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**Quality Highways, Better Connections**

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# **NORTH EASTERN TRANSPORT IMPROVEMENT PROJECT (NETIP)**



**UPGRADING TO BITUMEN  
STANDARDS OF ISIOLO –  
KULAMAWE – MODOGASHE  
ROAD SECTION, 190 KM  
(A13)**



**RESETTLEMENT ACTION  
PLAN**

**January 2020**

## Key Definitions

The following terms as used in this Resettlement Action Plan (RAP) shall have the following meanings unless stated otherwise.

**Census:** A field survey carried out to identify and determine the number of project-affected persons (PAP), their assets, and potential impacts; the procedures satisfactory to the relevant government authorities, and the World Bank Safeguard Policies.

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

**Corridor of impact:** is 15 metres wide for this project and it includes the immediate safety zone and any areas that impact directly on people's livelihoods. Whatever has to be removed or demolished, whether permanently or temporarily, is by definition inside a corridor of impact.

**Cut-off date:** As per OP 4.12, it is the date the census begins, those in the area before the census begins are eligible for compensation and assistance, as relevant and those who arrive after the cut off date are not.

**Displaced Persons** – Refers to persons who, for reasons due to loss of their assets under the road construction project, will suffer direct economic and or social adverse impacts, regardless of whether or not the said Displaced Persons are physically relocated. These people may have their: standard of living adversely affected, whether or not the Displaced Person will move to another location; lose right, interest in any houses or any other fixed or movable assets acquired or possessed, lose access to productive assets or any means of livelihood.

**Disturbance allowance:** this is a support to the affected persons and affected households during their move. It is provided for under the Kenyan government legislation and has been considered under this RAP at 15 percent.

**Economic displacement:** Loss of income streams or means of livelihood resulting from the land acquisition or obstructed access to resources (land, water, or forest) resulting from the construction or operation of a project or its associated facilities. Income streams is the earning/profits received regularly by a PAP from a business/venture/undertaking.

**Entitlement** Refers to the range of measures comprising cash and / or in-kind compensation, rehabilitation assistance, transfer assistance, and relocation which are owing to livelihood restoration and/ or PAPs, depending on the type, degree and nature of their losses, to restore their social and economic situation.

**Encroachers** are those people who extend their infrastructure or other land-based activities into land that does not belong to them. Encroachers may have personal investment in structures or agricultural crops. They are entitled to compensation at replacement cost (or an equivalent amount of rehabilitation assistance) for these lost assets.

**Involuntary Resettlement** Refers both to physical displacement and to economic displacement as a result of project-related land acquisition. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land

acquisition that results in displacement. This occurs in cases of: (i) lawful expropriation or restriction on land use based on eminent domain; and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if the negotiations with the seller fail. In the event of adverse economic, social or environmental impacts from project activities other than land acquisition (such as loss of access to assets or resources or restrictions on land use,) such impact will be avoided, minimized, mitigated or compensated for through the social and environmental assessment process of the bank on Social and environmental assessment and Management.

**Involuntary land acquisition:** means the process by which a project acquires land from affected individuals or households in exchange for compensation at replacement value.

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

**Livelihood restoration** means the restoration of ‘a livelihood’ which can provide for the wellbeing of the family. This can include elements from the original livelihood and/or livelihood strategies. The provision of development assistance in addition to compensation such as credit facilities, training, job opportunities, economic opportunities, veterinary care and extension advice, support to animal producer groups with micro credit through third-party providers, abattoirs for storage and marketing of animals to enable them get better prices for their animals.

**Livelihood restoration strategy** for this project adopts abroad concept of both income replacement (cash and in kind) and social development processes (health, education and social cohesion) which enable project affected persons and households to maintain their standard of living in the context of a changing social and economic environment.

**Physical displacement:** Loss of shelter and assets resulting from the acquisition of land associated with a project that requires the affected person(s) to move to another location.

**Project-affected persons (PAPs):** Any person experiencing loss of assets or loss of access to income, whether of a temporary or a permanent nature due to land acquisition process, regardless of whether they are physically displaced or relocated or not.

**Project-affected household (PAH):** The family or collection of project affected persons that will experience effects from land acquisition regardless of whether they are physically displaced or relocated or not.

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

**Resettlement Action Plan (RAP):** resettlement instrument prepared when sub-project locations identified involve land acquisition which leads to or involves the physical displacement of persons, and/or loss of shelter, and/or loss of livelihoods and/or loss, denial or restriction of access to economic resources. RAPs are prepared by the acquiring entity and it has legally binding requirements for compensation of the PAPs before the implementation of such project activities.

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

- **Replacement cost for agricultural land:** The pre-project or pre-displacement, whichever is higher, value of land of equal productive potential or use located in the vicinity of the affected land, plus the costs of: preparing the land to levels similar to those of the affected land; any registration, transfer taxes and other associated fees.
- **Replacement costs for land in urban areas:** the market value of the land of equal size and use, with similar or improved public infrastructure facilities and services preferably located in the vicinity of the affected land, plus the cost of any registration and transfer taxes;
- **Replacement cost for houses and other structures:** The prevailing cost of replacing affected structures of the quality similar to or better than that of the affected structures in an area. Such costs shall include; building materials; transporting building materials to the construction site; any labour and contractors 'fees; and any registration costs.

**Resettlement assistance:** Support provided to people who are physically displaced by a project

The measures may include allowances, residential housing or rentals, whichever is feasible and as required, for ease of resettlement.

**Right of Way :** Is the 60 metre gazetted road reserve that meets the class A road classification. In this project ROW is 60 metres wide and is already gazetted.

**Settlement:** Areas where communities or villages are living and have settled.

**Squatters** – This refers to members of the community who have illegally occupied public land. These persons will receive compensation for structures or other fixed improvement of the land and provision of resettlement assistance for residential relocation and livelihood restoration if applicable need to resettle the displaced squatters.

**Vulnerable and Marginalized Groups** –This are communities as defined under Article 260 of the Constitution of Kenya (2012) and referred to as marginalized community. Defined also under the World Bank Operational Standards OP 4.10 on Indigenous Peoples.(a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole; (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or (d) pastoral persons and communities, whether they are- (i) nomadic; or (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

**Vulnerable PAPs** means any people who might suffer disproportionately or face the risk of being marginalized from the effects of resettlement i.e.; (i) female-headed households with dependents; (ii) disabled household heads; (iii) poor households; (iv) landless elderly households with no means of support; (v) households without security of tenure; (vi) child headed household, (vii) households with people living with terminal illnesses or disability.

## Abbreviations and Acronyms

ACC	Assistant County Commissioner
AP	Administrative Police
ASALS	Arid and Semi-Arid Lands
CBD	Central Business District
CECM	County Executive Committee Member
CDICC	County Development Implementation and Coordination Committee
CIDPS	County Integrated Development Plans
CPGRC	County Project Grievance Redress Committee
DOSHS	Directorate of Occupational Safety & Health Services
ENNDA	Ewaso Ng'iro North Development Authority
ESIA	Environmental and Social Impact Assessment
ESMF	Environmental and Social Management Framework
FCDC	Frontier Counties Development Council
FPIC	Free, Prior and Informed Consent
GBV	Gender Based Violence
GRC	Grievance Redress Committee
GRF	Grievance Redress Framework
GRM	Grievance Redress Mechanism
ICAO	International Civil Aviation Organization
ICT	Information and Communication Technology
IDA	International Development Association
IDPs	Internally Displacement Persons
IVSC	International Valuation Standards Council
KeNHA	Kenya National Highways Authority
KES	Kenya Shillings
KDF	Kenya Defence Forces
KNCCI	Kenya National Chamber of Commerce and Industry
KRB	Kenya Roads Board
LAPSSET	Lamu Port South Sudan Ethiopia Transport
LGRC	Locational Grievance Settlement Grievance Committee
M&E	Monitoring and Evaluation
NACC	National AIDS Control Council
NEDI	North and North Eastern Development Initiative
NEMA	National Environment Management Authority
NETIP	North Eastern Transport Improvement Project
NGO	Non-Governmental Organisation
NLC	National Land Commission
NLP	National Land Policy
NPIS	Non-Pastoral Income-Earning Activities
OP	Operational Policy
GOK	Government of (the Republic of) Kenya
PAPC	Project Affected Persons Committee
PAPs	Project Affected Persons
PLWDS	Persons Living with Disabilities
PSEA	Prevention of Sexual Exploitation and Abuse
PIU	Project Implementation Unit
RAP	Resettlement Action Plan

RDU	Rapid Deployment Unit
RMLF	Road Maintenance Levy Fund
ROW	Right of Way
SCGRC	Sub County Grievance Redress Committee
SDGS	Sustainable Development Goals
SOK	Survey of Kenya
SPSS	Statistical Package for Social Sciences
TOR	Terms of Reference
VMGs	Vulnerable and Marginalized Groups
WB	World Bank

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## Executive Summary

### Introduction

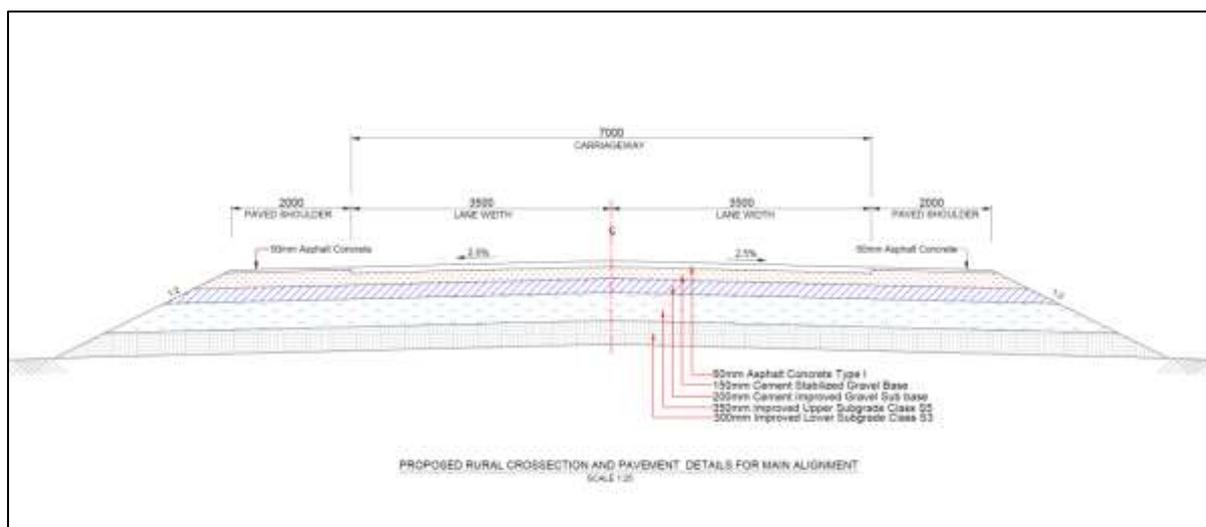
1. The importance of scaling up the quantity and quality of infrastructure is a vital feature of a sustainable and inclusive development approach. While Vision 2030, Kenya's blueprint for economic transformation, indicates that the country's aspiration for interconnectedness through world-class infrastructural facilities and services can be achieved through a multiplicity of means, of significance here is the achievement of a network of roads in the North and North Eastern Counties of Kenya. Therefore, the World Bank is financing the North and North Eastern Development Initiative (NEDI). This will include the North Eastern Transport Improvement Project (NETIP), under the implementation of the Kenya National Highways Authority (KeNHA). KeNHA, a Kenyan public corporation/entity established under the Kenya Roads Act, 2007, has planned for the upgrade of the Isiolo-Modogashe-Wajir-Elwak-Mandera road, to ease transport to the arid northeastern Kenya that has remained inaccessible and separated.
2. The project proposes to upgrade to Bitumen standard of a road that has for the longest time been of earth standards, with dismal level of maintenance. Moreover, although the entire road project and financing have been divided into various sections, the subject of this report is the Resettlement Action Plan for Isiolo-Kulamawe-Modogashe<sup>1</sup> section with a total length of 190km, and classified as Class A: National Trunk Road, nationally linking critical urban centers and international border to Ethiopia and Somalia.

