	Cash compensation for loss of land, crops and income
			Cash hand-out for loss of employment in farms
		Fishing at Mweza and Port Reitz Creeks	Non-restricted access to fisheries and fish landing sites. Cash compensation for lost income.
	Boda boda and Tuk tuk based passenger transport	Ensure non restricted access to transport routes. Provision of alternatives to blocked routes	
Rural Shika Adabu and Ngombeni	Farming	Cash compensation for land and crops lost. None restricted access to agricultural land.	

Source: This Study

4.3: The Entitlement Matrix

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

Table 4.4: The Entitlement Matrix

SN	Type of Loss	Entitled Persons	Entitlements	Implementation issue/ Guidelines	Responsible organization
1	Loss of agricultural land, pond, ditches and Orchards etc.	Legal owners of land	<ul style="list-style-type: none"> Cash compensation at market value for land replacement as determined by the NLC. Refund for all statutory and transaction charges in acquiring new land. 15% cash top-up in compulsory acquisition 	<ul style="list-style-type: none"> Assessment of market value for RAP Submission of application bundles by MOTI to the NLC¹ Follow Chapter VII of Lands Act 2012 NLC to revalidate valuation as per Schedule to Cap 295 	<p>KeNHA</p> <p>MoTID</p> <p>NLC</p>

¹ See section 3.3.3 above for NLC Guidelines in CLA

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SN	Type of Loss	Entitled Persons	Entitlements	Implementation issue/ Guidelines	Responsible organization
2	Loss of access to cultivable land by owner cultivator/ tenant/ sharecropper	Tenants/sharecropper/Legal owner/grower/ socially recognized owner/lessee/ unauthorized occupant of land	<ul style="list-style-type: none"> • Compensation for standing crops to owner cultivator/ sharecroppers or lessees as determined by NLC. • Owner/grower to take away the crop 	<ul style="list-style-type: none"> • All the individuals identified by the NLC as tenants or sharecroppers of land • Grant to be paid after taking possession of land and the legal /socially recognized owner is paid for land and on certification of receipt by legal/socially recognized owner • Additional cash grant to cover current market value of crop compensation as prescribed in case of private owner himself cultivating crop • Crop compensation and the crop will be shared between owner and sharecropper as per terms of sharecropping in case of privately owned land/socially recognized owner • In case of dispute over verbal agreement on sharecropping, certification from the elected representative will be considered as legal document 	KeNHA MoTID NLC

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SN	Type of Loss	Entitled Persons	Entitlements	Implementation issue/ Guidelines	Responsible organization
3	Loss of homestead/ residential/ commercial/ CPR plots by owners/ Authorities	Legal owner(s) of the land	<ul style="list-style-type: none"> Cash compensation at market value for property replacement as determined by the NLC. Refund for all statutory and transaction charges Replacement Cost for Immovable structures 15% cash top-up in compulsory acquisition Right to salvage material 	<ul style="list-style-type: none"> Assessment of market value for RAP Submission of application bundles by MoTID to the NLC Follow Chapter VII of Lands Act 2012 NLC to revalidate valuation as per Schedule to Cap 295 PMU to assist community to secure the completion of CPR's construction on relocation land before transfer of the plot 	<p>KeNHA</p> <p>MoTID</p> <p>NLC</p>
4	Loss of Trees/Perennials/ fish stocks	<p>i. Person with Legal Ownership of the land</p> <p>ii. Socially recognized owner/ Unauthorized occupant of the trees/ fishes</p>	<ul style="list-style-type: none"> For commercial trees, Cash compensation at replacement cost equivalent to seven year annual income plus seven year establishment and tending cost For ornamental trees, Cash hand-out computed at gross expected income from timber or firewood For perennials, Right to harvest at maturity Compensation at GMR in case pre-mature removal Cash payment at replacement cost for relocation of pen traps plus additional cash handout for income replace equivalent to six month declared income At cost replacement of fish landing sites displaced Cash handout for fishermen blocked from accessing fishing grounds 	<ul style="list-style-type: none"> Cash payment at replacement cost for relocation of pen traps plus additional cash handout for income replace equivalent to six month declared income At cost replacement of fish landing sites displaced PMU to inform Likoni BMU including the fishermen of information of fishing regulation, construction and results of monitoring of Kilindini Harbour during detail design 	<p>KeNHA</p> <p>MoTID</p> <p>NLC</p>

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SN	Type of Loss	Entitled Persons	Entitlements	Implementation issue/ Guidelines	Responsible organization
			calculated at gross daily income for entire length of displacement	phase, construction phase and monitoring phase for operation	
5	Loss of residential /commercial structure by owner(s)	Legal Titleholder Owner(s) of structures	<ul style="list-style-type: none"> Cash compensation at market value for property replacement as determined by the NLC. Refund for all statutory and transaction charges Replacement Cost for Immovable structures Repair costs at 25% of property value in case of partial loss Right to salvage material 	<ul style="list-style-type: none"> Assessment of market value for RAP Submission of application bundles by MoTID to the NLC Follow Chapter VII of Lands Act 2012 NLC to revalidate valuation as per Schedule to Cap 295 	KeNHA MoTID NLC
6	Loss of residential /commercial structure by squatters and unauthorized occupants	Informal settlers/ squatters/non-titled APs occupying public land without title/or squatting on Governmental land	<ul style="list-style-type: none"> Cash replacer pegged at equivalent to 12 months of gross monthly income as per audited accounts 	<ul style="list-style-type: none"> NLC to revalidate valuation as per Schedule to Cap 295 	KeNHA MoTID NLC
7	Loss of access to residential houses/ commercial structures (Owners/ rented or leased)	Tenants of rented/leased properties	<ul style="list-style-type: none"> House Transfer Grant (HTG) for shifting of furniture and belongings of residential structure (@ Ksh 20,000(twenty thousand) for wooden structure, Ksh 60,000 (sixty thousand) for masonry structure to each shifting tenant. 	<ul style="list-style-type: none"> Verification of NLC and records Transfer grants will be paid on relocation from project site 	KeNHA MoTID NLC
8	Loss of business by CBEs due to dislocation	Owner/ operator of the business as recorded by NLC	<ul style="list-style-type: none"> Cash replacer pegged at equivalent to 12 months of gross monthly income 	<ul style="list-style-type: none"> NLC to revalidate valuation as per Schedule to Cap 295 	KeNHA MoTID NLC
9	Loss of Income and work days due to displacement	Household head/ Employees identified by NLC	<ul style="list-style-type: none"> Cash grant to the affected employees/wage earners equivalent to 45 days wage @ Ksh 400/per day for unskilled laborers and @ Ksh 600/per day for 	<ul style="list-style-type: none"> All persons recorded by the NLC Cash grant to be paid while taking 	KeNHA MoTID NLC

SN	Type of Loss	Entitled Persons	Entitlements	Implementation issue/ Guidelines	Responsible organization
			<ul style="list-style-type: none"> skilled laborers. • Preferential employment in the project construction work, if available. 	<ul style="list-style-type: none"> possession • Involvement of the incumbents in project civil works • Training on income generating activities. 	
10	Poor and vulnerable households	Poor and vulnerable households including informal settler, squatters /women headed household without elderly son/ non-titled APs identified by NLC	<ul style="list-style-type: none"> • Additional cash grant of Ksh 10,000 (ten thousand) for affected poor women headed households and other vulnerable households • Training on IGA for AP, nominated by AP. 	<ul style="list-style-type: none"> • Identification of Vulnerable households • Income restoration schemes for vulnerable households • Arrange training on income generating activities 	KeNHA MoTID Restoration of Livelihood Implementation Agency
11	Displacement of community structure (CPR)	Community structure representative as identified by the CRL	<ul style="list-style-type: none"> • CCL by NLC to legal owners, plus the difference between CCL and RC of structure as determined by NLC. • Cash compensation for CPRs on land without titles to be determined by CRL to match RV for the structure • Dismantling and reconstruction cash assistance as per assessed price by NLC. • Owners will be allowed to take all salvageable materials (within KeNHA declared deadline) free of cost 	<ul style="list-style-type: none"> • PMU to conduct community consultations to ensure CPRs are relocated taking into account community concerns. • PMU to inform the community of relocation schedule in advance • PMU to assist community to secure the completion of CPR's construction on relocation land before transfer of the plot 	KeNHA MoTID PMU

SN	Type of Loss	Entitled Persons	Entitlements	Implementation issue/ Guidelines	Responsible organization
12	Temporary impact during construction	Community / Individual	<ul style="list-style-type: none"> The contractor shall bear the cost of any impact on structure or land due to movement of machinery and in connection with collection and transportation of borrow materials. All temporary use of lands outside proposed RoW to be through written approval of the landowner and contractor. Land will be returned to owner rehabilitated to original preferably better standard. 	<ul style="list-style-type: none"> Community people should be consulted before starting of construction regarding air pollution, noise pollution and other environmental impact The laborers in the camp would be trained about safety measures during construction, aware of health safety, STDs, safe sex etc. The contractor shall ensure first aid box and other safety measures like condoms at construction site. 	KeNHA MoTID PMU
13	Loss of income due to decrease of customers	Vendors around Likoni Ferry jetties, who might be affected due to the project	<ul style="list-style-type: none"> Provision of vocational training program for vendors who wish their means of livelihood Provision of fund for start-up after finishing the vocational training program 	<ul style="list-style-type: none"> Expected impacts should be studied on a detail design study, and affected vendors should be consulted about necessity of the vocational training. 	KeNHA MoTID PMU

JICA Survey Team

(i) Compensation and Mitigation Policy for Affected Fishery

Small and sensitive fishery is operated in/around the Mweza creek. Compensation and mitigation policies for the fishery are the followings in addition to the description of the entitlement matrix:

- To secure alternative landing site for displaced sites as needed,
- To secure land access routes to landing site during construction period,
- To secure sea access routes to Mweza creek from Kilindini harbor because bridge construction activities hamper the access,
- To consider convenience for fishermen to find alternative landing sites during bridge construction activities,
- To communicate to fishermen and the BMU sufficiently and continuously to find the best mitigation measures for each fisherman,

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- To plan and conduct mitigation measures such as livelihood restoration program as needed, and
- To share with the fishermen and the BMU about information of construction, restriction for fishing and monitoring results of the bay during the phases of detail design, construction and operation. Disclosure will be carried out by regular meetings between the BMU and the project proponents including KeNHA, consultants and contractors, and a notice board.

(ii) Compensation and Mitigation Policy for Common Property Resources

The project affects some CPRs including cemetery, shrine, school and church. The basic of compensation policy is cash compensation. However, since CPRs are one of social functions, break of operation and relocation to far place without alternatives will affect seriously. Therefore, considering the position of the CPRs in the communities, the project proponents should inform a relocation schedule in advance, talk to the communities about the best mitigation measures, and assist their relocation.

(iii) Assistance for affected vendors around Likoni Ferry Jetties

For the affected vendors around the Likoni Ferry Jetties, vocational training programs are provided. Some educational institutions in Mombasa area are providing a lot of vocational programs.

(Table 4.5) Using these program, the livelihood of the vendors will be restored.

The rough costs of the assistance for vendors are calculated as follows:

- The number of vendors: 800 vendors with stalls, and 400 vendors with no stalls
- On the assumption that 20% of vendors with stalls and 50% of vendors with no stalls wish the vocational training program, 360 vendors are object for the assistance.
- The cost of livelihood restoration per capita is 130,000~200,000Ksh (including 30,000~100,000Ksh of vocational training program and 100,000Ksh of fund of start-up)
- Total amount of the costs is roughly expected as 47million ~72million Ksh.