### Proposed Design

3. The project will largely maintain the existing Isiolo-Kulamawe-Modogashe road alignment, but slight modifications to existing alignment may be expected. The Isiolo Junction section has an existing Right of Way (RoW) of 30m while the rest of the road varies from a minimum of 7 to 11m. The project design speed is 100Kph, reduced to 60km/hr in restrictive mountainous terrain and 50Kph in areas approaching and within the 5 towns and urban centres along the route, largely to ensure the safety of pedestrians and access to the property. It is proposed as a 2 lane road. It is expected that other facilities such as lay- bays, bus-bays, and widening at market centres will be constructed within the 60 metres corridor along the road.

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<sup>1</sup> Will also be referred to as Isiolo-Modogashe road for ease of understanding.



Typical cross section of the road

Source: KeNHA road designs for Isiolo Manderu road.

### Objective of RAP

4. Based on the initial Project Category ‘B’ classification of the project, 2 separate draft Resettlement Action Plan (RAP) reports for Isiolo-Kulamawe and Kulamawe - Modogashe were produced. However, there was reclassification of the road project as a Category ‘A’ project, due to its significant adverse environmental and social impacts. This, therefore, necessitated the review and updating of the initial RAPs by an independent consultant, following the requirements of Category A project, and in a manner consistent with World Bank Safeguards Policies and Procedures, relevant laws and regulations of the Government of Kenya (GoK), and KeNHA Environmental policy requirements. The two RAPs were combined for ease of Review by a single consultant and since the area is homogenous.
5. This report is the updated Resettlement Action Plan (RAP) for the proposed upgrading to bitumen standard of Isiolo-Kulamawe-Modogashe Road (190km). It identifies, documents, quantifies, and mitigates the potential physical, economic, and cultural impacts arising from the involuntary resettlement of the proposed upgrading project. This RAP is in consistency to the Project’s Environmental and Social Impact Assessment (ESIA), and the Project’s Feasibility Study, detailed project Engineering Design. These documents have been developed in compliance with the World Bank’s Involuntary Resettlement Policy (OP/BP 4.12) as described in the NETIP Resettlement Policy Framework, as well as any applicable provisions of the Indigenous People Policy (OP/BP 4.10).

### RAP Methodology

6. A participatory approach was employed, ensuring the consultation of all stakeholders in the process. The study also combines quantitative and qualitative data collection methods with a review of relevant project documents. Due to a time lapse of at least a year since the draft RAPs were completed, a systematic parcel/structure by parcel/structure transect walk and validation exercised was undertaken in all 16 settlements along the route. The settlement patterns along the project route are one where sections, mainly around towns and all urban centres are densely populated with largely

zero or no occupation of all other sections of the roads. The term settlement here thus refers to areas where communities have settled.

7. Project Affected Persons (PAPs) were verified against the existing PAP and Asset register between February and March/April 2019.

*Table 0-1: Settlements and administrative units affected*

	Settlement Name	Sub Location	Location	Sub county	County
1.	A2/A10 Junction Junction/Checheles/Tulo Roba	Tulo Roba	Tulo Roba	Isiolo	Isiolo
2.	Ngare Mara	Kisima/Manyatta	Ngare Mara	Tigania East	Meru
3.	Gambella	Gambela	Gambela	Tigania East	Meru
4.	Ndumuru	Ntuamboi	Naathu	Igembe North	Meru
5.	Bullo 1	Naathu	Naathu	Igembe North	Meru
6.	Kachuru	Amathi 1	Kabasi	Igembe NorthNorth	Meru
7.	Yaqbarsathi/Yaqbarsadi (Machine)	Yaqbarsadi/Machine	Kulamawe/Kabati	Garbatula/Igembe	Isiolo/Meru
8.	Kulamawe	Kulamamwe	Kulamawe	Garbatulla	Isiolo
9.	Boji	Boji	Boji	Garbatula	Isiolo
10.	Camp/Kambi Samaki	Kambi	Kambi	Garbatula	Isiolo
11.	Eldera	Eldera	Eldera	Garbatula	Isiolo
12.	Eldere (Eldera)	Eldere	Eldere	Lagdera	Garissa/Isiolo
13.	Bullo 2	Bullo	Eldere/Eldera	Lagdera/Garbatulla	Garissa/Isiolo
14.	Barkuke	Barkuke	Barkuke	Lagdera/Modogashe	Garissa/Isiolo
15.	Janju	Janju	Modogashe	Lagdera/Modogashe	Garissa/Isiolo
16.	Modogashe	Modogashe	Modogashe	Lagdera	Garissa/Isiolo

8. A socioeconomic survey was undertaken, across these 16 settlements with a sample of 492 affected households.
9. Valuation exercise was undertaken for all affected asset owners. This included verification of the impact by assessing the location of the affected asset in respect to the road layout. The affected structure's measurements were verified using a tape measure, materials, type of impact (partial/full), and use (residential, commercial, religious etc.). Where the validation exercise found structures that were outside of the RoW, these were removed from the inventory. An example was at Bullo in Meru County. The economic activities of the project area were also updated.
10. The stakeholder engagement process included consultations with relevant key institutional stakeholders through key informants interviews, 15 public community meetings held in each of the settlements apart from Ngare Mara, which was combined with Gambella. With formation, updating or confirmation of settlement Grievance Redress Committee (GRC) during the community meetings.

## Minimizing Impact and Resettlement

11. Due to the potential to cause long term impoverishment, OP. 4.12 advocates that involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs. This was achieved through the following considerations:

- To some extent, the engineering designs established some mechanisms to minimize resettlement, which was achieved by the new road design very closely follows the existing alignment that substantially minimizes the physical and economic displacement.
- The entire project has an existing 60 metre right of Way except for
  - a 4km section from Isiolo Junction to 78 Tank Battalion where 30 metre RoW is available.
  - 30 metre RoW at major settlements of Kulamawe, Eldere, Yaqbarsadi and Modogashe
- Realignment to avoid cultural property such as places of worship i.e. mosques in Kulamawe, Eldere, Yaqbarsathi/Yaqbarsadi and cemeteries in Kulamawe, Kambi Samaki and Modogashe.
- Specifically, in Modogashe, the design has adopted a 15 metre corridor within the area as per the revised designs to fully avoid the cemeteries.

## Public Participation and Consultation

12. OP 4.12 requires that affected persons be meaningfully consulted, and should have opportunities to participate in the design and implementation of the project, as well as resettlement programs. In addition, public participation is a legal requirement under the Kenyan Constitution. Public participation was therefore achieved through a variety of information and consultation methods which were contextualized to the type of stakeholder and complexity of information to be shared or collected, which was realized by a stakeholder mapping and analysis along the alignment. Key informant interviews were carried out and 15 public meetings. A meeting was held in each settlement, with the exception of Ngare Mara where the PAPs are less than 5, thus facilitated to attend the meeting in Gambella. Although Isiolo Junction is nearer, these PAPs could only attend Gambella (Meru County) meeting due to inter-county boundary conflict, e.g. Ngare Mara lies within a contested area by the Isiolo and Meru Counties. In some cases, especially in the larger towns, it was often difficult to keep those who are not PAPs away from the meetings.

Table 0-2: Summary of Public Meetings

Settlement Name	Date	Venue	Participants	Male	Female	Total Numbers Attended <sup>2</sup>
Tulo Roba	14/5/19	Checheles Open grounds	<ul style="list-style-type: none"> <li>• Consultant</li> <li>• PAPs</li> <li>• Local Administration</li> <li>• KeNHA</li> </ul>	58	31	89
Gambella	15/5/19	Community Baraza Park	<ul style="list-style-type: none"> <li>• Consultant</li> </ul>	42	17	59
Ndumuru	15/5/19	Community Baraza Park	<ul style="list-style-type: none"> <li>• PAPs</li> </ul>	34	29	63
Bullo 1	16/5/19	Harvest Church	<ul style="list-style-type: none"> <li>• Local</li> </ul>	72	6	78

<sup>2</sup> Note that in some cases, especially in the larger towns, it was often difficult to keep those who are not PAPs away.

Kachuru	21/5/19	Community Baraza Park	Administration	81	12	93
Yaqbarsadi	17/5/19	Community Baraza Park		16	9	25
Kulamawe	18/5/19	Community Baraza Park		83	40	123
Boji	18/5/19	Boji Primary School		37	17	54
Kambi Samaki	20/5/19	Community Baraza Park		64	20	84
Eldera	22/5/19	AP Camp grounds		9	9	18
Eldere	19/5/19	Community Baraza Park		53	21	74
Bullo 2	22/5/19	Community Baraza Park		24	8	32
Barkuke	23/5/19	Community Baraza Park		19	11	30
Janju	23/5/19	Community Baraza Park		25	20	45
Modogashe	24/5/19	Community Hall		42	8	50
<b>Total Numbers Reached</b>						<b>917</b>

13. Overall, the findings show:

- A shortage of knowledge on land acquisition processes and relevant land legislation, particularly on community land acquisition, compensation processes and procedures;
- Contested land tenure classification: despite the land being under customary rights, some individuals claim ownership of some ‘plots’ they had settled and have an ancestral claim to the area;
- A reluctance towards the relocation of cultural property such as mosques and public cemeteries, with a preference for road re-alignment to avoid impact;
- Concerns over compensation timing, modalities, fears of non compensation due to the numerous land conflicts, etc;
- During Public Consultations, the affected persons indicated a general feeling of marginalization and state neglect in service provision and government mistrust.
- Discontent over the upheld cut off dates, and concern over the alleged poor communication in the first RAPs.

### Eligibility and Cut-Off Date

14. Criteria for Eligibility, as advocated for by OP 4.12 is applied in this RAP, to include full eligibility for those with formal legal rights to land and those without formal legal rights and don’t have claims recognized by Kenyan Laws. Eligibility here is applied to individuals or collectively as a group. For instance, in the case of community land, a ‘community’ can be defined based on usufruct rights to the land in question. However, the PAPs must meet the cutoff date requirement, unless where the initial RAPs omitted an eligible person or group. According to OP 4.12, the cut-off date is the date the census of PAPs begins, those in the area before the census begins are eligible for compensation and assistance, as relevant and those who arrive after the cut off date are not. Two (2) cut off dates existed in the project area as per the two RAP reports that were developed for two sections of the road i.e. Isiolo Kulamawe for section 1 and Kulamawe Modogashe as Section 2.