Table 4.5: Example of Vocational Program in Mombasa Area

Institution	Course	Costs (Ksh)
Technical University of Mombasa	Craft Certificate in Secretarial Studies	21,115
	Craft in Electrical Installation	-
Christian Industrial Training Centre	Electrical Installation Grade III, II, I	36,000
	Welding and Fabrication Grade III, II, I	36,000
	Site Carpentry	36,000
	Domestic Plumbing Grade III, II, I	36,000
	Motor Vehicle Technology Grade III, II, I	36,000
	Driving	-
Kenya Coast National Polytechnic	Welding & Fabrication	21,200
	Air Conditioning & Refrigeration	21,200
	Carpentry & Joinery	21,200
	Artisan in Dressmaking and Tailoring	31,250
	Wireman	21,200
	Masonry Grade III, II, I	21,200
	Artisan in Dressmaking Grade III, II, I	32,200
	Artisan in Hairdressing	38,165
	Artisan in Beauty Therapy	38,165
	Event Decoration and Interior Decor	26,250
	Artisan Proficiency in Leisure and Recreation	29,200
	Bread Making Technique	26,200
	Plumbing Grade III, II, I	24,265

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	Welding & Fabrication Grade III, II, I	24,265
	Refrigeration and Air Condition Grade III, II, I	24,265
	Motor vehicle electric Grade III, II, I	24,265
Bandari College Mombasa	Electrical installation	75,000
	Welding and metal fabrication	75,000

4.4: Site Selection, site preparation and Relocation

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

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CHAPTER FIVE: GRIEVANCE REDRESS MECHANISM

5.1: Overview

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

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

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

- Pre-compensation GRM
- Compensation Stage

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

5.2: The GRM

5.2.1: Pre- compensation GRM

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

(i) Grievance management at the Asset Inventory Stage

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

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

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

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

5.2.2: Organs in the Compensation Stage-GRM

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

(i) The Location PAPs Committees (LPCs)

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

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

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

Table 5.1: Distribution of PAP Committees

County	Sub County	Location	Name of PAP Committees
Mombasa	Mombasa Island	Majengo	Majengo PAP Committee
	Likoni	Likoni	Likoni PAP Committee
		Mtongwe	Mtongwe PAP Committee
		Shika	Shika Adabu/ Ng'ombeni PAP Committee
Kwale	Matuga	Adabu/ Ng'ombeni	

(ii) Location Elders Committees-LECs

Inventory of Assets undertaken for this RAP came across many silent land disputes relating to inheritance, boundaries, etc. which is likely to intensify once the compensation process gets underway. As such, the Location Elders Forums which already exist within the traverse area will require be re-mobilizing and energizing to resolve all non-RAP land disputes whose escalation has

potential to delay or derail project implementation. The LECs will also spearhead compensation for communally owned assets such as water projects, communal graveyards, etc.

(iii) Grievance Redress Committee-GRC

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

5.2.3: Operationalization of the GRM at Compensation Stage

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

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

Expectations for each level are highlighted in sections below.

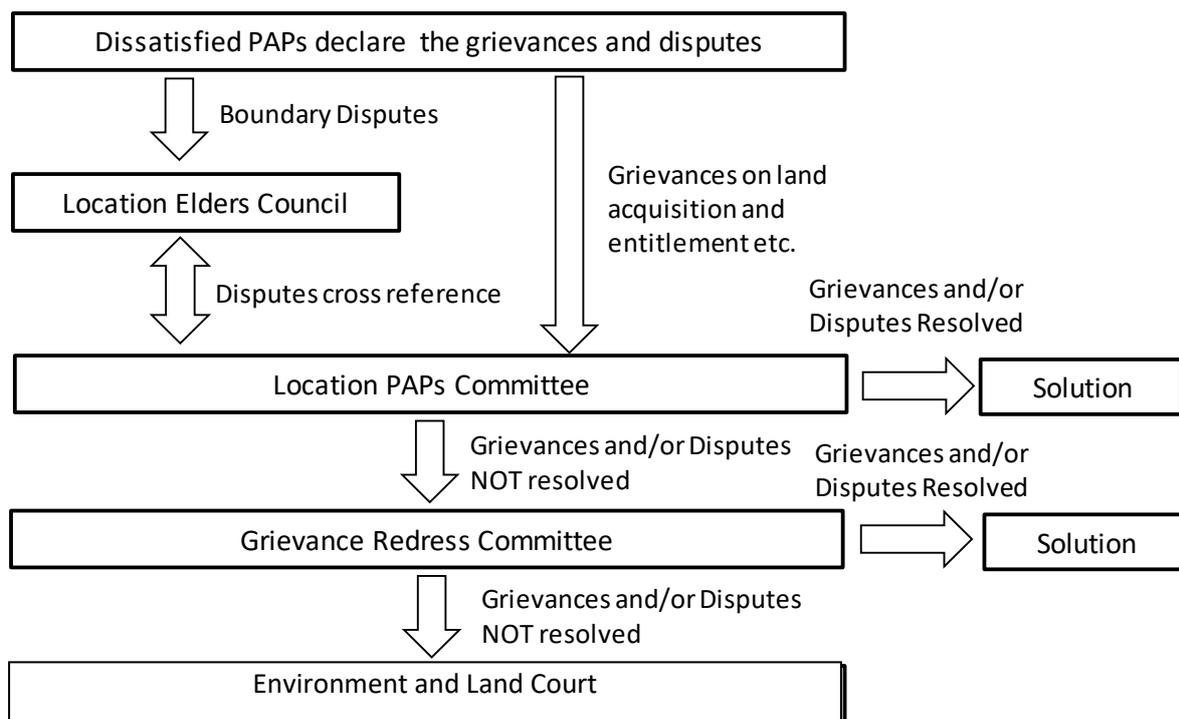


Figure 5.1: Grievance Redress Procedure

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(i) PAP to PAP Counselling

Experience has it that farmers learn best from fellow progressive farmers and this premise permeates all spheres of rural life. Indeed, it is expected that any aggrieved PAP will first try to seek guidance from a fellow PAP or a respected neighbor in which case, and this presents an excellent forum that could be tapped to resolve and nip disputes at the budding stage. The proposal is for the GRC to invest resources in extending intensive training and sensitization to all PAPs so that, armed with better understanding of the resettlement process, procedures and institutions, PAPs will be available to guide fellow PAPs to better understand their rights, jurisdiction of available conflict resolution organs and thus only approach the right organ for cases with merit, thereby cutting down on nuisance or otherwise unfounded claims and time wasted in cross referrals. Thus, one of the roles of the PMU through the Resettlement Officer will be to build capacity for PAPs and their organs.

(ii) The Location Elders Council-LEC

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

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

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

(iii) Location PAPs Committee (LPC)

PAPs in each of the 5 administrative locations traversed will appoint a Location PAPs Committee of their own to cater for interests. This committee will work in liaison with the LECs to cross refer and resolve disputes without duplicating or usurping roles. Thus, where disputes relating to boundaries or inheritance are referred to the LPC, the latter will refer the same to the LEC such that, the LPC will only deal with cases relating the Entitlement Matrix. Should a PAP be dissatisfied with the compensation offered, he/she will appeal to the LPC who will act as follows:-

- Maintain a register and files for all grievances raised,
- Hear the grievances of the PAPs, and provide an early solution to those they are able to,
- Refer boundary disputes to the LEC

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- Immediately bring any serious matters to the attention of the GRC,
- Provide liaison and feedback mechanism between the PAPs and the GRC.

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

(iv) Grievance Redress Committee (GRC)

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

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

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

(v) The Environment and Land Court

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

5.3: Costs in the Grievance Redress Mechanism

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

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CHAPTER 6: THE INSTITUTIONAL FRAMEWORK

6.1: Identification of Agencies Responsible for Resettlement Activities

6.1.1: Overview of the Institutional Framework

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

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

6.1.2: Levels of Project Implementation

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

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

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

6.2: Roles and Responsibilities within the Institutional Framework

6.2.1: National Level Institutions

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

(a) The Ministry of Transport and infrastructure Development

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

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funding. MoTID will communicate directly with JICA on technical issues related to project implementation including financial, procurement and physical progress and all such communication will take place under the signature of the Permanent Secretary (or his designated representative) as the overall accounting officer for the Ministry.

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

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

(c) *The Japan International Cooperation Agency-JICA*

JICA is the strategic partner who is collaborating with MoTID in the development of the Mombasa city Roads Improvement Project. In this capacity, JICA has two roles that are pivotal to the project namely:

- i) Provision of part funding for project development,
- ii) Provision of technical capacity for project development whereby JICA has appointed a JICA Study Team (JST) spearheaded by Katahira and Engineers to undertake feasibility and detailed design of the project. In this capacity, the JST has supported KeNHA in the implementation of supplementary studies on EIA and Resettlement Action Plan. This RAP has accrued out of that process.

(d) *The National Environment Management Authority (NEMA)*

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

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

6.2.2: Regional Level Institutions

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

This office already exists and is headed by a Regional Manager (RM) overseeing diverse interest pertaining to development and maintenance of the rural trunk road network in coast province. The Coast Regional Office of KeNHA will provide backup to the Head Office in

the supervision of Project Implementation including administrative leverage to the project through liaison with GoK Agencies relevant to project implementation.