Table 0-3: Cut Off Dates

Section	Date Set in Initial RAP	Current cutoff date
Isiolo Junction (Tulo Roba) to Yaqbarsadi/	18 <sup>th</sup> December 2017, and communicated in the public meetings.	18 <sup>th</sup> December 2017 upheld and communicated in the public

Yaqbarsathi		meetings and through local administration officers like the chiefs, deputy chiefs and members of the local authority.
Kulamawe	Half section of the settlement (up to AP roadblock on way from Isiolo town set as 18 <sup>th</sup> December 2017.  Second half from roadblock to end of settlement (on way to Boji) set as 12 <sup>th</sup> December 2017.	To ensure all PAPs in the settlement are under a single cutoff date thus avoiding confusion, 18 <sup>th</sup> December 2017 was upheld and communicated in the public meetings and through barazas held by local administration officers like the chiefs, deputy chiefs and members of the local authority.
Boji to Modogashe	12 <sup>th</sup> December 2017, and communicated in the public meetings	12 <sup>th</sup> December 2017, and communicated in the public meetings and communicated in the barazas held through local administration officers like the chiefs, deputy chiefs and members of the local authority.

## Project Impacts

15. The road upgrade seeks to promote sustainable growth and investment in the area. However, it has mitigatable negative impacts in terms of PAPs to be affected, with 96% being individuals/persons, while the rest includes well-defined community groups such as a women group or institutions or a government agency.

### i. PAP Numbers

The Census shows a total of 1,182 Project affected persons; individual asset owners being 64%, as compared to 34.6 % being tenants. All these PAPs are in the 60 M wide RoW.

Table 0-4: Number and Type of PAPs

Settlement	Asset Owners	Tenants			Asset owner /tenant	Institutions/ groups	Total
		Residential	Commercial	Commercial/ residential			
Ngaremaraa	3						3
Kambi Samaki	19						19
Kachuru	49	19	21				89
Eldera	32	7	3				42
Janju	38						38
Yaqbarsadi	19	2	1			1	23
Barkuke	44		1			1	46
Gambella	36	8	1				45

Boji	71	1	1			2	75
Ndumuru	66	30	21	1			118
Bullo 1	41						41
Bullo 2	27						27
Eldere	51	3	24	1	1		80
Kulamawe	78	4	25	1		4	112
Modogashe	115	3	106			4	228
Tulo Roba	0	0	0	0		0	0
<b>Total</b>	<b>689</b>	<b>77</b>	<b>204</b>	<b>3</b>	<b>1</b>	<b>12</b>	<b>986</b>

## ii. Impact on Vulnerable Groups

In the project affected area, majority vulnerable comprise of women-headed households, showing women in the project area are more at risk of impoverishment if proper mitigation measures are not designed. There are 20% of the sampled population was deemed vulnerable, of which 73% of the vulnerable group are women headed households. This parameter was measured by asking if the Household was headed by a woman, headed by a child under 18yrs, headed by a disabled Person, headed by a chronic ill person or headed by elderly over 65yrs of age.

## iii. Impact on structures

Semi-permanent Houses (549), Manyattas/Dhash (272) and Shops/hotels (317) form the majority of affected structures. The 317 shops and food vending kiosks are transient in nature.

## iv. Loss of Cultural and Religious Property

There are 5 public cemeteries within the towns of Kambi Samaki, Bullo 2, Kulamawe and Modogashe – the latter hosting 2, 1 on one either side of the proposed road corridor, on the peripheries of the RoW. The project has adopted a Corridor of Impact being 15 metres in these areas thus avoiding **ALL** the cemeteries. The same principle has been applied to avoid mosques in Modogashe, Tulo Roba, Yaqbarsadi, Kulamawe, Boji, and Eldere.

## v. Loss of Community Services and Structures

There will be community structures essential for the provision of much-needed services such as water and education affected.

Table 0-5: Affected Community Facilities

Settlement	Affected Community Facility
Bullo 2	Community Water Kiosk
Boji	Community Water Kiosk
Modogashe	2 Community Water Kiosks
	Youth Polytechnic

Kulamawe	Water Project
	Social Hall

## Entitlement Matrix

16. To mitigate the above mentioned, impacts, an entitlement matrix was established as follows:

Table 0-6: Entitlement Matrix

Type of Loss/Affected Right	Defined PAP/Eligibility	Indicative Areas	Compensation Strategy	Other Forms of Assistance/Entitlements
<b>Land</b>				
Permanent Loss of any type of Land regardless of severity <sup>3</sup>	Private Landowner (individual or group) with legal document e.g. title. In case of individual, spouse included.	Isiolo Junction/ Tulo Roba area	<ul style="list-style-type: none"> <li>• Provide PAP with cash compensation at full replacement cost.</li> <li>• If residual is unusable, or 'orphan' land, subject to case by case NLC determination and recommendation for full acquisition of land.</li> </ul>	<ul style="list-style-type: none"> <li>• All compensation before notice to relocate.</li> <li>• 15% disturbance allowance</li> <li>• Maintained access to unaffected remaining land thus need for access provision in detailed road design.</li> <li>• Access to Grievance mechanism.</li> <li>• Right to request for orphan or residual land to be acquired if not economically viable.</li> <li>• Owner eligible to participate in livelihood restoration activities if they wish.</li> </ul>
	Private Owner with no legal documents e.g. title but land gazetted for adjudication prior cutoff date i.e. legalizable owner or some form of recognized land. In case of individual, spouse included.	Majority sections of Meru Modogashe	<ul style="list-style-type: none"> <li>• Compensation of the land at replacement value on good faith, NLC to access the closed registry to determine the land owner.</li> <li>• If residual is unusable, or 'orphan' land, subject to case by case NLC determination and recommendation for full acquisition of land.</li> </ul>	
	Un registered community but with user rights	Isiolo and Garissa County sections	Cash compensation at replacement value. Funds deposited with the County as a trustee until community registers. Those with Registered Rights to get cash compensation at full replacement cost.	

<sup>3</sup> Temporal loss of land due to occupation by contractor or KeNHA during construction not covered in this RAP, thus compensation often at commercial rates to be negotiated outside this RAP.

	Unlawful occupant of public, private and communal Land	Whole route	No compensation for land	• Access to Grievance mechanism.
Temporal loss or damage to Land/Property during inspection to ascertain the suitability of the land for acquisition for the road upgrading.	Private, public or community land/property owner		Payment in full, of just compensation for any damage resulting from the entry. The amount to be negotiated directly with the owner of the land/property	• Access to Grievance mechanism.
<b>Individual and Institutional Structures</b>				
Loss of all structure types irrespective of use.	Owner of Structure regardless of legal ownership/registration status (and their spouse).	Whole route	Cash compensation at full replacement cost free of depreciation and transaction costs	<ul style="list-style-type: none"> <li>• 15% disturbance allowance</li> <li>• Right to Salvage</li> <li>• Right to request for orphan or residual structure to be acquired if not structurally viable.</li> <li>• Owner eligible to participate in livelihood restoration activities if they wish.</li> <li>• Access to Grievance mechanism.</li> </ul>
	Business Tenants		3 months restitution based on assessed monthly incomes and a 3 months relocation notice	Access to Grievance mechanism.
	Residential Tenants		3 months relocation notice	Access to Grievance mechanism.
<b>Communal Assets/structures</b>				
Socio infrastructure e.g. boreholes	Community/Users of the services and assets	Whole route	<ul style="list-style-type: none"> <li>• Provision of replacement facilities within the settlement, with a higher capacity to serve more community members.</li> <li>• No cash compensation</li> </ul>	• Access to Grievance mechanism.
Cultural/Religious heritage sites/assets e.g. cemeteries,	Community/Public		<ul style="list-style-type: none"> <li>• First option is re-alignment of road route to avoid the facilities where feasible.</li> <li>• If no re-alignment: <ul style="list-style-type: none"> <li>○ Purchase of land or assistance in</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 15% disturbance to realize religious and cultural rituals.</li> <li>• Access to Grievance mechanism.</li> </ul>

mosques, Graves			<ul style="list-style-type: none"> <li>○ identification of alternative sites.</li> <li>○ Cash compensation only where recognized committees exist to facilitate and oversee the relocation and replacement of facilities.</li> <li>○ Where no committees exist, KeNHA in collaboration with community forms one and facilitates required safeguards to ensure money is used for the right purpose, or agreement on whether KeNHA hires a contractor to work with the community to redesign and rebuild the facility. KeNHA pays the contractor on community approval of completion of works.</li> <li>○ In all cases, KeNHA facilitates rebuild of a bigger facility.</li> </ul>	
	Individual/Family owners		<ul style="list-style-type: none"> <li>● Cash compensation.</li> </ul>	<ul style="list-style-type: none"> <li>● 15% disturbance to realize religious and cultural rituals.</li> </ul>
<b>Business and Income</b>				
Loss of business	Business building owner (if premises rented out) regardless of legal ownership/registration status	Whole route	3 months rental income per tenant lost verification by NLC	<ul style="list-style-type: none"> <li>● Eligible to participate in livelihood restoration activities such as markets proposed by KeNHA in some of the settlements.</li> <li>● Access to Grievance mechanism.</li> </ul>
	Owner of Business		3 months transitional assistance based on existing monthly income	
<b>Trees</b>				
Loss of all types of trees	Individual/ group owner regardless of legal status of owner	Whole route	Cash compensation at full replacement cost using KFS rates	<ul style="list-style-type: none"> <li>● Right to salvage</li> <li>● Access to Grievance mechanism.</li> </ul>
	Community as owners and users (in the latter where the owner is an		Cash compensation at replacement value to owner.	

	individual but community uses the tree)			
<b>Loss of Public Utilities</b>				
Power lines	Public	Whole route	Physical relocation and reinstatement of access by relevant authorities.	
<b>Vulnerability</b>				
Any losses incurred by the vulnerable	Female household heads, elderly, persons living with disabilities.	Whole route	<ul style="list-style-type: none"> <li>• Provide PAP with cash compensation at full replacement cost for lost assets</li> <li>• Compensation in kind measures be adopted where additional need is established</li> </ul>	<ul style="list-style-type: none"> <li>• Priority in processing/ disbursement of compensation</li> <li>• Priority eligibility to livelihood restoration interventions e.g. markets. Where KeNHA has proposed markets in some settlements, vulnerable get preferential treatment in getting strategic locations in new market centres while the markets will be designed to take into consideration accessibility by the physically challenged.</li> <li>• Employment priority in project related jobs.</li> <li>• Recommendation for additional assistance by county and national government programmes such as the Inua Jamii programme if they qualify.</li> </ul>
<b>Unforeseen impacts, if any</b>				
Design of additional mitigation measures by KeNHA on a case by case basis	Private, public or community land/property owner	Whole route		

## Community awareness on the project and preference for compensation

17. Of all the affected persons, 99% are aware of the proposed project which entails upgrading of the Isiolo-Modogashe road to bitumen standards. The primary source of information was the public meetings and from the local authorities. Also, 96% of the PAPs were aware that their land, structures, and/or livelihood sources could be affected by the project. Cash compensation is proposed as the preferred option for individual/private assets and loss of income.

In the case of community assets, if the impact cannot be avoided, can be paid in kind by providing an equivalent of cash for the replacement of the asset where most have committees in charge of the institutions like mosque thus can organize for relocation. However, assets such as community water kiosks will be in-kind compensation and relocation through organizing the construction in a separate section of the settlement.

### Livelihood restoration

18. The project affected are engaged in two main activities i.e. Livestock production and various entrepreneurial activities, with the most prominent within the road reserve being small scale retail trading.<sup>4</sup> This livelihood restoration shall essentially start from maximizing the possible and available project-based opportunities by introducing new, and enhancing the existing social investment as part of the proposed road infrastructure such as markets and undertaking rest stops or lorry parking with roadside trading amenities.

Other options that can be explored can include entrepreneurial training for existing small businesses that will be affected by the road upgrade through its land acquisition, as well as recommendation to institutions offering small grants and loans for women and vulnerable groups.