(b) Project Management Unit

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

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

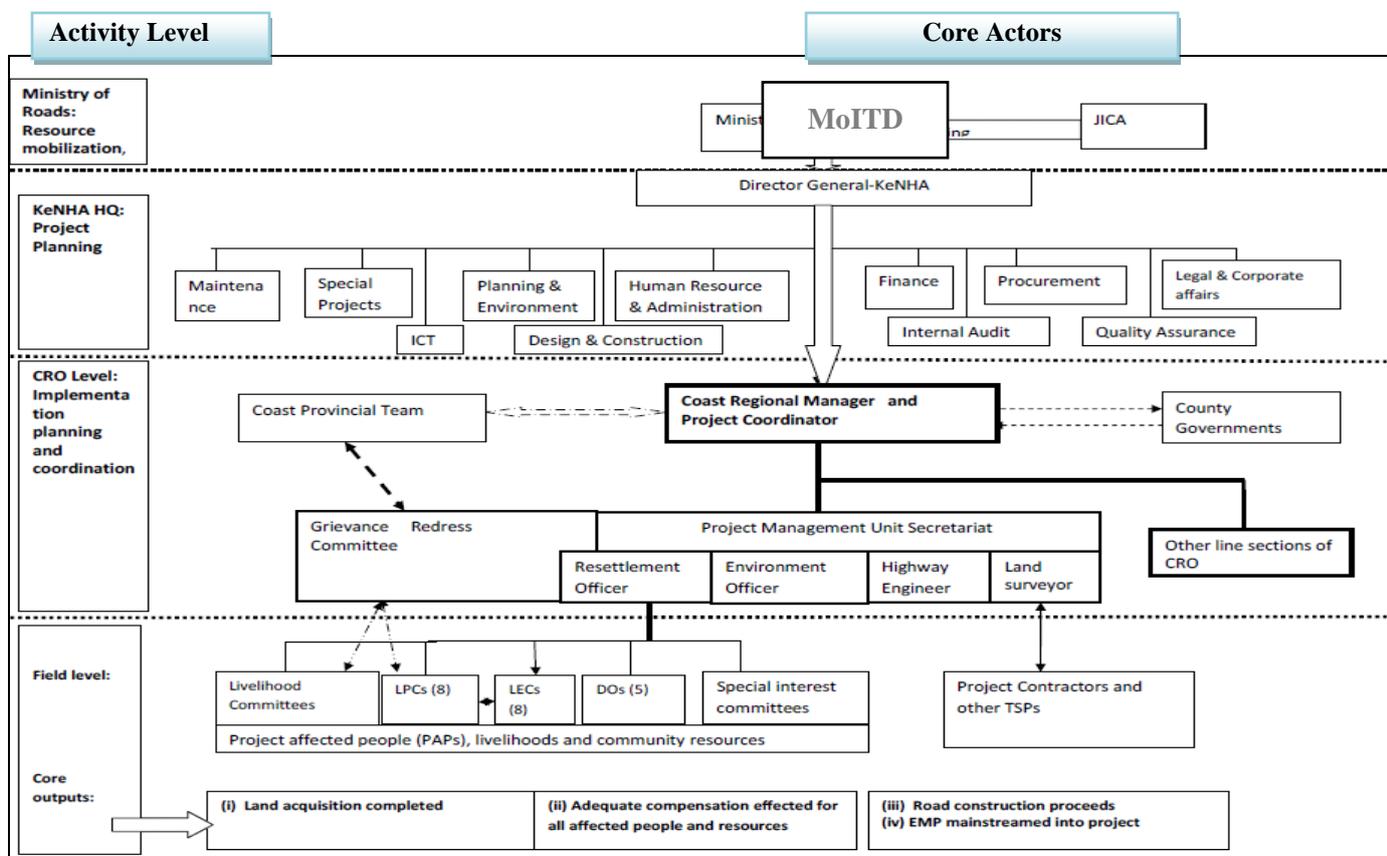


Figure 6.1: Proposed Institutions framework for RAP implementation

- ii) Facilitate site handover to the Contractor and introduce the latter to the local administrative set-up.
- iii) Provide liaison between the Project and other arms of government including the local political leadership through the county governments, provincial administration, etc.
- iv) Facilitate compensation for all displacement occasioned by the Project,
- v) Facilitate resolution of all disputes arising from project implementation-particularly land acquisition. Towards this, the PMU will require to create a semi-autonomous Grievance Redress Committee (GRC) and oversee creation of grass-roots groups to protect PAP interests as outlined in section 5.2.3 below.
- vi) To supervise project development including activities of the Project Contractor. This will require the PMU to employ a Highway Engineer to serve the role of Supervisor of Works (SOW).
- vii) Supervise implementation of the Environmental Management Plan of the Project,
- viii) Facilitate activities of all consultants and other Technical Service Providers (TSP) on the project.
- ix) Report on matters of Project development to KeNHA Headquarter.

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

(c) *The Resettlement Officer*

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

Table 6.1: Groups to be activated by the Resettlement Officer

Category of impacts	Mode of linkage	Remarks
Displacement of settlement and property	Establish LPCs in 5 locations within Mombasa and Kwale Sub Counties	Formation of LPCs will first require that the final alignment be established
	Make contact with all corporate and parastals individually	Some preliminary contacts have already been made
Displacement of community assets	Mobilization of LECs in all 5 locations	Location Elders Councils already exist under coordination of Chiefs and are useful in settling boundary disputes.
Displacement of livelihoods (special interests)	Make contacts with Beach Management Unit (BMU) for Likoni	BMU have been formed under formation under auspices of respective Fisheries Offices to cater for interests

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		of all fishing based stakeholders
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(d) Grievance Redress Committee (GRC)

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

6.2.3: Project Level Institutions

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

(a) The Location PAPs Committees

It is expected that PAPs in each location will form their own committee which will henceforth liaise with the PMU/GRC on all aspects of resettlement. This is the committee that will also play a role in resolving basic conflicts between members. A total of 5 LPCs will be formed (Appendix 6.1).

(b) Location Elders Committees

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

(c) Restoration of Livelihood Implementing Agency

KeNHA will engage an experienced Implementing Agency (IA) for implementation of the RAP in the field level in coordination with CRO KeNHA and PMU. Implementing Agency will have to establish a Restoration of Livelihood section which will support vulnerable people with a Livelihood and Income Restoration Program (LIRP).

6.3: Assessment of the Institutional Capacity of Agencies

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

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6.3.1: Capacity Building Needs for KeNHA

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

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

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

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

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

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

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

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

(iii) Encroachment on road reserves:

Encroachment on road reserves is by far the most severe challenge to KeNHA and other managers of designated reserves. Encroachment poses a challenge for future expansion

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of roads and hampers safety of road users due to poor visibility within the road corridor. Clearance of these encroachments often results to destruction of livelihoods and additional costs in compensation to project affected persons. Public sensitization against encroachment, clear demarcation of the road corridor and clearance of encroachments were undertaken to secure the road corridor. The Authority also secured a GIS system through which all road network will be mapped and a database for land acquisitions be maintained.

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

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

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

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

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

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

6.3.2: Capacity Building for Project Implementation

(a) Creation of Project Management Unit

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

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Providers (TSPs) will be integrated in the overall Resettlement Schedule to ensure optimum benefit to the process and a schedule is proposed in Table 6.2.

Table 6.2: Phasing of Recruitment and Deployment of TSPs

Requisite Service	Timing of procurement/ deployment	Procuring authority	Counterpart authority
Preparation of Project Implementation manual-PIM	Planning phase- 2 nd Quarter 2022	Procurement Section of KeNHA Hq.	Planning officer of PMU
Confirmation of Assets Register	Quarters 2&3 of 2022	As above	Resettlement Officer
Mobilization of PAP structures including pre-resettlement counselling	Quarters 3&4 of 2022	As above	Resettlement Officer

(b) Capacity Building for the Contractor Staff

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

(c) Capacity Building for the GRC

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

(d) Capacity Building for the LPCs

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

(e) Capacity Building for PAPs

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

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CHAPTER SEVEN: IMPLEMENTATION SCHEDULE

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

When L/A will be made in December 2018, it will take one year to select the Consultant by December 2019, Detailed Design will take two years by December 2021 and construction work will start in November 2023 to October 2027, respectively.

7.1: Loan Effectiveness and Implementation Planning

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

(a) Constitution of a PMU at the KENHA

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

(b) Planning for Implementation

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

(c) Orientation to the Project Affected Area

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

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

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

(e) Constitution of LPCs and the GRC

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

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7.2: Implementation Phase Activities

Implementation Phase activities will entail the following:-

(a) Mobilization of LPCs institutions

Once funding has been procured, the RO will move to mobilize the LPCs by ascertaining that there is one for each location Majengo, Likoni, Mtongwe, Shika Adabu/ Ng'ombeni and the Fishermen and that they have been appropriately constituted, and are adequate. Following this, the RO will arrange training schedules with a view to focusing activities of the PAPs and such training will cover aspects such as leadership qualities, roles, responsibilities and limits of the LPC, grievance registration procedures, approach to conflict resolution, need for impartiality, etc. Upon successful training, LPCs will be equipped with standard stationary including grievance registers, foolscaps, filing material etc.

(b) Mobilization of the GRC

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

7.3: Compensation Process

7.3.1: Submission of the application bundles to the NLC

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

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

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by the Commission. This is in the purview that in previous acquisitions, the compensation payments were delayed as opposed to the promptness required by the Law

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

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

7.3.2: Due process by the NLC

(a) Gazetting of all target parcels

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

(b) Public Inquiries

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

(c) Making of awards

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

(d) Final Award and Signing of Contracts

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

(e) Preparation of PAPs by the PMU

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

7.4: [Removal of Assets](#)

(a) Removal of Economic Assets

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

(b) Removal of Non-economic Assets

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

7.5: Costs in the RAP Implementation Schedule

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

CHAPTER EIGHT: COSTS AND BUDGET

8.1: Overview on the budgetary process

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

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

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

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

8.2: The RAP Budget

8.2.1: Gross Budget

The budget also includes operational cost of the Restoration of Livelihood Implementing Agency and capacity building training cost of the KeNHA etc. The total estimated cost for implementation of the RAP is approximately 9.402 billion Ksh as provided in Table 8.1 below. This includes amount to be determined by the CRO KeNHA for land and other physical assets. These estimates and the budget must be regarded as provisional, given the need for updating the RAP (if required) during implementation. Final rates per unit for land, structures, trees and other affected properties will be determined by the CRO KeNHA. Based on the rate and RAP policy a final resettlement budget would be prepared and approved by the KeNHA Headquarter. All resettlement funds will be provided by the KeNHA based on the financing plan agreed by the GoK and the Donor.

A summary of the **Gross RAP Budget** is shown in the Table 8.1 with a breakdown provided in Table 8.2 (a) and (b). **The Gross RAP Budget recognises cost heads as follows:-**

- Compensation cost:- land, building and re-construction of public infrastructure
- Restoration of livelihood cost:- Compensation for loss of business to CBEs, vocational training cost, firming support cost, agent commission on introduction of job and working capital of small size company

- Operation cost:- technical support cost, monitoring and evaluation cost
- Contingency:- allowance for inflation, population growth and the others

Table 8.1: Gross RAP Budget

Item	Component	Cost	Share
Direct Costs	Land	3,054,505,740	33.2%
	Structure Demolition	418,919,100	4.5%
	Structure	2,671,989,100	29.0%
	Other Assets	565,497,340	6.1%
	CBEs & Loss of Income	2,366,711,600	25.7%
	CPRs	9,916,500	0.1%
	Trees	30,167,500	0.3%
	Assistance	80,000,000	0.9%
	External Monitoring	20,000,000	0.2%
Sub Total (a)		9,217,706,880	100%
Operation Cost (b) (1% of (a))		92,177,069	
Sub Total RAP Cost (c) ((a)+(b))		9,309,883,949	
Contingency (d) (1% of (c))		93,098,839	
Gross RAP Cost ((c)+(d))		9,402,982,788	

Source: This Study

8.2.2: Direct Costs

Compensation for displacement: Compensation costs have been computed based on the entitlement as applied to the Assets Register to yield to the Costed Assets Register issued as Appendix 8.1 to this RAP. A summary of the assets register is provided in Table 8.2(a) below while Table 8.2(b) provides a summarised breakdown of the Costed Assets Register. Cost schedules applied in determination of direct costs have been generated through the Replacement Cost Study reported in Appendix 8.2. A total of Ksh 8,698,787,780 has been identified under this vote, of which compensation for land is the largest share accounting for 33.5% followed by Structures and CBEs at 29.3 and 26.0% respectively.