In summary, the following measures have been adopted to form part of livelihood restoration interventions where applicable:-

- Direct and indirect Jobs/employment opportunities for the PAPs and members of their households
- Prompt Compensation
- Provision of Modern Market Stalls
- Financial and Basic Entrepreneurial Skills Training
- Referral to Credit and Micro-credit Facilities through third party providers and Government Sponsored initiatives like Uwezo Fund and Cooperative Groups
- Linkage of the PAPs to government sponsored Social Development Initiatives through the area Social Development Officers
- Linkage of PAPs undertaking to Livestock activities to extension offices in the county where necessary
- Local Purchasing Programs tailor made to benefit PAPs or groups of PAPs who can supply goods and services

### Grievance Redress Mechanism

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<sup>4</sup> However, it is important to note that the livestock based livelihoods will not be adversely affected given the land requirement for the land is minimal compared to the existing land. Therefore, no pasture land is affected. The key consideration will be the replacement of the few affected watering points as water troughs are located in the vicinity of water kiosks in settlements.

19. This RAP proposes a Four-tier grievance redress mechanism consisting of:
- Locational Grievance Redress Committee (SGRC): Already established at the community level in 15 of the 16 settlements (Location), membership varies from a 7 to 15-member committee depending on the unique conditions of the settlement, and acts as the first point of complaints;
  - Sub County Grievance Committee (SCGRC): to be formed at the sub-county level. This should maximize the existing county and national government representation at the sub county level. PAPs are also represented. Will act as the escalation mechanism.
  - County Project Grievance Redress Committee (CPGRC): to be formed at county level and including county government, project staff, PAPs etc.
  - The Courts of Law: The Land and Environment court will then act as the last tier as a high court i.e. appeal court.
- (The NLC system also remains open to the PAPs in the second and third tier levels.)

## **RAP implementation**

20. Institutional Arrangements: The Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works is responsible for project implementation on behalf of the Government of the (Republic) of Kenya. The primary responsibility for the implementation of this RAP, however, remains with KeNHA the implementing agency under the State Department for Infrastructure. KeNHA has a fully-fledged department Environment and Social Safeguards department (headed by a Deputy Director to manage the process, the Senior Sociologist to oversee GRM, Stakeholder engagement, Senior Valuer to coordinate the NLC validation process and delivery of Compensation, Senior surveyor to coordinate the property inspections of affected assets on the RoW, Project engineer to coordinate funds from treasury and progress of works as well as other members of the PIU like the Legal Officer, Accountant), under the Directorate of Highway Planning & Design who will oversee implementation activities of the RAP. This will rope in as needed the grievance committees, the NLC, county governments, Ministry of interior, Livestock, agriculture, Industrialization, NEMA, NGOs, other government agencies as well as professional firms, etc. to assist in various components of this RAP, as and when needed.
21. Land Acquisition and Compensation Payment Procedures: NLC will undertake land valuation and acquisition using the procedures outlined in the Land Act, Land Regulations, 2017 and Land Value (Amendment) Act 2019, and summarized in sections 5.4.1 and 5.4.2 of this RAP. The PAPs will be allowed to open individual and joint Bank accounts in banks of their choice. Funds will be deposited directly to Bank accounts for all categories of PAPs as described in the entitlement matrix prior to the takeover of the land, and a follow up is done to confirm to the PAPs that funds have been disbursed. Where payment is directed to an individual, joint accounts (for spouses) are encouraged to curb complains on disposal of family land or property.
22. Notice to Relocate and Relocation of the affected structures/assets: Once the compensation has been paid out to respective PAPs, a notice of self-demolition will be issued by NLC. This RAP proposes a 3 months' notice to PAPs. In case a PAPs fails self-demolish his or her own structure within the notice period, KeNHA will commence the road in disregard of the removal of the structure.

## **Financial Responsibility and Authority**

23. The overall financial responsibility for facilitation of affected structures is solely mandated to KeNHA and by extension the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works. It is their responsibility to ensure the funds are available before acquisition starts.

**i. Cost Per Item Per Settlement**

*Table 0-7: Cost per Settlement*

Settlement	Land (as per asset register)	Structures	Trees	Graves	Income	Total Compensation Sum
Ngare Mara	Nil	1,334,000.00	120750.00		17250.00	1472000.00
Kambi Samaki	Nil	1,761,340.00			195500.00	1956840.00
Kachuru	Nil	10,470,980.00	51750.00		1114350.00	11637080.00
Eldera	Nil	11,900,372.50			289800.00	12190172.50
Gambella	Nil	7,535,145.00	132825.00		172500.00	7840470.00
Bullo 1	Nil	1,914,750.00			122475.00	2037225.00
Boji	Nil	34,864,780.00			575000.00	35439780.00
Barkuke	Nil	2315870			93150.00	2409020.00
Yaqbarsadi	Nil	5,063,335.00			51750.00	5115085.00
Eldere	Nil	17,813,730.00			1059150.00	18872880.00
Ndumuru	Nil	12,751,602.50			1318475.00	14070077.50
Bullo 2	Nil	2,456,285.00		0	517500.00	3370535.00
Modogashe	Nil	160,239,390.00		0	5756670.00	186696060.00
Kulamawe	Nil	82,391,836.25		0	1483500.00	85703836.25
<i>Tulo Roba</i>	0	0	0	0	0	0
Janju	Nil	1,109,060.00			224250.00	1333310.00
<b>Totals</b>	<b>Nil</b>	<b>353,922,476.25</b>	<b>305,325</b>	<b>0</b>	<b>12,991,320.00</b>	<b>367,219,121.25</b>

\*1 the Isiolo junction area, is also known as Tulo Roba.

ii. **Land Acquisition Costs for sections under adjudication and Community Land**

**Overall Budget**

24. The estimated budgetary costs for the RAP (with the mitigation measures adopted in the design and with realignment interventions discussed above, the estimated RAP cost while utilizing the available corridor is Kshs. **566,051,989.44**.

*Table 0-8: Estimated RAP Budget*

<b>Item</b>	<b>Cost estimate with the existing alignment plus design interventions</b>
<i>Land</i>	0 ( <i>alignment adopts 30metres in settled areas and maintains existing RoW outside settlement</i> )
Loss of Structures	353,922,476.25 ( <i>free of Isiolo junction</i> )
Income Loss	12,991,320.00 ( <i>free of Isiolo junction</i> )
Graves	0 ( <i>realignment avoids graves</i> )
Trees	305,325.00( <i>free of Isiolo junction</i> )
Livelihood Restoration Activities	100,000,000.00
Monitoring and Evaluation (external and internal)	25,000,000.00
<i>Subtotal</i>	492,219,121.25
Contingency Costs (15%) of Subtotal	73,832,868.19
<b>Total</b>	<b>566,051,989.44</b>

25. A RAP Implementation schedule is provided in table 0.13.

Table 0-9: RAP Implementation Schedule

ISILO MODOGASHE RAP IMPLEMENTATION SCHEDULE															
Activity	Responsibility	2019					2020								
		Nov	Dec	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Sep	Oct	Nov	Dec
Review and Approval of final RAP	PIU, WB														
Disclosure of RAP on websites and stakeholders	PIU, WB														
Sensitization of PAPS on RAP through Information Disclosure	PIU														
Establishment and operationalization of GRC Committees	PIU (NGO/firm)														
Gazettement of Intention to Acquire, inspection of the assets, inquiry, PAPS Sensitization and training on utilization of funds, Preparation and Issue of awards& payments	NLC														
Start of physical Relocation of PAPS and grace period to allow salvage of asset materials of affected assets	NLC														
Grievance Redress	Committees, PIU														
Livelihood Restoration activities	PIU (NGO/firm)														
Monitoring and evaluation	PIU (NGO/firm)														

## Monitoring and Evaluation of this RAP

26. The responsibility for M&E rests with KeNHA's Project Implementation Unit, with expected reporting to the higher levels of company management. It is KeNHA's responsibility to ensure that the exercises are well funded and adequate staffing is available more so for internal monitoring, as well as setting up the right procedures to guide the exercise. These functions can be exercised through partnerships with other stakeholders such as external firms, or directly by KeNHA staff.

(The PIU to monitor the social risks is domiciled within KeNHA head office. It is headed by a Deputy Director in charge of Environment and social safeguards, to manage the resettlement process, the Senior Sociologist to oversee GRM, Stakeholder engagement, Senior Valuer to coordinate the NLC validation process and delivery of Compensation, Senior surveyor to coordinate the property inspections of affected assets on the RoW, Project engineer to coordinate flow of funds from treasury and progress of works as well as other members of the PIU like the Legal Officer, Accountant, and Community Liaison officers who are trained sociologists where applicable).

### **i. Internal Performance Monitoring**

27. Internal performance monitoring allows KeNHA to measure physical progress against milestones and schedule of required actions established in the RAP. It is meant to be an internally driven continuous process, i.e. routinely aimed at ascertaining the RAP implementation achievements against a set of specific actions. Performance monitoring assesses KeNHA's performance should be in line with this RAP's scheduled activities and integrated into everyday implementation work.

### **ii. Midterm Impact Evaluation**

28. The midterm impact evaluation will gauge the effectiveness of the RAP, and its implementation in meeting the needs of the affected population i.e. assesses the satisfaction of affected people with resettlement initiatives and, thus, the adequacy of those initiatives before all phases are rolled out. Any lessons learned and recommendations to improve performance and impacts will be the main deliverable from this exercise. The report will advise KeNHA management of changes necessary to improve implementation of the RAP towards the achievement of its objectives, including strategies on how to implement those changes. The most prominent and widely adopted guideline for evaluations is the five criteria of Relevance, Effectiveness, Efficiency, Impact, and Sustainability from the Development Assistance Committee of the Economic Cooperation and Development (OECD/DAC). This also allows for cross-cutting issues, such as poverty, gender, and environment, to be taken into consideration.

### **iii. Post-Implementation Evaluation (Completion Audit)**

29. Upon completion of the RAP implementation (at least 6 months but not more than a year later after project closure), KeNHA will undertake an audit to determine if the RAP was

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implemented and PAPs received their entitlements. It verifies if all commitments were delivered and whether mitigation measures had the desired effect. If the outcome of the audit reveals that these objectives may not have been realized, KeNHA can institute follow-up measures including reference to county governments on any outstanding social infrastructure developments, as they may deem appropriate. This documents the lessons learnt to feed into the implementation of other RAPs, and future projects.

# 1 Introduction

## 1.1. Background

1. Kenya's Vision 2030, the country's long-term development strategy for achieving economic, political and social transformation, highlights the Arid and Semi-Arid Lands (ASALs) representing 84 percent of the total land mass of the country<sup>5</sup> and a large part coincidentally found in the north and northeastern parts of the county, as largely under-exploited. Of these, it is essential to note that the arid areas alone (also synonymous with the concept of 'Northern Kenya', or the area once known as the Northern Frontier District) accounts for 70 percent of the mass and are home to 36% of the population.<sup>6</sup> Characterized by a myriad of unique and complex factors including high poverty levels, climatic variability, lack of basic services, dilapidated or nonexistent infrastructure, the north and North Eastern region has often lagged behind in development to extent that the term 'marginalization' is often considered a synonym of these areas of the country. Specifically, a recent World Bank publication shows that counties in the area are way below the national average on all development indicators.<sup>7</sup> It is, therefore, these specific (ecological, economic and political) realities which shape development in Northern Kenya that development proponents argue that policy and practice must adapt to.
2. Given that the country's strong economic performance needs to translate into shared prosperity and reduced poverty across the country,<sup>8</sup> Vision 2030 imagines a future where the hopes and dreams of all Kenyans can be realized, seeking to transform Kenya into a country providing a high quality of life to all its citizens, including Northern Kenya. This has thus triggered deliberate policies and strategies – the most outstanding been the entrenchment of the notion of advancing affirmative action in the formulation of Article 204 of the Constitution (2010) on the Equalization Fund, and the Vision 2030 Development Strategy for Northern Kenya and other Arid Lands. Most development partners such as the World Bank thus anchor their collaboration on such policies.
3. The importance of scaling up the quantity and quality of infrastructure is one key feature of a sustainable and inclusive development approach. Actually, Vision 2030 and the Vision 2030 Development Strategy for Northern Kenya and other Arid Lands set integrated, cost effective, safe and efficient infrastructure as a necessary foundation and precondition for unlocking the potential of the economy in general. However, in the North – this key feature, more so a network of roads, considered as a key basic enabler of development is either inadequate and in most cases virtually lacking or missing. As a result of a policy decision where roads were (in the past) constructed based on levels of traffic flow and population density, here, the transport network is thin, disjointed, and in places non-existent.<sup>9</sup> The Government of Kenya (GOK) estimates that in an area covering nearly 400,000km<sup>2</sup> of land, less than 1,000km of tarmac could be found as at 2008-2012, much of which is in disrepair.<sup>10</sup> This they argue is despite research showing that infrastructural investments in remote areas have the highest returns and impact on poverty reduction. In addition, the area serves as a major international artery, linking Kenya to Ethiopia, Somalia, Uganda and South Sudan.

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<sup>5</sup> Government of the Republic of Kenya, 2007

<sup>6</sup> Government of the Republic of Kenya, 2012

<sup>7</sup> See World Bank, 2018

<sup>8</sup> World Bank, *Ibid*

<sup>9</sup> GOK, *Ibid*

<sup>10</sup> GOK, *Ibid*

4. While Vision 2030 indicates that the country’s aspiration for interconnectedness through world-class infrastructural facilities and services can be achieved through a multiplicity of means, of significance here is the achievement of a network of roads in the North and North Eastern Counties of Kenya. This is both in terms of operation and maintenance of the existing infrastructure, as well as undertaking large scale expansion in the sector within the geographical area.
5. Particularly, under the World Bank funded North and North Eastern Development Initiative (NEDI), and in specific, the North Eastern Transport Improvement Project (NETIP), the Kenya National Highways Authority (KeNHA) – a Kenyan public corporation/entity established under the Kenya Roads Act, 2007 – has planned for the upgrade of the Isiolo-Modogashe-Wajir-Elwak-Mandera road, to ease transport to the arid northeastern Kenya that has remained inaccessible and separated. Consistent with the transport policy, the aim is to stimulate the development, integrate, and contribute to improving security and bringing about sharing the prosperity of the country with this region.
6. Although the entire road project and financing has been divided into various sections as the table below shows, this Resettlement Action Plan covers the Isiolo-Kulamawe-Modogashe<sup>11</sup> section with a total length of 190km.

*Table 0-1: Isiolo-Mandera Road Sections*

No.	Road Section	Length of the road (km)	Financier
1.	Isiolo - Kulamawe	77	World Bank
2.	Kulamawe - Modogashe	113	World Bank
3.	Modogashe - Samatar	90	Arab Banks
4.	Samatar -Wajir	67	GoK Annuity
5.	Wajir - Kutulo	119	World Bank
6.	Kutulo - Dabasit	28	World Bank
7.	Dabasit - Elwak	28	World Bank
8.	Elwak - Sukelatifa	71	GoK Annuity
9.	Sukelatifa - Rhamu	71	GoK Annuity

Source: KeNHA

7. In the year 2017/18, and through design review, the Kenya National Highways Authority (KeNHA) undertook the preparation of draft Resettlement Action Plans (RAPs) for the proposed upgrade of:
  - Isiolo-Kulamawe road, 77 km (A10); and
  - Kulamawe-Modogashe road, 113 km.
8. Based on the initial Environmental and social Category ‘B’ classification of the project, 2 separate draft RAP reports were produced. However, a recent review, reclassified the road project as a Category ‘A’ project, since the project is likely to have significant adverse environmental and social impacts that are sensitive, diverse or unprecedented. This necessitated the review and updating of the initial draft RAPs, in accordance with the requirements of Category A project, and in a manner consistent with World Bank Safeguards Policies and Procedures, relevant laws and regulations of the Government of Kenya (GoK), and KeNHA Environmental policy requirements.

<sup>11</sup> Will also be referred to as Isiolo-Modogashe road for ease of understanding.

## 1.2. Scope and Objectives of RAP

9. This report contains an updated Resettlement Action Plan (RAP) for the proposed upgrading to bitumen standard of Isiolo-Kulamawe-Modogashe Road (190km). It identifies, documents, quantifies and mitigates potential physical, economic and cultural impacts arising from the proposed upgrading project, consistency with respect to the Project's Environmental and Social Impact Assessment (ESIA) and the Project's Feasibility Study, Detailed Project Engineering Design, and in compliance with the World Bank's Involuntary Resettlement Policy (OP/BP 4.12) as described/elucidated in the NETIP Resettlement Policy Framework, as well as any applicable provisions of the Indigenous People Policy (OP/BP 4.10).

In specific, the objectives of the initial RAPs prepared were to:

- Provide proposals to avoid, limit and minimize potential displacement which can be considered in the final design plans;
- Identify and update on potential project affected persons, and undertake a socio economic baseline of their economic, social and cultural life to assist in the design of mitigation measures and for monitoring and evaluation during the project implementation period;
- Document the impacts of the proposed projects on the occupants and their way of life. This includes to carry out an asset inventory survey of all potential assets that will be affected, develop a valuation methodology for PAPs and their assets and livelihoods and recommend measures to minimize displacement/resettlement effects and safeguard livelihoods;
- Document acceptable entitlements to guide compensation and other mitigation actions to Project Affected Persons (PAPs). In this regard, develop innovative compensation/resettlement/livelihood restoration options (technically and economically feasible, and socio-culturally compatible with the cultural preferences) for the displaced persons based on existing situation and context of each settlement and best global resettlement practices;
- Conduct extensive and in-depth stakeholder consultations with all project stakeholders, and particularly the Project Affected Persons, using data generated to inform the RAP report;
- Set out implementation strategies and arrangements for RAP, including institutional responsibilities, organizational procedures and a grievance redress system that takes cognizance of the existing local context;
- Put in place a monitoring and evaluation and reporting system for the RAP implementation, and
- Compile a PAP and Asset register.

Objectives of the RAP Review and update are:

- i. To review the existing draft RAP reports and the process through which they were prepared in terms of their completeness, consistency and compliance with the World Bank Involuntary Resettlement Policy.
- ii. To undertake the necessary activities to complete, rectify and address any gaps in existing RAP Reports and the process through which they were prepared, including additional survey, consultation and coordination with the project design and other teams.
- iii. To revise and update the RAP Reports in the form and substance that is consistent and compliant with the World Bank OP 4.12.

### 1.3. RAP Methodology

10. A participatory approach ensured the participation and consultation of key stakeholders in the process. The study also combined quantitative and qualitative data collection methods. Mobilization of all field activities was undertaken through the office of the County Commissioner and state officials falling under this office i.e. chief and sub-chiefs. Local county officers and ministers were involved in the process. Subsequently, announcements were done in local barazas, churches, and mosques.

#### 1.3.1. Document Review

11. The review of relevant project documents was undertaken, including project related documentation, e.g., project feasibility report, engineering reports, Environmental and Social Impact Assessment (ESIA) report etc., as well as published research reports on the project area, County Integrated Development Plans (CIDPs), etc. Specifically, the initial draft RAP reports and the process through which they were prepared were reviewed in terms of completeness, consistency, and compliance with World Bank policies, and gaps identified.

#### 1.3.2. PAPs Verification Census and Socio-economic Survey

12. Due to a time lapse of at least a year since the initial RAPs were completed, a systematic parcel/structure by parcel/structure transect walk was undertaken in all settlements. Note the settlement patterns along the project route is one where sections, mainly around towns and all urban centres are densely populated with largely zero/no occupation of all other sections of the roads. The term settlement here thus refers to an area of occupation. The situation on the ground at the time the RAP was that there was drought that led to the migration of sections of the pastoralist communities along the route. Insecurity and inter-community conflicts over land, pastures at various times also forced some communities to flee their homes. The public participation in some settlements was delayed to ensure capture of PAPs who would have moved back with the rains, and in several others due to intercommunity/clan open conflict. These are factors that also have a bearing on the ESIA.
13. The ongoing drought had led to the migration of PAPs were verified against the existing PAP and Asset register between 26<sup>th</sup> February and 30<sup>th</sup> March 2019. Where PAPs could not be found, a pre-arranged second field activity was held to fill any missing gaps on PAPs details in May 2019, and a third in July 2019. Given that an inception meeting with the client upheld the cut-off date, new physical displacement PAPs and structures were not enumerated, but economically displaced PAPs and activities updated. PAP details, e.g. phone numbers, missing ID numbers were updated where available. The first RAPs did not document tenants, while in many cases tenants both residential and commercial, e.g., those renting out shops had changed. It is important to note that even after the PAPs verification exercise, new structures are mushrooming in some sections of some settlements.
14. A socioeconomic survey was undertaken to targeting the PAPs. The interview solicited quantitative information on household demographic structure, households' living conditions, access to basic social services, livelihood, employment and income, and

households' perceptions about the project and preferred compensation and resettlement options, among other resettlement related issues.

### 1.3.3. Valuation

15. A verification exercise was undertaken to verify the impact by assessing the location of the affected asset in respect to the road layout. In sections, where KeNHA had undertaken beaconing of the road e.g. between km 1 from Isiolo Junction to Kulamawe settlement, this eased the identification of the proposed route alignment. In other sections, a GPS with the route layout was used to verify the impacts. The affected structure's measurements were verified using a tape measure, including materials, type of impact (partial/full), use (residential, commercial, religious, etc.) noted. Where structures were found to be outside the road RoW, such as the case in Bullo (Meru County), these were eliminated from the inventory.
16. All verification was undertaken in collaboration with a representative from the office of the County commissioner. In most cases, the chief, assistant chief, or a community elder nominated by the chief's office accompanied the team to all houses/structures. This safeguard measure ensured that the correct PAP details and ownership status were captured. The properties were inspected and valued for RAP purposes on various dates during February/ March/April 2019 by duly qualified valuers. Validation of this valuation will be conducted by Valuers from National Land commission for compensation.

### 1.3.4. Stakeholder and PAPs Consultations

17. Relevant key institutional stakeholders were consulted through interviews. Such included the National government through the Office of the respective County Commissioners, and National Survey of Kenya, County Departments of Survey, National Land Commission, Project Affected Institutions (such as the Isiolo Army Barracks commonly referred to as 78 Tank Battalion, Ewaso Nyiro North Development Authority, Isiolo district/referral hospital), among others. 15 public community meetings were held in the course of the assignment and details are provided in Chapter 6 while the relevant minutes and lists of attendance are found as Appendix C and D respectively. Community meetings covered topics related to the purpose and objective of the project, the project description, valuation methodology and principles, findings from asset assessment, entitlements and compensation options, notice to relocate. In addition, depending on the nature of the impact findings and emerging concerns from the asset inventory exercise, a number of additional topics such as alternatives to minimize displacement, relocation of mosques/graves, difference in land acquisition processes depending on tenure status etc. All meetings provided the PAPs with opportunity to give their views, seek clarification and ask questions. All questions received a response from the consultant.
18. Mobilization for the community meetings was undertaken through the Office of the County Commissioner's chiefs and assistant chiefs. All the Grievance redress committees covering the 16 settlements were formed during the community meetings.