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

County	Project section by sub-county	Admin Location	Land (Ha)	Tally of structures										KRC rails and ramps	CBES	CPRs	Trees
				NS	1S	2S	3S	4S	5S	6S	7S	Temp S					
Mombasa	Mombasa Island	Majengo	5.44	47	27	24	15	0	1	1	3	112		597	8	598	
	Likoni	Likoni	26.38	298	1	0	1	0	0	0	0	124		84	8	4536	
		Mtongwe	3.57	48	0	0	0	0	0	0	0	0		3	2	267	
		Shika	21.71	221	4	0	0	0	0	0	0	274		199	6	10602	
Kwale	Matuga	Ng'ombe	5.49	0	0	0	0	0	0	0	0	0	0	0	1	710	
	Totals	5	62.59	614	32	24	16	0	1	1	3	510	883	25	16713		

Source: This Study

Key: NS-Non storied; 1-7S-number of Floors ; Temp S-Temporary Structure; KRC-Kenya Railways Corporation; CBEs Commercial and Business Enterprise; CPRs-Common Property Resources

Table 8.2(b): Breakdown of Direct Costs in the RAP Budget

Cost Item	Description	Unit	Unit cost	Total Units	Total to Item	10%	Gross Estimate
Land	Commercial land in Msa Town	Ha	370500000	5.44	2015520000	201552000	2,217,072,000
	Shoreline land in Likoni	Ha	19760000	15	296400000	29640000	326,040,000
	Residential land in Likoni, Mtongwe and Shika Adabu	Ha	14820000	25.98	385023600	38502360	423,525,960
	Agricultural land in Shika Adabu and Ngombeni	Ha	4940000	16.17	79879800	7987980	87,867,780
Structures	3 No. Highrise buildings Mombasa Island	Sq metres	47000	5684	267148000	26714800	293,862,800
	46 No Low rise high class blds	Sq metres	37000	33617	1243829000	124382900	1,368,211,900
	68 No Low rise buildings	Sq metres	28000	22968	643104000	64310400	707,414,400
	510 No Temporary structures	No	550	500000	275000000	27500000	302,500,000
Other assets	Boreholes	No	2500000	68	170000000	17000000	187,000,000
	Wells	No	250000	29	7250000	725000	7,975,000
	Septic tanks	No	220000	593	130460000	13046000	143,506,000
	Miscellaneous assets walls, gates, sentry, parking)	No	LS	1341	187740000	18774000	206,514,000
	KRC Rails and Ramp		LS		17340000	1734000	19,074,000
	Pentrap accessories at Bofu	LS					1,428,340
CBEs	Loss of Rental income in MI (94)	Month	37333333	12	448000000	44800000	492,800,000
	Loss of rental income for rest of traverse (531)	Month	18585000	12	223020000	22302000	245,322,000
	Loss of bussiness by 246 MI	Month	36900000	12	442800000	44280000	487,080,000
	Loss of bussiness by 263 SS	Month	2630000	360	946800000	94680000	1,041,480,000
	Loss of fishing income by pen trap owner	Day	12600	360	4536000	453600	4,989,600
	Loss of fishing income to other 200 fishermen	Day	240000	360	86400000	8640000	95,040,000
CPRs	Removal of 9 graves (shika Adabu)	LS	15000	9	135000	13500	148,500
	3SHG structures	LS	120000	3	360000	36000	396,000
	Renovating 7 Public schools	No	360000	7	2520000	252000	2,772,000
	Relocating 4 churches	No	1500000	4	6000000	600000	6,600,000
Trees	Fruit trees	No	5722	2000	11444000	1144400	12,588,400
	Timber trees	No	7825	2000	15650000	1565000	17,215,000
	Ornamental trees	No	331	1000	331000	33100	364,100
Total					7,906,690,400		8,698,787,780

Source: This Study

8.2.3: Indirect costs

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

RAP Implementation Costs/Operation costs: A sum equivalent to 1% of Direct Costs has been provisioned to be drawn by KENHA in implementing the RAP. Expenses envisaged include field costs, capacity building for RAP structures, setting up of a Project Implementation Team, among others.

Monitoring Costs: A lumpsum of Ksh 20 million has been set aside for use by KENHA in the hiring of consultants to undertake enteral monitoring of RAP implementation.

Assistance to Vulnerable PAPs: Some PAPs are considered too vulnerable on account of advanced age, poor health etc as to be able to manage relocation challenges on their own. And vendors around Likoni Ferry jetties might be affected due to decrease of customers after the commencement of the project. As lumpsum of Ksh 80 million has been provisioned for use by KENHA in providing the additional assistance that may be called for in such cases. Of necessity, such a category of PAPs cannot relocate before provision of both compensation and the special assistance as proposed

Demolition costs: Demolition costs entail a provision for KeNHA to utilize in demolition of structures in target Right of Way. This amount has been calculated as follows:-

Rationalization of demolition costs

Section	Type of structure	Area (m ²)	Unit cost (USD)	Cost to unit (USD)
MI	HLB	39,301	60	23,58,060
	LRB	22,968	30	689,040
	MS	15,535	10	155,350
	Others	5,000	10	50,000
MMS	MH	64,992	10	649,920
	OH	16,057	10	160,570
	MS	2,291	10	22,910
	Others	2,120	10	21,200
Totals		168,264		4,107,050
KSh equivalent				418,919,100

Key: *HLB-Highrise building, LRB- Low-rise building; MS Minor Structure, MH-Main House; OH- Other House*

8.2.4: Contingency Costs

From Table 8.1, an item of Ksh 93,098,839 equivalent to 1% of the total costs including operation cost has been allowed to cater for contingencies in costs and unknown impacts .

8.3: Other Assistance measures

8.3.1: Assistance to Vulnerable groups:

Additional measures will be pursued as follows:-

- d. **Creating of special programmes:** While ordinary PAPs will undergo training on modalities of coping either the displacement, elderly and sick PAPs will not be available for such. It will thus require the Resettlement Officer to tailor make special programmes to reach out to such people and help them understand and cope with the shock of displacement. If not properly cushioned, such PAPs may find the shock to be too much to handle.
- e. **Monitoring management of proceeds from compensation:** If left alone, some PAPs have no capacity to manage monies accruing from compensation and would end up losing the money without replacing lost assets. The Resettlement Officer will require to network with PAPs to establish modalities of how such PAPs can be assisted to re-place lost assets without being exploited.
- f. **Project related job opportunities:** Severely affected persons will be prioritized in gaining employment in the works linked to the Project. KENHA will ensure that this is included in the contractors' specifications wherever possible.
- g. **Assistance through Corporate Social Responsibility (CSR) Programme:** The CSR programme should aim at addressing community felt needs as documented during in the socio-economic survey conducted for this RAP, among which is poverty alleviation.

With this in focus, KENHA will explore means of remaining engaged in communities adversely affected by the road upgrading project with possible entry points as follows:-

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

CHAPTER NINE: PROCEDURE FOR MONITORING AND EVALUATION

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

9.1: The basis for monitoring

9.1.1: JICA requirements in Project Monitoring

Article 9 of Appendix 1 to the JICA's Guidelines make requirements for monitoring as follows:-

1. After projects begin, project proponents etc. monitor whether any unforeseeable situations occur and whether the performance and effectiveness of mitigation measures are consistent with the assessment's prediction. They then take appropriate measures based on the results of such monitoring.
2. In cases where sufficient monitoring is deemed essential for appropriate environmental and social considerations, such as projects for which mitigation measures should be implemented while monitoring their effectiveness, project proponents etc. must ensure that project plans include feasible monitoring plans.
3. Project proponents etc. should make efforts to make the results of the monitoring process available to local project stakeholders.
4. When third parties point out, in concrete terms, that environmental and social considerations are not being fully undertaken, forums for discussion and examination of countermeasures are established based on sufficient information disclosure, including stakeholders' participation in relevant projects. Project proponents etc. should make efforts to reach an agreement on procedures to be adopted with a view to resolving problems.

9.1.2 Monitoring in the MGB implementation

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. For purposes of this RAP, monitoring will involve collection and analysis of data on project activities whereby accruing information will be applied to guide and redirect project implementation and management towards target project objectives.

9.2: The Monitoring Strategy in the MGB Project

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

- Internal Monitoring
- External Monitoring
- In sections below, the process for both levels of monitoring are highlighted

9.2.1: Framework for Internal Monitoring

Figure 9.1 outlines the schematic procedure for internal monitoring proposed for the Mombasa Gate Bridge Project.

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

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

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

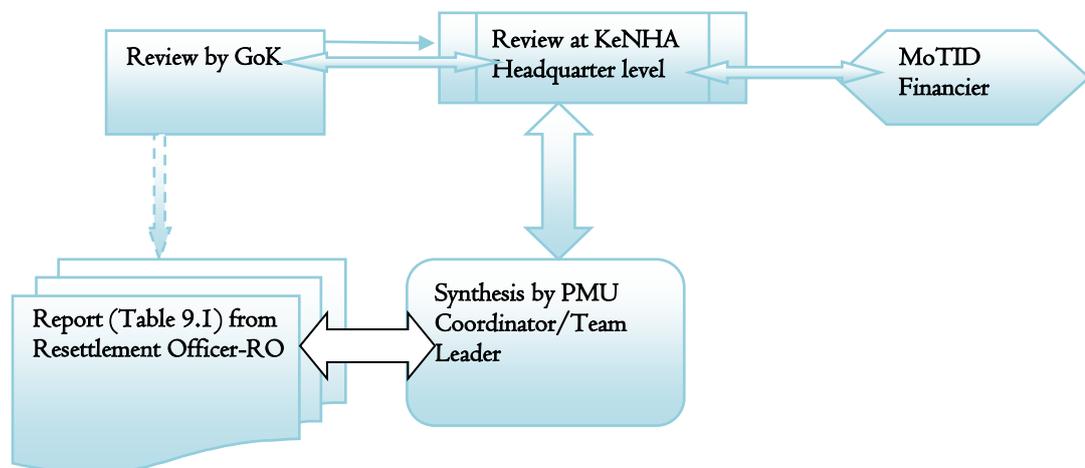


Figure 9.1: Framework for Internal Monitoring

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

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

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

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

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

Criteria for Internal Monitoring	Indicators for Monitoring	Specifics	Quarter No.. review (%)	Cumulative (%)	Recommended Action	Responsibility
On land acquisition and resettlement	Are resettlement implementation activities being achieved against agreed implementation plan?					
	Percentage of scheduled funds received by the NLC?					
	Number of PAPs signing consent papers	Majengo				
		Likoni				
		Mtongwe				
		Shika Adabu/ Ngombeni				
	Percentage of land acquired for Project	Majengo				
		Likoni				
		Mtongwe				
		Shika dabu/ Ngombeni				
	Percentage of PAPs received entitlements according to numbers and categories of loss set out in the Entitlement Matrix?	Majengo				
		Likoni				
		Mtongwe				
Shika Adabu/ Ngombeni						
Fishermen						
Bodaboda Operators						
Kaya						
Progress in restoration of social infrastructure and services?	Specify by component					
On livelihood restoration	Are PAPs able to access schools, health services, public transport, cultural sites and activities?	Specify concerns per location				
	Percentage of PAPs receiving income and livelihood restoration activities	loss of jobs				
rental income						

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Criteria for Internal Monitoring	Indicators for Monitoring	Specifics	Quarter No.. review (%)	Cumulative (%)	Recommended Action	Responsibility
		loss of fisheries				
		loss of trade				
	Percentage of businesses received entitlements including transfer and payments for net losses resulting from lost business and stoppage of production?					
Disclosure	Number of consultations taken place as scheduled including meetings, groups, community activities?					
Grievance Redress System	Number of complaints by Non PAPs	Majengo				
		Likoni				
		Mtongwe				
		Shika Adabu/Ngombeni				
	Number of disclosure meetings taken place?					
	Have LPC and LECs been constituted for Majengo, Likoni, Mtongwe, and Shika Adabu/Ngombeni?					
Grievance Redress System	Number of grievances handled by LPCs	Majengo				
		Likoni				
		Mtongwe				
		Shika Adabu/Ngombeni				
	Has a GRC been set up within KENHA ?					
Assistance to Vulnerable Groups	Number of Vulnerable Groups identified	Majengo				
		Likoni				
		Mtongwe				
		Shika Adabu/Ngombeni				

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Criteria for Internal Monitoring	Indicators for Monitoring	Specifics	Quarter No.. review (%)	Cumulative (%)	Recommended Action	Responsibility
	Action taken to cushion vulnerable Groups by location					
	Number of complaints received from Vulnerable Groups					
Effectiveness of the GRC	Number of conflict resolved by GRC					
	Number of grievances refer to the Environment and Land Court					
Effects Monitoring	What changes have occurred in patterns of occupation, production and resource use compared to the pre-project situation?					
	What changes have occurred in income and expenditure patterns compared to pre-project situation? What have been the changes in cost of living compared to pre-project situation? Have PAP incomes kept pace with these changes?					
	What changes have taken place in key social and cultural parameters relating to living standards?					
	What changes have occurred for vulnerable groups?					
Assessment	Over-all assessment of success in implementation of the EM					

9.3: External Monitoring

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

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

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

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

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

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

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

Table 9.2: Criteria (Themes) in External Monitoring

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

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

Source: This Study

CHAPTER 10: STAKEHOLDER CONSULTATION

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

10.1: Support KeNHA in Public Consultation

Guidelines issued to the RAP Team require support to KeNHA in making Disclosure on the Project as follows:-

- Reporting the alternatives in preliminary stage
- Reporting the result of socio-economic survey
- Reporting the policy on compensation of losses
- Reporting the restoration of livelihood
- Site selection, site preparation and relocation (when it's necessary)

Activities undertaken in respect of each requirement are reported in Tabular form below.