### 1.3.5. Data Analysis and Report Writing

19. Quantitative data from the survey were entered in excel, cleaned, and exported to Statistical Package for Social Sciences (SPSS). This is presented in statistical tables, charts in the relevant sections of this RAP. Qualitative data was analyzed through content

and thematic analysis and presented in prose form. All valuation (asset inventory) data was entered and presented in Microsoft Excel.

#### 1.4. RAP Challenges

20. A number of challenges were encountered, some solvable, others require additional inputs outside preparation of the RAP document as shown below.

Table 0-2: Challenges in Data collection

Challenges	How Resolved or not
Community opposition along Isiolo Junction	<ul style="list-style-type: none"> <li>• Alignment design considered the available 30 metres RoW.</li> </ul>
<p><b>Insecurity:</b> The region is rife with banditry, and inter-community conflicts which often restricted access to the settlements for long periods.</p> <p>In some settlements e.g. Kambi Samaki verification of some structures could not be undertaken. An inter-community conflict had resulted in the destruction (burning) of structures owned by the Somali community (refer to section 2.3 for more details on the local context).</p>	<ul style="list-style-type: none"> <li>• Where needed, Administration Police escorts were used.</li> <li>• Repeated efforts to reach the same settlements over several months. Three extended attempts during March/April, May and July 2019 ensured the PAPs were captured.</li> <li>• PAPS whose structures met the cut-off date even where destroyed by floods have been maintained in the asset register as per the data collected in the initial RAP.</li> <li>• The insecurity aspect can be mitigated through interventions from the area leadership, as well as locals working with ministry of interior as well as Ministry of Defence from attacks from Somalia based Insurgents.</li> </ul>
<p><b>Natural Disasters and Migration:</b> Due to the ongoing long drought, settlements in Isiolo and Garissa county been inhabited by pastoralists, a number had migrated in search of water. Sections Bullo (Meru) had moved to Laare in Meru in search of water.</p> <p>In Bullo, structures in the initial RAP inventory had been swept away by floods, and some had since collapsed.</p>	<ul style="list-style-type: none"> <li>• A deliberate strategy to hold the public participation during the Holy Month of Ramadhan, which helped reach more people through the meetings.</li> <li>• Three extended visits to the same settlements ensured PAPs were reached. Working with the chief and elders present also helped to confirm ownership of their properties.</li> <li>• Data from the initial RAP was used.</li> </ul>
<p><b>Claims of proposed low compensation amounts:</b> In Modogashe, some of the locals claimed to be aware of the proposed compensation values and these were lower than what was given to Nuno Modogashe residents as compensation. This led to refused access to their properties, causing a stalemate and delay in physical verification of assets.</p>	<ul style="list-style-type: none"> <li>• Intervention by the Office of the County Commissioner which negotiated access for the consultant.</li> <li>• Continuous engagements necessary to allay these fears</li> </ul>

## 2 Project Description

### 2.1 Overall Project Context: NEDI and NETIP and the Isiolo-Mandera Road

21. The North & North Eastern Development Initiative (NEDI) is a World Bank funded programme to increase investments to Mandera, Garissa, Isiolo, Lamu, Marsabit, Samburu, Tana River, Turkana, Wajir, and West Pokot Counties. It aims to complement the ongoing Government of Kenya efforts to improve equity as well as reduce extreme poverty through targeted and coordinated initiatives with a focus on transformative and integrated infrastructure investments and support to sustainable livelihoods.<sup>12</sup> One of the programme's critical flagship project and partly implemented by KeNHA is the Road project from Isiolo, Kulamawe, Modogashe, Wajir, Elwak up to Mandera (A13) that is packaged as North Eastern Transport Improvement Project (NETIP) funded under an International Development Association (IDA) credit.<sup>13</sup>
22. As the main enabler for the northern frontier development programme, the objective of the North Eastern Transport Improvement Project (NETIP) is to improve transport efficiency and connectivity in the North along the Isiolo-Modogashe-Wajir-Elwak-Mandera (740KM) road corridor. The project comprises of 3 components. Component 1 focuses on Upgrading Selected Critical Road Infrastructure and Associated Roadside Amenities, where the upgrade of the Isiolo-Modogashe-Wajir-Elwak-Mandera road is planned. This component also covers provisions for road side social amenities and a program of activities designed to implement transport, trade and development facilitation measures. Component 2 deals with Institutional Development and Project Monitoring and Management where support to the State Department of Infrastructure on enhancing project management and oversight capacity, maintenance management and engineering capabilities in the transport sector, in addition to other activities, falls. Component 3 deals with Enhancing Internet Connectivity and Support to the Information and Communication Technology Authority (ICTA). Under this last component carrying out feasibility and detailed design and the construction of a fiber optic cable network, alongside the part of the Isiolo-Mandera Corridor is planned.
23. Within this larger project, the proposed upgrade to bitumen standards, of the Isiolo-Kulamawe-Modogashe (190km) road forms the first tranche of the upgrade of the Isiolo-Modogashe-Wajir-Elwak-Mandera road, under Component 1 of NETIP. Its scope includes:
  - Improvement to bitumen standards the road from Isiolo – Kulamawe and Kulamawe – Modogashe (77Km + 113Km),
  - Installation of a fiber Optic Cable, and
  - Provision of social amenities to be determined later. The social amenities are not covered under this RAP, and a separate RPF has been prepared to cover it. The proposed fiber optic cable will be laid within the proposed road corridor.

### 2.2 The Isiolo-Kulamawe-Modogashe Road

24. The Isiolo-Kulamawe-Modogashe (A13) road has a total length of 190km. The project road is classified according to major function as Class A: National Trunk Road nationally

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<sup>12</sup> World Bank 2018

<sup>13</sup> Other projects in the initiative include: (i) O--Grid Solar Access Project for Underserved Counties, (ii) Climate Smart Agriculture Project, (iii) Water and Sanitation Development Project, (iv) Development Response to Displacement Impacts Project, (v) National Safety Net Program Additional Financing.

linking important urban centres and to international boundaries with Ethiopia and Somalia.

### 2.2.1 Current Road Status

25. The project involves upgrading to bitumen standard of a road that has for the longest time been to earth standards, with maintenance being hampered by seasonal flooding, sand storms, insecurity and long distances for material haulage. The project road has undergone upgrading to gravel standard for most of the sections, largely undertaken by KeNHA. A small section of the road (about 2-3km) from Isiolo Junction is of bitumen standard – while the rest is currently earmarked for upgrading to bitumen standard for the very first time with sections being impassable or having detours where erosion of the carriageway has taken place. Parts of the road are clogged with sand making it difficult to maneuver through, while others have deteriorated, often forcing vehicles to adopt side tracks. However, the sections which were recently graveled by KeNHA are well defined with side drains, coupled with mitre drains.

*Plate 0-1: The road condition in Boji, Gambella, Yaqbarsadi and Eldere/Eldera*



26. The existing horizontal alignment from Isiolo town is characterized by long straights and horizontal curves which have characteristic short lengths and long radii. Traffic volume along the project road can be described as very low, comprising of mainly medium goods trucks, large buses, and 4-wheel drive vehicles. This is except areas bordering Isiolo Junction. It is, however, expected that the development would lead to generated traffic comprising of all vehicle classes originating from the neighbouring town centres including Lamu and Garissa. At the moment, vehicles use the Thika - Garissa-Modogashe road to take a shortcut to Mandera due to the state of the road.

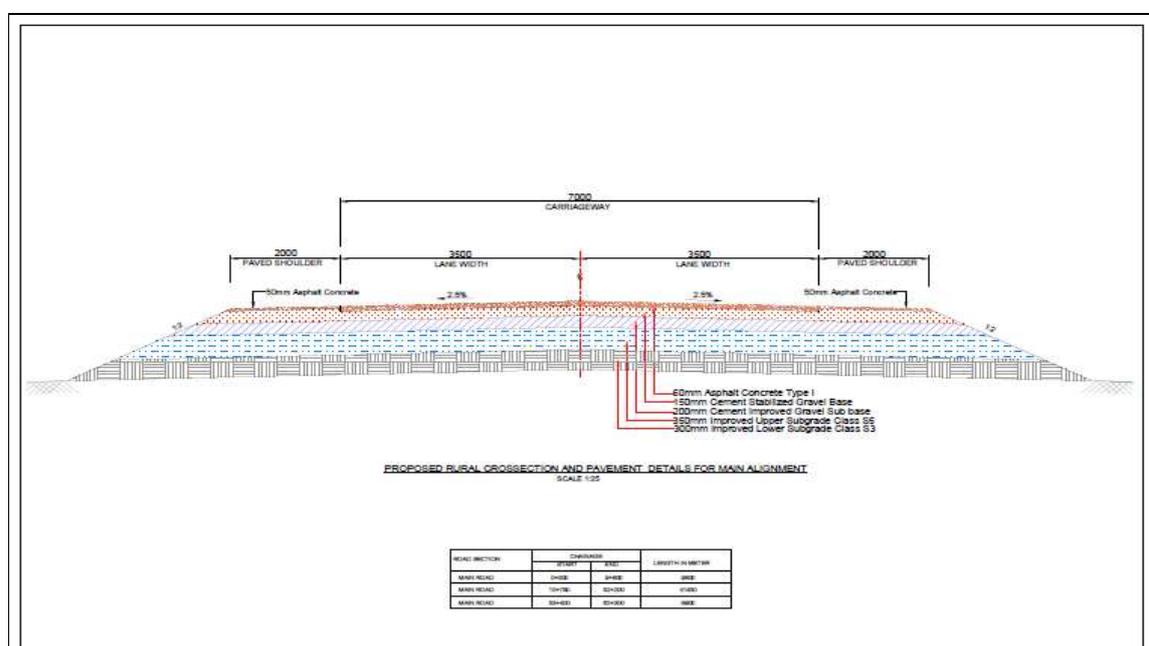
### 2.2.2 Proposed Design

27. The project will maintain the existing Isiolo-Kulamawe-Modogashe road alignment, but slight modifications to existing alignment may be expected. A large part of the road alignment has enough space to accommodate the required 60m corridor save for a few

settled areas where land acquisition may be necessary to maintain the 60 metres corridor. To minimize resettlement, the alignment as proposed will fit in the available space within settled areas that have an available Corridor of Impact as 15 metres. The project design speed is 100Kph, reduced to 60km/hr in restrictive mountainous terrain and 50Kph in areas approaching and within the over 16 towns and urban centres along the route, largely to ensure the safety of pedestrians and access to their property. The choice of the cross section made in consideration of the terrain, traffic volume, composition, road function, and design speed is summarized in the table below; largely been a cross-section Type II for a two-lane rural road.

Table 0-1: Proposed cross section

Type	Lanes	Surfacing	Total width	Shoulder Width	Carriageway Width	Normal Cross fall
II	2	Bitumen	11.0m	2.0m	7.0m((2*3.5m)	2.5%



28. Service roads and markets have been proposed at Ndumuru, Kachuru and Kulamawe markets, while the specific location for bus bays which have been proposed will be determined during construction. Two (2) locations have been proposed to have lorry parking bay namely Ndumuru and Kulamawe Markets. Grade separated junctions are proposed at A2/A13 and A13/B66 junctions. An interchange at A13/B84 junction has not been designed since the precise location for this junction is not known and considering the link road from Kachuru to Duse does not exist. Geometric design for A10/B84 interchange will be done once the exact located is determined. (Garbatula Jn - Eldera - Modogashe is known as (B84) Road).
29. The specific sites/locations for other associated infrastructure such as roadside social amenities, markets, slaughterhouses, veterinary posts, livestock holding areas, etc. are yet to be defined as such the project has prepared an Environment and Social Management Framework (ESMF) to cover these activities whose specific locations is unknown. Besides, these facilities and other ancillary facilities utilized during the project implementation will be subjected to separate ESIA studies, and if need be RAPs undertaken.

### 2.2.3 Route Description and Project Location

30. The first section of the road starts from Isiolo town, at a T-junction with road to Moyale, approximately 1km from Isiolo town Central Business District (CBD) and traverses for approximately 3km in easterly direction within Isiolo County. The alignment then exits Isiolo County into Meru County, curving into a north-easterly direction and traverses approximately 63Km to Kachuru trading centre in Meru County. It then exits Meru County back to Isiolo to terminate at Kulamawe trading centre.

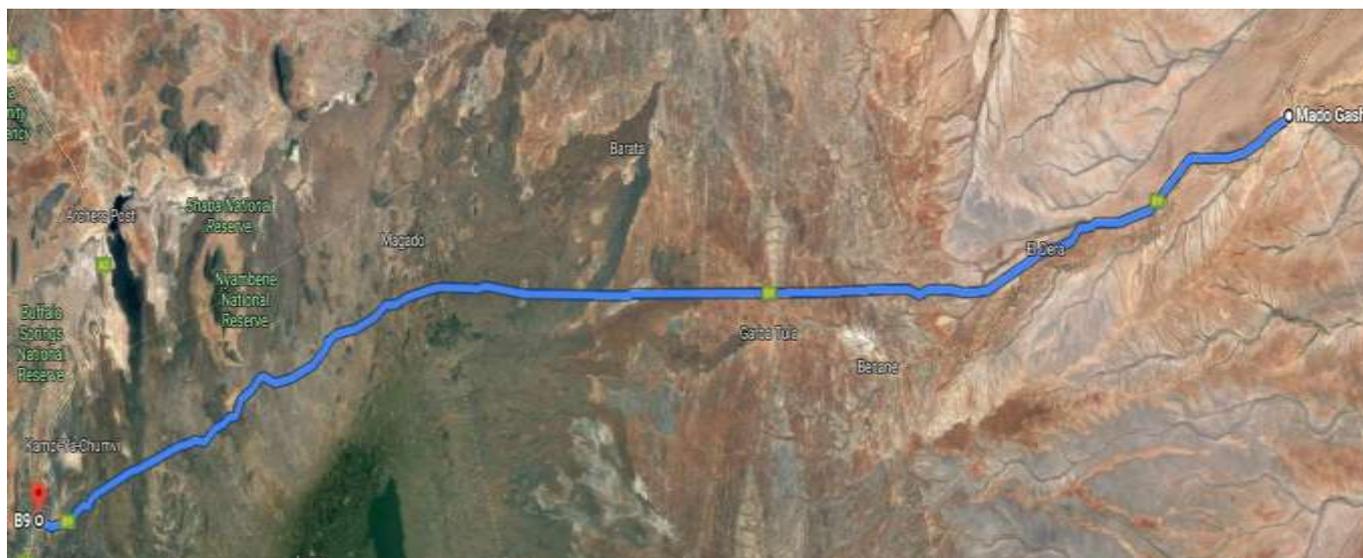


Figure 0-1: Isiolo-Modogashe Project Route

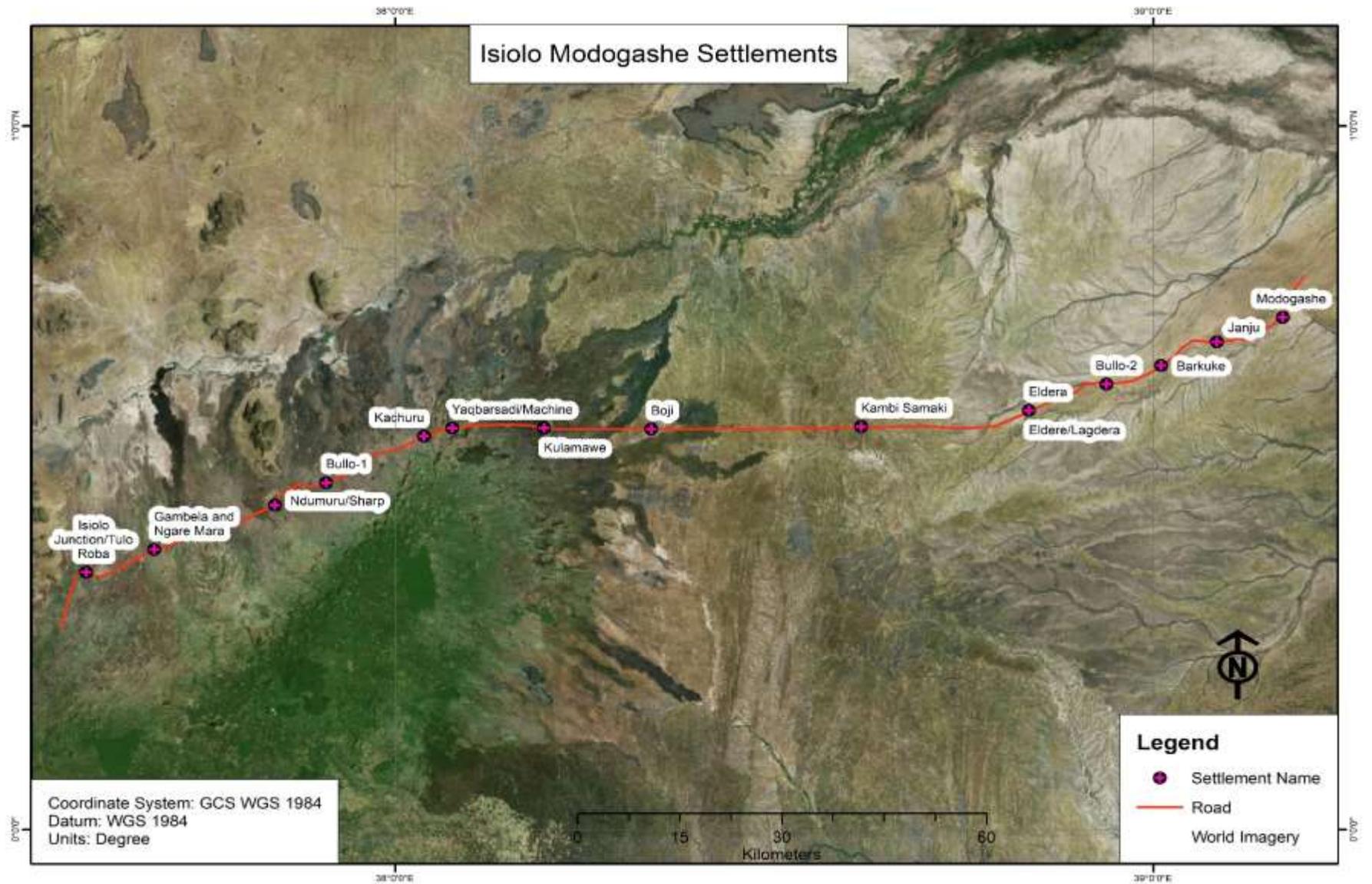
31. The second section starts From Kulamawe centre in Garbatulla Sub-County, Isiolo County, it continues along B9 for approximately 80 Km before moving North easterly for about 3.9 Km till Eldere in Benane, Garissa County. It then continues for approximately 23.15 km through Bullo, Barkuke and Janju settlements then proceeding for about 10 km, before terminating and ending at Modogashe shopping centre in Lagdera Constituency of Garissa County. Approximately 10km of the alignment lies within Isiolo County while the rest of the alignment lies within Meru County. The project road traverses several settlements and administrative units outlined in Table below.

Table 0-2: Settlements and administrative units affected

	Settlement Name	Sub Location	Location	Sub county	County
1.	A2/A10 Junction Junction/Checheles/Tulo Roba	Tulo Roba	Tulo Roba	Isiolo	Isiolo
2.	Ngare Mara	Kisima/Manyatta	Ngare Mara	Tigania East	Meru
3.	Gambella	Gambela	Gambela	Tigania East	Meru
4.	Ndumuru	Ntuamboi	Naathu	Igembe North	Meru
5.	Bullo 1	Naathu	Naathu	Igembe North	Meru
6.	Kachuru	Amathi 1	Kabasi	Igembe NorthNorth	Meru
7.	Yaqbarsathi/Yaqbarsadi (Machine)	Yaqbarsadi/Machine	Kulamawe/Kabati	Garbatulla/Igembe	Isiolo/Meru
8.	Kulamawe	Kulamamwe	Kulamawe	Garbatulla	Isiolo
9.	Boji	Boji	Boji	Garbatulla	Isiolo
10.	Camp/Kambi Samaki	Kambi	Kambi	Garbatulla	Isiolo

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11.	Eldera	Eldera	Eldera	Garbatula	Isiolo
12.	Eldere (Eldera)	Eldere	Eldere	Lagdera	Garissa/Isiolo
13.	Bullo 2	Bullo	Eldere/Eldera	Lagdera/Garbatulla	Garissa/Isiolo
14.	Barkuke	Barkuke	Barkuke	Lagdera/Modogashe	Garissa/Isiolo
15.	Janju	Janju	Modogashe	Lagdera/Modogashe	Garissa/Isiolo
16.	Modogashe	Modogashe	Modogashe	Lagdera	Garissa/Isiolo



Figure

0-2:

Settlements

### 2.3 Contextualizing the RAP: Local Project Setting and Everyday Dynamics

32. In the project area, there are conflicts between the three project affected counties of Isiolo, Meru and Garissa Counties. For instance, project affected but contested sections between Meru and Isiolo County include Gambella, Ndumuru, Bulo and Kachuru. Between Isiolo and Garissa, Eldere, Eldera and Modogashe are under conflict at times. While these may seem as the classical border conflicts, a multiplicity of factors exacerbate the situation showing a multi-layer conflict. Competition over control and access to limited natural resources particularly water and pasture is frequent, and has bred a historical rivalry, frequent along with county and perceived community boundary lines.

It is therefore essential to note, that table 2.2 above uses both the ‘official’ administrative boundaries in some areas, while alternative names are given i.e. these settlements have 2 names, depending on which community one engages. For instance, to the Borana, what is called Yaqbarsathi/Yaqbarsadi is Machini to the Meru. Eldere and Eldera is a single town, but the suffix defines who lives where. Remarkably, cases of inter-community marriage exist between these groups, more so the Borana and Somali, and it is common to find some who speak both languages. Therefore, this RAP takes cognizance of these local dynamics.