Table 10.1: Summary of meetings to explain alternatives

SN	Stipulated Task	Task as at Draft RAP Report Stage	Remarks
1	Assist KeNHA in reporting the alternatives in preliminary stage	Achievement as follows:- i) Two Leaders Meetings were held at Royal Hotel and ACK Guest House at the Preparatory Stages ii) Two Leaders Meetings were held at Royal Castle Hotel and ACK Guest House during RAP Stage iii) Three public hearing meetings held at for Likoni, Mtongwe and Shika Adabu/ Ngombeni Residents during the RAP Stage iv) One meeting held with fishermen under auspices of Likoni BMU v) One Meeting held for Kaya Elders in Likoni	During the meetings, the following was disclosed:- i) The Projects concept and objectives, ii) The diverse alignments considered iii) The recommended alignment iv) How the alignment would impact on residents v) Measures to mitigate impacts
2	Report the result of socio-economic survey	i) Leaders meetings to disclose socioeconomic survey yet to be held ii) One meetings has been held for MMS PAPs at Peleleza Primary School	2 Leaders meetings pending
3	Reporting the policy on compensation of losses	This was achieved during the Round One meetings as outlined under item one above	Achieved
4	Reporting the restoration of livelihood	This was partly achieved during Round One meetings and Meeting with PAPs at Peleleza primary. Additional disclosure will be held during Round 2 and Three meetings.	Partly achieved but more meetings planned as per TORs
5	Site selection, site preparation and relocation	Land for land compensation not anticipated. Hence site selection not	Not required.

	(when it's necessary)	necessary	
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10.2 Record of proceedings

10.2.1: The Focus

Activities of the Feasibility Study Phase were aimed at assessing the viability and feasibility for the proposed bridge project and this involved detailed assessment of environmental and social impacts including displacement impacts. Consultations at this stage were aimed at interrogating specific concerns and issues emergent from the prefeasibility study.

10.2.2: The Strategy

RAP Study consultations essentially employed Leaders Meetings as entry points to access both target communities and special interest groups. Issues emerging from this stage have essentially informed the impact prediction process and by extension, the RAP Process adopted to resolve displacement concerns.

10.2.3: The Statistics

Appendix 10.1 provides a documentation of the Stakeholder Engagement Process during RAP Study/ Detailed ESIA Stage. A total of 29 formal meetings were held essentially to gather views from diverse stakeholders and when interviews held with over 2,300 residents during Asset Inventory for RAP are compounded (Table 10.2), then over 2,800 people (stakeholders) were easily met during the detailed ESIA and RAP Process. In sections, below, a synthesis of emergent issues is provided. The same synthesis will be updated ice round two of sensitization meetings are held to explain the Entitlement Matrix.

Table 10.2: Summary of RAP Study/ Detailed ESIA Stage meetings

Category of meeting	Details of meeting		Breakdown of attendance by gender		
	Date	Venue	M	F	Total
Leaders Meetings	07th Dec 2017	Royal Castle Hotel	59	27	86
	08th Dec 2017	A.C.K Guest house	40	8	48
	14th Feb 2018	Mombasa C Govnt. Senior Staff	5	2	7
Public Hearing meetings	09th Dec 2017	Peleleza primary school	76	18	94
	13th Dec 2017	Kibaki estate	53	19	72
	19th Dec 2017	Mtongwe polytechnic	45	24	69
Focus Group Discussions	9th Oct 2017	Kenya Ferry Service	0	0	6
	24th Jan 2018	Meeting with KPA Operations	9	0	9
	26t Jan 2018	Dept. of Transport and Infrastructure-MCG	10	0	10
Meeting with Special Interest	26th Jan 2018	KeNHA-CRO	8	1	9
	05th Jan 2017	Meeting with Fishermen at Bofu Maskani	39	0	39
	14th Feb 2018	Meeting with Kaya Elders	5	0	5

Groups	at Bofu Maskani			
	Security Meeting at Hon Mwahima compound	8	2	10
	Site Survey of MMS with JST/ Hon Mwalimu Mwahima matter	4	2	6
	Meeting with JICA Nbi Office at KeNHA followed by site survey	4	1	5
Key Informant Interviews	14 Key Informant Interviews in MI/MMS	12	5	17
	Encounters with residents during Asset Inventory for RAP	932	1,398	2,330
Total by gender	29 Formal meetings; over 2300 private encounters	1,309	1,513	2,822
Breakdown (%)		46.4	53.6	100.0

Source: This Study

10.3: Minutes of meetings held

These are attached as appendix 10.1

10.4: Presence of arguments

No arguments were ever encountered. All are in support of the Project

10.5: Core issues arising from the RAP Stage Consultations

(i) Comments from the leaders Meeting at Castel Royal: From Mombasa Town, Leaders raised a total of 10 concerns as recorded in Table 10.3 below. Concerns were centered on the following issues:-

- i) Possibility of MGB Project being realised and time frames
- ii) Security concerns in bridge operation
- iii) Compensation for genuine land owners and squatters
- iv) The fate of the KFS and pedestrian crossing
- v) Modalities for information flow
- vi)

Table 10.3: Summary of concerns from the Mombasa Island Leaders Meeting

Name	Organisation	Question	Answers
Salim Mutiye	Property Owner	If Feasibility study goes to the final stage and it turns out to be every expensive route what will happen. Will the government abandon the project due to high cost of implementation?	Your question is very important, seem you are worried that at the final stage the cost of implementation will go beyond the projected amount of 80 billion. However, the Gok is not saying that the project is costly;
		Clarify on the term continuous	Continuous consensus building: Continues consultation to come up to

Name	Organisation	Question	Answers
		engagement	with the very best product
		Are individual encroaching on existing road reserves eligible for compensation?	Most of the land targeted for acquisition is titled, except for the mainland south. But section 40 article 4 of the 2010 constitution allows for NLC to pay compensation for non-titled individuals.
Ben Agoye	Komako	The highest point of the bridge is 69 meters and no building underneath the bridge; what measure have you put in place to enhance security of the bridge against terrorism?	Yes. There will be no building underneath as you have stated. However, there will be high security installations. Currently there are proposals for entry and exit control points. Additionally, bridges of this nature (Nyali and Mtwapa) are always considered for security. There will be constant security surveillance of the bridge. Consequently, construction underneath the bridge is highly discouraged due safety issues.
Ali Tongere sh	-	What will happen if the vehicles no longer use ferry, will there be a toll station? And will the bridge replace/abolish ferry services?	Ferry operates with levy fees collected from vehicles. Proposal is to establish a toll station for paying. A study was conducted and the findings revealed that people are willing to pay for the bridge to enable ferry to operate though only for pedestrian and also for maintenances. This bridge will be very high -69 meters- some transport means like Tuk-Tuk will not be allowed to use it because the wind speed and strength at the apex come disrupt cyclists and Tuk-Tuk. People and other disadvantaged category will continue enjoying free services as currently offered by Kenya Ferry Services.
Said Juma	Kenya Prisons – King’orani	I need a clarification. Is prison/station going to be affected now that the area already have a dual carriage way?	The road starts at the Mosque. The prison wall will be affected. But we are quite aware that for prison, it is the wall and the towers that make the difference. In such, adequate mitigation measures will be put in place to maintain the prison environment.
Fatuma Mwidadi	Ganjoni Health Centre – University of Washington	From the presentation its difficulty to identify the impact. My concern is on how future communications will be done. If	The clinic is not affected by the project but in any case it is, then the county government will ensure that your activities are not interrupted. Only part of Bishop Makarios is affected but the bridge development will concentrate in

Name	Organisation	Question	Answers
		affected can we start planning to move soon? We depend on research grants from the US and there is no any other clinic in the county offering similar Medicare as we do. All our plans are long term based.	the road reserve. There is going to be very small impact on the premise. More specifically, the team will come GPS to identify the corridor, measure the ROW and conduct inventory of all anticipated assets. With this, we are able to know impact on land and what development exists on land/road reserve. A cut-off date will be declared and not only individual assets are going to be inventoried but also corporate PAPs. 100% inventory must be taken.
		How soon should we plan to move?	Inventory will go up to end of January; KeNHA and public reviews to verify the findings; Detailed designs to take 2 years. In reality, do not start to panic. In any case you can only be asked to move your property after compensation. But as stated earlier, a lot of caution has been taken to minimize impacts.
Ben Agoye	COMARCO	Do you have the list of the affected people? Can it be availed?	No, we don't have the list of the affected persons. The team will move around to establish the extent of the corridor on ground and enumerate the affected land and properties. That is the only way we can generate the list.

Source: This Study

(ii) Comments from the Likoni Leaders' (ACK Guest House) Meeting

A total of 12 concerns (Table 10.4) were raised centred on the following issues:-

- Arrangements for pedestrian accommodation on the bridge including physically challenged
- Modalities of accessing the bridge from Likoni
- Possibility of accommodating a light train on the bridge
- Security concerns on the bridge
- The question of price recovery and toll station
- Modalities and time frame in compensating for acquired land
- Modalities for conflict resolution in land acquisition
- Impact of bridge on fishermen and fishing based livelihoods

Table 10.4: Concerns from ACK Guest House Leaders' meeting

Name	Organisation	Question	Answer provided
Walter	Truth Justice and Reconciliation Commission/	You have talked of a pedestrian lane fixed on the Eastern part of the bridge but this will be a long stretch definitely.	The issue of elevator across the bridge is a good idea that is currently under discussion with JICA. Also under consultation is the issue of toll station.

Name	Organisation	Question	Answer provided
	TJRC	Can there be elevators in the bridge to reduce on the height concerns for pedestrians?	
Fatuma	Konza Sub location Assistant Chief	You said the bridge can be accessed from Jela Baridi and Ziwani; how will those living in Likoni connect to the bridge or they will have to go to Jela Baridi or Ziwani?	The bridge has several approaching bridges or lanes. Jela Baridi, Mombasa Sports Club, and Corner Mpya in Mtongwe road. Also about 2 Kms from Puma Primary near Mtongwe Barracks, the road will be a normal highway
Omari Raisi	Representative of Likoni Business Community	30 years to come, the population will be massive and the ferry will not be enough even for pedestrian, can there be an electric train over the bridge? Or what will happen if the carrying capacity of ferry is over stretched?	Unfortunately the weight of the train cannot be supported by the bridge. Also train cannot go climb beyond 2% elevation gradient. Demand at the ferry will reduce with the bridge because commuters will go through town using the bridge.
		Weighbridge and box culverts are always ideal crime zones, How are you going to ensure security of these points?	Protection of the bridge will be of security concern to the government and even all of us. The area under the bridge will be under security surveillance and with constant monitoring at entrances and exits.
Mtinda	Representing People Living With Disability	Ferry services are currently maintained by income from vehicles, how will it be sustained when vehicles will be using the bridge? If the wind speed at the highest point of the bridge can blow off a tuk-tuk, what about wheel chairs in the pedestrian lane?	As noted before, the pedestrian lane will be closed with glass to protect against the wind strength and any suicidal missions among the public. The wheel chairs ramp will also be closed with glasses.
Salim mboga	Community Member	How are you going to handle dispute on land and structure?	Disputes on properties and land are anticipated and is a normal occurrence. However, the RAP team will not be solving any dispute but will take inventory of all assets and all the interested parties, The disputes or points of

Name	Organisation	Question	Answer provided
			conflicts will be noted and transferred to NLC. The NLC will only listen to the complaints. If the complains are already registered with a court of law, the due process must be concluded and this will be out of NLC jurisdiction.
Walter	Truth Justice and Reconciliation Commission/ TJRC	Time frame, heard from a friend that people are kept waiting for a long time before the compensation is done. On the 40% employment of locals, in most cases the locals are always ignored.	The time frame for the entire project period has been discussed. On compensation, we hope that by the end of December 2018, the process will have commenced. However, even if we have inventoried your plot, no one stops you from continuing with your development until you are given notice to stop. Compensation depends on several issues. The 40% local participation is a requirement by the government. This can be achieved through supply of local materials and labour. Tender can be given to local firms or youth groups but the groups should be well organized and recognized.
A/C Fatuma		The huge support pillars may affect the activities of fishermen denying them access to their livelihood.	Impact on the fishermen is eminent but their interest will be covered in another forum that involves the entire BMU members.
Henry Kago	Business Man	Toll station payment will disrupt business at the ferry point. We also fear that ferry will start charging pedestrians.	Ferry charging on people is the most feared even among politicians. If you introduce charges to the people you are sure of even losing your political seat. It is a government policy that no one is charged when crossing the channel as a pedestrian.

Source: This Study

(iii) Comments from Public Hearing Meetings:

Peleleza primary: Comments from the Peleleza Primary School meeting are summarised in Table 10.5. Core issues emerged as follows:-

- Community support the proposed bridge
- Modalities for payment of compensation for displacement and other risks in bridge construction

- Timeframes in project development including identification of PAPs
- Modalities of accommodating physically disabled in the pedestrian passage
- Concerns that locals may not access jobs in bridge construction
- Compensation of assets within riparian reserve
- Compensation for public owned assets
- Modalities of determining the road reserve of 60m

Table 10.5: Comments from Peleleza Primary School Meeting

SN	Name	Question/ remark	Answer
1	Juma Manuari	i) The idea to construct a bridge connecting the island and Main land is a good idea, we appreciate the planned development. But when is the compensation going to take place, before or after construction?	<p>i) Compensation will take place before the project begins after which a three month notice will be given to allow for peaceful relocate.</p> <p>ii) Before compensation, two committees will be formed: PAPs committee and Grievances Redress Committee.</p> <p>ii) Vulnerable individuals will also be identified. The constituted committee will assist the vulnerable to ensure justice is delivered. The Vulnerable include orphans with less than 18 years, people living with disability and the elderly.</p> <p>iv) If land and assets have disputed ownership and court process is underway, the final verdict from the courts shall prevail. However, we are advising for early arbitrations to mitigate compensation delays.</p>
2	Juma kizuri	<p>ii) When will the project start and end?</p> <p>ii) How are you going to compensate other impacts e.g. the risks, will there be a risk analysis in your work?</p>	<p>v) The research period is expected to take two years after which the construction period will take four years;</p> <p>vi) By the end of next year all compensation process will have been concluded;</p> <p>vii) Three months' notice to move/relocate with all important materials salvaged will be issued to all PAPs</p> <p>iii) Baseline surveys on Air quality, Vibrations, Marine ecology, noise levels among other will be conducted to manage risks and monitor change overtime.</p>
3	Musa Omwanda	<p>iv) How will you consider the disabled and other human traffic when developing the pedestrian lane?</p> <p>v) The 40% required for local participation may</p>	<p>ix) The pedestrian lane will be spiral to allow for wheelchair movement.</p> <p>x) Ferry services will also still be operational.</p> <p>xi) It is a government policy that 40% of all labour (semi-skilled and skilled if available) should be sourced from the local</p>

		not be realistic. Most local companies (Base Titanium was cited) to not provide opportunity for the youths; not even supporting activities such as football clubs. Also, local employment to incorporate companies owned by local people and first priority to be given to local people.	community and that 40% of all contracts should be awarded to the locals. However, a clear line should be drawn between Corporate Social Responsibility (CSR) and local participation in projects. Your question has mixed views. CSR is percentage given back to the community at operation phase of a company e.g. Bamburi Cement can decide to build schools and roads from the benefits the company has received. The 40% requirement in reference is local participation at construction period.
4	Amedi Hamisi Mwanga	vi) We are fishermen and our homes and assets are in the riparian reserve owned by KPA – Kenya Ports Authority, how will compensation of such be done noting that we don't own any other land elsewhere?	ii) Riparian land belongs to the government. But the constitution under article 40/4 provides the guidelines for negotiations and compensation under such circumstances. The government will not compensate for affected assets and leave you without land.
5	Japheri wa Insaka	vii) What is the way forward on land owned by the community?	iii) Any community project will be compensated but proof of community ownership must be demonstrated. Records of registrations of community group, minutes and other statutory documents will be required for ease of enumeration.
6	Juma Bakari	iii) When will you identify Persons Affected by the Project? Because following your explanation, it apparent that the PAPs should be identified first.	iv) The team is ready to undertake full inventory even today. What we need is an agreeable date. We will also require two village elders to guide the RAP team in identification of land owners. We will also need 4 youths to assist as in enumeration. The enumerators will be trained but must have at least diploma certificate in any field of study.
7	Mohamed Juma Kawingo	ix) Where will the 60 meters start at?	xv) From the age of the water mark, a Centre line/middle of the road will be established by the RAP team, then from this middle line, 30 meters both sides will be measured physical to provide limits of our inventory. Everything falling within the corridor will be documented.

Source: This Study

Kibaki Estate Meeting: This meeting was called for residents of the Shika Adabu Section of the traverse. Concerns are summarised in Table 10.6 with core issues raised as follows:-

- Modalities for processing compensation monies
- Procedures for utilising land already inventories for RAP
- Timeframes in Project Development
- Modalities for benefitting communities traversed
- Modalities for compensating public properties
- Modalities for compensating for mosques, churches
- Certainty that compensation will be paid given past experience

Table 10.6: Comments emergent from Kibaki Estate (Shika Adabu Meeting)

SN	Name	Question/ comment	Answer
1	Mwakodza wa Kodza	i) Is there a custodian to the amounts paid by the NLC or it's sorely paid to the owners?	i) The government has put in place measures where compensation monies go directly to the affected persons. ii) The national lands commission advises that accounts where such amounts are to be transferred be opened together with the spouses for accountability purposes.
2	Mohamed Athman	ii) How will people get information on the RAP process will be underway?	ii) Was advised that the whole group attending the meeting gives a specific day in which they would all set aside for the exercise to take place in their area.
3	Malumba	ii) For those with ongoing developments, should they stop?	iv) Construction and any development on the piece of land should continue until the day when NLC compensates, then it can stop and a three month notice is issued to relocate.
4		iv) When is the construction due to start and how long will it take?	v) The designing stage is set to take two years up until end of 2021. vi) Construction process to start in 2023 and will take five years. vii) The project will cost 80 billion.
		v) What are the measures put in place to ensure that the project benefits the locals?	iii) It is a requirement that 40% of the participation goes to the locals, e.g. the supply of raw materials and also that of skilled and unskilled labour. ix) During the implementation, committees should be formed by the locals to ensure they front the suitable personnel's for the job.
		vi) How will the public facilities affected be compensated?	x) Such can be paid cash wise to the relevant authorities, but if the committees formed can agree that

			such facilities be moved to a different place and be constructed there.
5	Mohamed Ali Mwawito	vii) How are mosques, churches and schools handled?	xi) In most cases such amenities are avoided during alignment but if inevitable, committees are formed to give a way forward on the compensation of such.
6	Bwana Mwingi Mwabibi	iii) Complained of being man handled by the NLC commissioners and that he was not compensated for his open field on another project (southern by-pass)	xii) He was convinced that the compensation on the said project had not begun.

Source: This Study

Mtongwe Polytechnic Meeting: The meeting was called for Mtongwe Location residents whose comments are summarised in Table 10.7 Core issues include:-

- Fears that the project is a scheme by individuals to grab land
- On width of the road reserve to be acquired
- Modalities for compensation including to non-displaced roadside neighbours
- Modalities for mitigating pollution
- Modalities for preparing communities for relocation upon displacement
- Modalities for compensating non property owners e.g. tenants

Table 10.7: Comments from Mtongwe meeting

SN	Name	Question/ comment	Answer
1	Geoffrey Adans	How sure are you that the project will be implemented?	This is a GOK Project with very high priority.
		Can we continue with more developments on our properties?	The only organization to stop developments on such properties will be NLC and that will be after full compensation has been done.
2	Eric Amollo	He noted it is a good project but with challenges such as land grabbing from the community.	The environmental expert stated clearly that he had not been sent by anyone to look for land to grab.
		What will stop people from building on the road reserve to avoid displacement?	Highways are wide thus requiring more land.
		Is it possible to stop the project with a court order?	When there is no agreement with the NLC, one is free to go to the environmental court.
3	Reuben Nderitu	Is the 90 Meters total area of acquisition?	Yes, the 90 meters acquired is the total area and the contractor is limited to work from that area during implementation.

SN	Name	Question/ comment	Answer
			The acquisitions done for highways by the government is done on the higher side to avoid future acquisitions in the future.
3	Stephen Mwakisla	What form of compensation will be used? Is it land for land resettlement or compensation?	Compensation will be done as either land for land or cash compensation. The amounts compensated will beat the then market price such that the affected can comfortably acquire land close to where they were living. There will also be a 15% disturbance fee.
		What will happen to the non- impacted homes next to the road?	Each home next to the road will get an entry to their compound.
		How to deal with the pollution during implementation like water at the creek and other forms of pollution like noise and dust?	The road construction is being done away from the creek, also a lot of research is being undertaken so as to come up with a solution to Mitigate all forms of anticipated pollution during the implementation stage.
4	Rashid Salim Shame	How will you prepare members psychologically before displacement?	The NLC will prepare people and also give guidance on the resettlement project.
5	Elizabeth Mwayala Cose	How will they relocate before compensation?	Relocation cannot be before compensation is done by the NLC. After compensation, a notice of at least four months is given for members to look for new places to relocate to.
6	Triza Awour	In case of families employed and the property of the employer is the one being affected, how such will be treated?	There is always a provision for other persons affected other than the property owner.

Source: This Study

(iv) Comments from Focus Group Discussions

Diverse Groups were met for purposes investigating specific aspects of the Gate Bridge Project. Appendix 10.1 provides a record of proceedings with brief summarise provided in Table 10.8 below. The main issues emerging included:-

- Possible impact of bridge development of the KFS operations
- The growing traffic of passengers and vehicles daily relying on the Ferry Service to cross Likoni Channel
- Possible interference with navigation and port operations during bridge construction
- Security threats posed by bridge construction
- Security threats posed by bridge structures to vessels operating in the channel

Table 10.8: Summary proceedings from Focus Group Discussions

Group	Meeting date and Venue	Matters discussed
Kenya Ferry Service:- AM Washenga Operations manager; Morris Kai- Projects Manager	9 th October 2017 at KFS Likoni	Meeting had been called by the JST to obtain data about ferry operations. KFS informed JST that current ferry traffic is 320, 000 passengers and 6,000 vehicles daily. Each Ferry has a capacity of 60 cars and 1,400-1,500 passengers. New ferries have capacity of 2,500-3,000pax. KFS operations are 65% funded by GoK with revenue accounting for reminder 35% mainly through charging of MVs. KFS will lose this revenue once bridge is operational but can divest to other areas given its national mandate. KFS advised that a cable was being planned for at Likoni for mass transport. Decision was awaiting cabinet approval.
Meeting with KMA: Capt. Muli	9 th Oct 2017, KMA head office- Msa.	KMA is concerned about security threats posed by the Inshore Pillar for Mombasa Gate Bridge. It was explained that the Pillar would be located outside the main navigation channel and an allowance of 150m would be maintained giving a 600m wide channel for navigation. The Pier would be covered with rubber venders to protect small vessels navigating within vicinity of the pier.
Kenya Ports Authority:- Cap Namadoa, Capt Abdule Ali, Capt Onyango, David Onyango	24 th Jan, KPA- Control Tower	Meeting had been called by the JST to request for modalities for partial closure of the channel during bridge construction. JST reported that construction of Center Span would require closure of the channel by buoys which would reduce the navigation width to 150m for a continuous 8 months. A daily closure of 8 hours continually for 8 days would be required. i) KPA observed that closure of the Channel would disastrously affect economic activity in the hinterland as far spread as Rwanda, Burundi and DR Congo and is thus not acceptable. ii) It was suggested that night-time construction when big vessels are fewer be considered. KPA could arrange for convoy movement of vessels to optimize on time and safe on costs especially for European, liquid and gas bearing vessels whose charter rates are quite high. iii) During the convey movement, buoys will be temporarily moved to create room for vessels to pass. iv) Other stakeholders such as the Kenya Navy and all

Group	Meeting date and Venue	Matters discussed
		<p>international carriers will be notified (pre-warned) of the on-going construction so as to observe caution.</p> <p>v) During construction, all vessel movement will be authorized and coordinated by the KPA Control, Tower. All floating vessels will have appropriate lighting during day and night and working area will have flashing red lights and will maintain contact.</p>

(v) Comments from Special Interest Groups

Appendix 10.1 provides documentation of meetings held with fishermen and Kaya Elders operating in the mainland south area. A summary is provided in Table 10.9 below but core issues were raised as follows:-

- i) Impact on fishing based livelihoods and assets
- ii) Impact of physical cultural resources including sacred shrines
- iii) Impact on ancestral properties including graveyards

Table 10.9: Comments from Special interest groups

Group	Date and venue	Concerns raised
Fishermen/ Likoni Beach Management Unit	5 th Jan at Bofu Maskani	<p>Group will lose two fish landing site;- Mvumoni and Mkokoni to the bridge</p> <p>Fishery breeding grounds along Mweza creek will be displaced by bridge pillar</p> <p>Some fishing sites including pen traps will be displaced by both construction and construction area</p> <p>Mwenza Ceek is usually the only fishing ground when sea is hostile in May, June, July and August Kuzi season when fish also migrates to the creek.</p> <p>Mweza creek mangroves are a breeding ground for fish and baits (chambo).</p>
Kaya Elders	14 th Feb 2018 at Bofu Maskani Self Help Group	<p>Meeting was convened through the Likoni Chief for purposes of explaining entitlements for cultural assets when encroached. Six Kaya Elders were met as documented in Appendix 10.2.7 with issues raised as follows:-</p> <ul style="list-style-type: none"> • Kaya Elders appreciated their being recognised by the ESIA Team • All are in support of the Project. • Group oversees four community shrines;- Kaya Makame (includes the baobab next to the main pier in mainland south), Mgadini, panga Wazi and Vijiweni all of which serve diverse purposes in traditional religious worship • Elders are concerned that part of Kaya Makame which is the main Kaya will be displaced by the bridge and

Group	Date and venue	Concerns raised
		<p>this can only if preceded by local rituals. A quotation in items required towards this including pacifying all the other shrines was provided (Appendix 10.2.7).</p> <ul style="list-style-type: none"> Access routes to Shrines could be blocked by proposed bridge in which case, access routes should be provided.
Meetings with Hon Mwalimu Mwahima	Diverse dates in Dec 2017/Jan 2018	Meetings were held to understand Hon Mwahima's opposition to the route traversing through his compound. He explained that his house is over 300yrs old and hence ancestral and the adjoining family graveyard dates back several centuries (his great grandparents) as well.

Source: This Study

10.6: Core issues arising from the Round Two Stage Consultations in the RAP Process

10.6.1: The focus and nature of meetings

The Second Round of Stakeholder meetings was held in conformity with JICA requirements to meet the following objectives:-

- To disclose findings of the ESIA and RAP Reports to all PAPs and Stakeholders
- To disclose the Entitlement Matrix to PAPs
- To afford all PAPs an opportunity to inspect the Assets Register and ascertain correct capture of their interests.

A total of 5 meetings through which 850 stakeholders comprising leaders, PAPs and residents in both Mombasa Island and Mombasa Mainland South sections of the MGB traverse were held as summarised in Table 8.9.8 below. The meeting with Likoni Beach management Unit (BMU) members who comprise fishermen and fishmongers was preceded by a meeting with the fisheries department who guided on the approach to disclosure with fishermen.

Table 10.10: Summary data for the Second Round Stakeholder Meetings

SN	Target of Meeting	Site	Date	Attendance
1	Mombasa Mainland South Leaders	ACK Guest Hse	28 th May 2018	72
2	Mombasa Island Leaders and PAPs	Castle Royal Hotel	29 th May 2018	174
3	Shika Adabu and Ngombeni Location PAPs/ Villagers	Kibaki Estate	22 nd May 2018	265
4	Likoni and Mtongwe PAPs /Villagers	Bofu Maskani	20 th May 2018	221
5	Likoni/Mweza Creek Fishermen	Bofu Maskani	30 th May 2018	118
		Total		850

Source: This Study

10.6.2: Outcome of the Leaders Meetings

Appendix 10.2 provides a full documentation of the outcome of the Round Two Stage Consultations with core issues being summarised in table 8.9.9 and briefly highlighted in

sections below. Essentially, 36 of the 44 comments received touch on matters of compensation and only 4 relate to environmental and social impacts. The implication is clear, displacement from property, shelter and livelihood is the most critical concern in developing the Mombasa gate Bridge Project.

Table 10.11: Summary of issues form Second Round Stakeholder Meetings

Target of Meeting	Core concerns
Mombasa Mainland South Leaders	<ol style="list-style-type: none"> 1. 40% local participation in labour and supplies of local materials before, and during construction of the bridge to favor local community. 2. Provide clear timelines to help PAPs plan adequately for relocation. Only relocate people when the project is ready to start. 3. Compensation to be adequate, fair with family set up consideration. 4. During planning, involve all institutions to avoid duplication of other projects and destruction of newly expanded infrastructures. 5. Update asset register few months before project commencements to capture real business tenants and new businesses. 6. Besides plants species, document impact of project on marine life and capture those that are critically endangered. 7. The proposed Bridge construction will highly improve likoni but also bring in new speculators 8. The Cut Off Date proclaimed during entry meetings to remain in force and all should guard against influx of new commers. Land owners to however continue developing their land until otherwise communicated by NLC. 9. Training of PAPs in financial management prior to compensation; and 10. No relocation until all upfront and full payments is made to PAPs.
Mombasa Island Leaders and PAPs	<ol style="list-style-type: none"> 11. Do you have an online presence where one can get all this presented information for more details? 12. Can the asset/PAPs register be shared on email? 13. What was the outcome of EIA study on Mangrove biodiversity? 14. Are their provision for matatu terminus at the end of the Bridge in Jela Baridi 15. How is the cultural diversity of Mombasa reflected in the architectural design of the Bridge 16. Mombasa has a Swahili Cultural Centre, consider consultation with the organisation 17. Valuation process. Who is going to do the valuation? Is it NLC, Government valuer, property owners or KeNHA 18. Are there provisions of light rail in the bridge? 19. Noise levels are already escalated based on the findings of your study; Liwatoni residents do not want further noise. This will cause people to relocate far from the area 20. You talked of encountering some challenges during the inventory process, we as KAR A –Kenya Residents Association would want to know what challenges you faced in the cause of your work. 21. When is the construction/or ground breaking likely to start 22. What is the fate of those that were not inventoried due to absence during the study period 23. How are you going to approach compensation on impacted graves 24. Does your asset register have entries of affected plot numbers and affected areas?

Target of Meeting	Core concerns
Shika Adabu and Ngombeni Location PAPs/ Villagers	<p>25. What is the fate of properties in Honorable Mwahimas' plots- the plots were not inventoried due to constant resistance from Mwahima neighbours.</p> <p>26. 100% and 15 % Compensation as outlined in the entitlement matrix is far from adequate. What guided the matrix on 115% (100% and 15% top up) replacement value? Raise total compensation to 150%.</p> <p>27. Loss of rental income to be compensated beyond 3 months. Most rental houses have new tenants every time. Tenants that are documented today may be missing next month.</p> <p>28. During compensation, outstanding loans attached to properties to be cleared by the government without reducing the compensation package for an individual.</p>
Likoni and Mtongwe PAPs /Villagers	<p>29. Business tenants and residential tenants to be compensated by the government not landlord;</p> <p>30. Bridge academy should be compensated and relocated because teachers will not teach with construction ongoing.</p> <p>31. How will compensation be done: in-kind, cash or through cheque.</p> <p>32. What mechanism does you in place to ensure that non-titled landowners are also compensated?</p>
Likoni/Mweza Creek Fishermen	<p>33. Genuine list of fishermen to be generated in the BMU and harmonized with that of fisheries department in Likoni. We request that the list of beneficiary to be generated here in the meeting because all fishermen are here. List generated by fisheries cannot be trusted. We had experienced this during dredging of the channel by KPA recently. List from the fisheries was populated by non-fishermen particularly motorbike owners who have nothing to loss.</p> <p>34. We are operating in the same area (fish sellers, traders' boat owners, net owners etc) Impact on a fisherman extends to all others. As such fair compensation for all at equal costs regardless of category. We have to be treated alike.</p> <p>35. All fishermen to be compensated and given a boat for fishing away from bridge construction area. Fishermen to be compensated following their categories, landing sites to be improved and if possible let the affected fishermen to be given employment during construction of the bridge as an alternative means of raising livelihood. Contractor to sign MOU with the fishermen on employment of fishermen during project construction.</p> <p>36. Improve the remaining 4 landing sites with capacity to handle all our docking needs. At least every landing site must have a vessel for fishing if compensation is fair. Do not include Mwangala BMU in our compensation package. If given fishing equipments as compensation for livelihoods restoration, the equipments to be at our landing sites not county fisheries because even the boats that were procured by county government is not helping us.</p> <p>37. Compensation to be monthly or yearly or a lump sum amount given once and for all. Because if possible let it be by monthly installments for ease of sustainability.</p> <p>38. The fishermen need to be trained and capacity build. Likoni BMU to have a boat manufacturing factory to enable fishermen to buy their own boats at a reduced cost.</p> <p>39. Provide compensation for 6 years advance payments before start of construction. The government to sign MOU with the fishermen indicating when to get receive fair compensation.</p>

Target of Meeting	Core concerns
County Government Chief Fisheries Officer	40. Even though Likoni BMU is severely affected, other BMUs are most likely to have impacts on reduced fish catch because the Mwenza creek is the breeding area for all marine fish found in the near shore and adjacent areas. 41. Conduct studies to assess directly and indirect loss of livelihoods. 42. As a matter of policy, each BMU is constituted by 160 fishermen and includes all categories that is boat owners, fishmongers, food vendors etc. 43. Compensation package to include the six listed BMUs because impact on marine fish has no defined boundaries; Likoni BMU, Shikaadaba BMU, Timbwini BMU, Mtongwe BMU, Mwangala BMU, and Old town BMU.

Source: This Study

Opening Statements by KeNHA:

Both Leaders Meetings were presided over by an officer from KeNHA Coast Regional Office. In her remarks, Petronilla elaborated on the role of KeNHA as the GoK mandate holder in developing and maintaining the national trunk roads network including the Mombasa Gate Bridge. KeNHA would therefore be responsible for implementing all recommendations made from the RAP and ESIA Studies. She then gave an overview of the proposed MGB, its objectives and role in national and regional development.

With regard to the disclosure meetings, she welcome all to make objective remarks noting that this meeting is just one in a series of many others planned for the future. At the Mombasa Island Meeting, she was categorical that the Assets Register will only be discussed with individual PAPs and by the NLC.

Presentation by the ESIA Team:

Discussion in both the Leaders meetings was based on a presentation made by the Team Leader for both ESIA and RAP Studies. The presentation was structured as follows:-

- A disclosure of the design and alignment of the MGB Project
- Discussion of the alignment of MGB in both MI and MMS
- Overview of the ESIA and RAP Process including the role of local enumerators and village elders in the Studies
- Overview of the findings from the ESIA and RAP Studies
- Overview of core Environmental and Social Impacts during construction operation of the Project
- Overview of the scope of displacement impacts in both MI and MMS
- Overview of the ESMP
- Overview of the RAP inclusive of the Entitlement Matrix
- Way forward with both the RAP and ESIA Studies

The Mombasa Leaders meeting was also used to disclose the Assets Register which was available for scrutiny by all PAPs present.

Reaction from participants in the Mombasa Mainland South Leaders Meeting:

The ACK Guest House brought participation of many leaders among them the Local Member of Parliament-Hon Mishi Mboko and two Members of the County Assembly representing wards in Likoni Constituency. The local MP expressed full support for the MGB but emphasised that fairness has to be observed especially with regard to:-

- Compensation for displacement

- Allocation of opportunities such as skilled and semi-skilled employment and business contracts emanating from the Project

The MP also lamented the common trend of delays in effecting compensation for lands targeted for acquisition. Being unsure of when they shall be required to relocate, such property owners are unable to make decisions on whether to develop their properties and this denies them opportunities to earn their livelihoods thus contributing to poverty build up. Her appeal is for prompt payment for all properties targeted for displacement to allow for PAPs to easily rebuild livelihoods.

Comments from Mombasa Island Leaders Meeting:

The Mombasa Island meeting was presided over by the Deputy County Commissioner for Mombasa Island who welcomed all to contribute positively to the deliberations. He observed that Public Participation is a requirement of both the National Constitution and other laws. The meeting progressed well and recorded an attendance of 174 participants, mainly potential PAPs which was way above the target of 80. The meeting was orderly and there was no recorded incidence of opposition to the project.

In addition to reactions as captured in Table 8.99 above, other core observations were made as follows:-

Impact of bridge on the cultural landscape: Concern was raised by 2 participants that the bridge would irreversibly change the cultural landscape of Mombasa and wondered how this could be mitigated. Their recommendation was for the bridge design to consult widely on the question of culture so as to inbuild as cultural heritage as possible into the new landscape. The work already started by the NMK should be continued.

The question of noise pollution: Given the already observed high noise level in Mombasa, it was feared that, concentration of traffic by the bridge in Ganjoni area would further aggravate noise levels and make the area non-habitable. Bridge design would look into ways of mitigating threat of new noise levels.

Impact on mangroves: To the participant who enquired on the potential impact of the MGB on mangroves and associated biodiversity, it was clarified that the bridge will have limited impact on mangroves whose main colony in the Mweza creek is not impacted directly. However, other biodiversity is affected.

On traffic congestion in Mombasa Town: It was observed that opening of the bridge would make it possible for public service vehicles from MMS to enter Mombasa Town thus aggravating traffic congestion and noise levels. It was further enquired whether bridge planning has made provision for BRT, Light rail or ample modalities for traffic management. In reply, the meeting was informed that while the MCG will put in place modalities for traffic management, alignment of the MGB to the west of Mombasa was an intervention in rerouting traffic away from the CBD hence decongesting the town. Bridge design however cannot accommodate a light rail because of weight considerations.

10.6.3: Outcome of the Public Disclosure Meetings

Both Public Hearing Meetings at Likoni and Shika Adabu were used to disclose the Entitlement Matrix for all displacement impacts while pointing out potential environmental

and social impacts. In keeping with the general pattern, most reaction centred on displacement impacts anticipated from the project. Other pertinent issues emerged as follows:-

On the question of residential tenants: It was observed that this category of PAPs are highly mobile and rarely stay in one premises beyond six months. As such, the list of tenants at compensation stage will be drastically different from that prepared during inventory for RAP and the same case could extend to business Tenants and all other PAP categories. This will necessitate a revalidation of the Assets Register before compensation.

Fate of Hon. Mwachima and his neighbours: Some residents of Shika Adabu enquired on the fate of Hon Mwachima and his neighbours who had stubbornly resisted efforts to inventory their property. The RAP Team had no ready answer at this stage only responding that engagement with Hon Mwachima at higher levels of government will be intensified.

Disruption of village life including schools: A representative of the bridge Academy situated neat the proposed weigh bridge observed that construction activity will greatly disrupt village life and interfere with operation of the school because of noise, dust, danger to children etc. This is indeed a core concern for the entire traverse which will require careful management through participatory regulation of the Contract for Works to ensure minimal disruption of life.

10.6.4: Outcome of the Public Disclosure to Fishermen

This meeting was attended by 118 fishermen who are members of the 500-member strong Likoni BMU. It was explained that compensation would only target replacement on two landing sites to be displaced by the bridge and income replacement during days when fishermen will not access the sea due to bridge construction. Core issues emerged as follows:-

Genuine list of BMU members: This list is contended. While the fisheries department insisted on providing the genuine list of BMU members, the meeting insisted on preparing their own which is also contended on claims of being infiltrated by non-members. The RAP team was guided by a revalidated list for the two landing sites of Bofu and Kokotoni whose membership totals 61. However, to forestall any future conflict, the figure of 500 issued by the BMU has been retained to pending verification in the future.

The compensation package: The compensation package demanded by fishermen is wide but to cover loss of livelihood, capacity building for deep sea fishing, boat manufacturing, complete buyoff from fishing etc.

10.6.5: Proceedings of the meeting with the Fisheries Department

This meeting was held sat he request of the County Executive Member in charge of Fisheries at Mombasa County Government. His position that only his office should produce the genuine list of BMU members who should be registered and paid up however goes contra to the policy of this RAP which is to rehabilitate all livelihoods likely to be displaced by the Project. As well, the requirement for the project to compensate all other BMUs operating in Likoni Channel may not be tenable given that the RAP only makes provision for livelihoods that are directly displaced by the proposed bridge. As such, other BMUs whose landing sites and access to sea are not affected are not genuine foundation for compensation.

10.7: WAY FORWARD WITH THE STAKEHOLDER ENGAGEMENT PROCESS

10.7.1: Public Review as part of the ESIA Process

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

10.7.2: Public Hearings by the National Land Commission

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

CHAPTER 11: CONCLUSION AND RECOMMENDATIONS

11.1: OVERVIEW

This study set out to prepare a legally anchored framework to guide resolution of all displacement impact occasioned by the GOK and JICA funded project to develop the Mombasa Gate Bridge. Mombasa Gate Bridge Project aimed at providing a functional road connection between Mombasa Island and the Mombasa Mainland South. Development of the Project was guided by an overriding goal of minimizing displacement impact coupled with formulation of a RAP to resolve any inevitable displacement.

11.2: DISPLACEMENT IMPACT

A major observation of this RAP Report is that by far, the greatest impact of the Project Design Works is the pre-emptive minimization of displacement through selection of an alignment that traverses the least populated areas, position manifested by the fact that, though the 13.2-kilometre long MGB Project which will traverse and acquire 62.6 hectares of land in a traverse where population densities sometimes exceed 12,000 persons per square kilometre, the total potential displacement was computed at only 3,230 people.

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

Most of the PAPs will only suffer partial displacement of land-based assets while the non-affected portions remain viable in which case, a resettlement site was not considered necessary for investigation under the RAP. All such potentially displaced people have been engaged either in person all collectively during public barazas and, except for one family, all are united in support of the Project and are unanimous in favour of cash compensation provided that such payment is just, adequate and prompt to enable them to relocate affected assets and move on with their lives. For some few, Ganjoni-based PAPs considered vulnerable because of very advanced age, the wish is to be allowed peaceful transition which still in their current homes. Others, such as proprietors of the Kilindini Bar are considered vulnerable on grounds of potential loss of family heritage that has changed hands down generations and the impending sentimental loss will require careful restitution.

11.3: RECOMMENDATIONS

Fair, Just and prompt compensation: This RAP recommends that fair and just compensation be paid promptly for all livelihoods, shelter and assets marked for displacement by the Project. Article 40(4) of the Constitution should be invoked to allow compensation for land and developments to non-title deed holders and squatters who have not access to any other land and shelter.

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

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

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

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

The Question of Fishermen, the BMU and County Fisheries Office: Between, these three groups, it has not been possible to establish who the genuine fishermen are, which fishermen are likely to be displaced by the MGB and, who indeed merits compensation. Though the BMU insists that all the Likoni fishermen totalling 500 stakeholders will be displaced, our estimates put this number at 200 to comprise the Bofu Maskani and Kokoni Landing sites which are deemed likely to be displaced by the MGB. As such, as at the time of compensation, a comprehensive, multi-agency vetting process should employed to weed out impostors from genuine fishermen.

Volume Two-Appendices :

Appendix One: Profiles for the RAP Team

Appendix 3.1: Assets Registers:

3.1(a): Assets Register for Mombasa Island

3.1(b): Assets Register for Mombasa Mainland South

Appendix 3.2: Pictorial Assets Register

Appendix 6.1: PAPs Committees

Appendix 8.1: Costed Assets Registers

Appendix 9.1: Format for Internal Monitoring

Appendix 9.2: Terms of Reference for External Monitoring Consultant

Appendix 10.1: Record of Stakeholder Consultations