### 3 Minimizing Displacement and Resettlement

#### 3.1 Project Component/Activities that give rise to Displacement and Resettlement

33. The design review recommended a ‘desirable’ 60 m RoW, reduced to 30 m RoW, in urban/built-up areas.<sup>14</sup> KeNHA further maintained the existing 30m Right of Way (RoW) between A2/A10 junction and end of 78 Tank Battalion.<sup>15</sup> The previous chapter shows that the current /existing alignment consists of a 7m width road, to undefined 11m width in most urban sections. These realities pose both advantages and disadvantages for the project, in terms of displacement and resettlement impact. Settlement patterns and land use in Kenya partly as a function of urbanization, often follow roads. Thus the majority of the settlements/towns have developed along the current alignment, but at intervals (refer to Figure 2.2). Largely, **99% of the proposed 60m RoW is unoccupied in terms of investment in assets such as buildings**. This means that majority project impact is related to developments on the Right of Way (RoW) within towns or urban centres. The ‘unoccupied’ sections of the road within the 60M RoW remain public land.
34. The section between A2/A10 junction and end of 78 Tank Battalion, in Isiolo is most settled off the 30M RoW and hence expanding the road beyond the 30Metres would be challenging. The first section (measuring about 1.39 kilometres) is densely occupied and consists of permanent (some highrise) structures occupied by an array of actors, i.e. businesses, major institutions such as Kenya Defence Forces (KDF) Army Barracks (78 Tank Battalion), Ewaso Nyiro North Development Authority, Isiolo district/referral hospital, Isiolo Mission school, etc. This section also poses the strongest opposition to acquiring any of their land for the project.<sup>16</sup> As a remedial measure, KeNHA has maintained the **existing 30m** Right of Way (RoW) between A2/A10 junction and end of 78 Tank Battalion



*Figure 0-1: Heavily built up section on both sides of existing 30M RoW at Isiolo Junction section towards 78 Tank Battalion*

<sup>14</sup> Client has adopted 60m RoW all through except for Isiolo Junction, Kulamawe and Modogashe settlements.

<sup>15</sup> As per the engineering reports.

<sup>16</sup> Refer to challenges section where verification activities were delayed.

35. In addition, along some towns, the impact on mosques extends the RoW. Due to the usage of such facilities by all communities settled within the specific town/urban centres since the areas are predominantly occupied by Muslims, the project has adopted realignment to avoid these socio-cultural resources.

### 3.2 Alternative Mechanisms to Minimize Resettlement

36. Due to the potential to cause long term impoverishment, OP. 4.12 advocates that involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs. To some extent, the engineering designs established some mechanisms to minimize resettlement. Specifically, the review of the initial road design and redesign of relevant sections shows that it was guided by a major consideration of maintaining the horizontal and vertical alignment as it was so as to minimize both construction and resettlement costs. Hence, the new design very closely follows the existing alignment – which substantially minimizes the physical and economic displacement of the PAPs. Moving forward, additional measures and alternatives to be considered by KeNHA to avoid or minimize displacement and resettlement include:

- Adoption of a 30 M RoW between A2/A10 junction and the end of 78 Tank Battalion,<sup>17</sup>
- Avoidance of socio cultural resources like Mosques in urban settlements

37. From the Stakeholders engagement, community members proposed adoption of Isiolo Junction/Tulo Roba alternative (bypass) route. This area is largely unoccupied, with prospects of very minimal displacement impact, and preferable for design of a junction. Besides, a comparison of the two sections shows the bypass is shorter (6.49km) versus the current 7.48km. *This bypass option has not been decided upon by KeNHA and if adopted will require a RAP update.*



Figure 0-2: Adopted current Route versus community preferred alternative.

<sup>17</sup> This has been utilized in the design of the project.

- Re-alignment has and will be adopted to avoid sensitive cultural property such as places of worship i.e. mosques in Kulamawe, Eldere, Yaqbarsathi/Yaqbarsadi and cemeteries in Kulamawe, Kambi Samaki and Modogashe as a sign of goodwill by the project to maintain cohesiveness of the community.
  - In Modogashe, where it may not be possible to avoid both cemeteries found on opposite sides of the road, the community proposes the alignment of the road to impact the right side of the road (on the way from Isiolo), thus affecting only one cemetery (which is also older), and impacting lesser structures, as opposed to affecting both cemeteries. The alignment at this area has been designed to fit the available 15metres CoI and hence no major impact will be resultant from the project.
  - Adoption of 30m RoW as opposed to the 60m in the 16 settlements/urban areas.
38. Service roads and markets have been proposed at Ndumuru, Kachuru and Kulamawe areas, while the specific location for bus bays which have been proposed will be determined during construction. The client will update the RAP through the RPF as well as the Environmental and Social Management Framework (ESMF) to cover these activities whose specific locations is currently unknown. The Cut-off Date will be upheld since the project has been widely disseminated in line with OP. 4.12.
39. As assessment of the road shows that there exists a high possibility that KeNHA will totally avoid displacement when designing these additional infrastructures. Where for instance, markets and lorry parking is proposed in Ndumuru and Kulamawe Markets, these will be located near the town (less than 500m) from the main town, thus accessible but also avoiding impact on investments such as structures.

Settlement patterns and the extension of the towns and urban areas along the route follows a horizontal pattern by spreading out over the ground and increasing the urban surface at the expense of rural and natural grounds. The first row of buildings develops facing the road (at times on the road reserve) with additional rows behind it with time. Already, in some settlements, a new number of structures along the road have developed since the first RAP. The vertical construction of buildings was only noted in areas such as Isiolo Junction (Tulo Roba) and proposed in Kulamawe.

### **3.2.2 Mechanisms to Minimize Resettlement/Displacement during Implementation**

40. Mechanisms proposed to minimize displacement during the implementation of the RAP, include site delineation (GoK through KeNHA surveyors is marking the RoW) to ensure the landowners can use their own land without worry of having encroached on the RoW by placing road markers on adjacent land. This will ensure any proposed permanent developments are built off the road reserve and in observance with the county planning by laws and hence will not be affected if expansion is necessary in the future.

## 4 Census and Socioeconomic Baseline

### 4.1 Census

41. Validation of the PAPs and asset registers was undertaken in the review of the RAP. This is important to establish legitimate PAPs, enumerate assets/structures, and to serve as a basis for valuation of assets/livelihoods. The results show that a total of 986 Project affected persons will be impacted.

Table 0-1: Number and Type of PAPs

	Male	Female	Institutions/Groups/ Company	Total
Ngaremara	2	1		3
Kambi Samaki	10	9		19
Kachuru	52	37		89
Eldera	19	23		42
Janju	27	11		38
Yaqbarsadi	12	10	1	23
Barkuke	29	16	1	46
Gambella	27	18		45
Boji	39	34	2	75
Ndumuru	80	38		118
Bullo 1	41			41
Bullo 2	14	13		27
Eldere	48	32		80
Kulamawe	70	38	4	112
Modogashe	134	90	4	228
<i>Tulo Roba</i>	0	0	0	0
<b>Total</b>	<b>604</b>	<b>370</b>	<b>12</b>	<b>986</b>

### 4.2 Socio-Economic Baseline

42. In RAPs, a socio-economic survey of the settlement, at the individual and community levels, is essential, serving various functions:
- Enumerating and collecting basic information on the affected population;
  - Ascertains various types of losses suffered by the population;
  - Laying a foundation for designing of sustainable income restoration or development interventions;
  - Providing a baseline for monitoring and evaluation of the project income restoration and sustainable development initiatives i.e. helps establish indicators that can be measured at a later date for monitoring and evaluation.
43. The qualitative and quantitative data collected enables resettlement planners to budget resources and services for the affected population. The socioeconomic survey was undertaken in March 2019, covering social, economic attributes of PAPs (both structure owners and tenants) and included an array of topics – demographic data, livelihood, welfare, health, education, waste disposal as well as concerns/fears about the project. Table 4.2 below summarises the sampled population from the 16 settlements, representing all three affected Counties; Isiolo, Meru and Garissa.

Table 0-2: Number of sampled PAPs per settlement

Settlement Name(s)	Frequency	Percentage
Barkuke	15	79%
Boji	20	22%
Bullo (2 settlements) <sup>18</sup>	23	55%
Tulo Roba	29	76%
Eldera	18	78%
Eldere	24	52%
Gambela/Ngaremara	27	56%
Yaqbarsadi	61	81%
Janju	17	14%
Kachuru	42	62%
Kambi Samaki	47	59%
Kulamawe	44	39%
Modogashe	76	33%
Ndumuru	49	25%
<b>Total</b>	<b>492</b>	<b>42%</b>

#### 4.2.1 PAPs Demographic Characteristics

##### i. Household Head Characteristics

44. Most of the PAPs are male (68%), compared to women (32%).

Table 0-3: Age of PAP

The average age is 49 years, while ages range from 20 to 87 years. However, the majority are within the working ages of 35-65. In terms of marital status, 57% are married in a monogamous relationship, while 17% are in a polygamous relationship. The rest is a mixture of single (3%), separated/divorced (7%) and widowed (15%). 1% did not respond to the question. A cross-tabulation of the gender and marital status (amongst those who answered the marital question) shows that a higher number of women are separated/divorced and widowed, with at least 4 times of women widowed compared to men.

Age Group	Number	Percentage
20-35	109	22
36-65	299	61
Above 65 years	68	14
Did not Respond	16	3
<b>Total</b>	<b>492</b>	<b>100</b>

Table 0-4: Cross tabulation of Gender and Marital Status<sup>19</sup>

		Single	Married Monogamous	Married Polygamous	Separated/Divorced	Widowed
Gender	Male	9	235	64	12	14
	Female	6	46	21	21	58

Table 0-5: Education Level

Education Level	Number	Percentage
Without Education	250	51
Did not complete Primary	65	13

<sup>18</sup> Combines both Bullo 1 and 2.

<sup>19</sup> Uses Numbers not percentages

45. Given that education has a bearing on economic conditions, the education levels are substantially low, with approximately half of the PAPs having no formal education at all. Those who have obtained university education are extremely low in numbers (4%). Women tend to fair much worse compared to men, having a disproportionately much lower number completing higher education levels such as secondary, technical/vocational training and university education. The lack of formal education translates to literacy, where 44% cannot read or write English or Swahili with 27% not responding to the question.

Completed Primary	56	11
Did not Complete Secondary	12	2
Completed Secondary	68	14
Completed Technical Training	1	0
Completed Vocational Training	10	2
University Graduate	20	4
Adult education	1	0
Did not Respond	9	2
Total	492	100

As a response, the project communication strategy will use local languages.

### ii. Other Household Member Characteristics

46. The majority (83%) of the other household members are Sons/daughters to the household head. 273 (10%) of the spouses were noted despite the indication that a large number of the PAPs were in polygamous marriages. 51% of the other household members are male. 60% are below the age of 18, while 70% are dependents i.e. within the categories of students, housewife, non-employed home helpers and those without occupation/employment.

Table 0-6: Relation to Household Head

Relation	Number	Percentage
Spouse	273	10
Son/Daughter	2150	82
Parent (mother/father)	13	0
Brother/Sister	27	1
Nephew/Niece	34	1
Grand-son/daughter	82	3
Other Parent	1	0
In laws	5	0
Others	6	0
Did not Respond	32	1
Total	2623	100%

Table 4-7: Age of other Household Members

Age Group	Number	Percentage
0-17	1573	60%
18-35	762	29%
36-65	215	8%
Above 65	27	1%
Did not	46	2%
	2623.0	100%

47. Of the interviewed, 62% can read and write English/Swahili, while owing to the high number of children, 54% of the other household members are without education or have not completed primary education. Only 6% and 10% respectively have completed primary and secondary education, mimicking similar low education levels as showcased by the household heads. The main languages spoken by the PAPs include Borana, Meru and Somali. To a lesser extent, Turkana, Gikuyu, Kamba and Samburu are found in the affected area. Majority of the locals in Eldere, Eldera, Bullo 2, Barkuke and Janju do not understand Swahili or English, thus translation was done during the socio economic survey and public meetings.

As a response, the project disclosure strategy will use the same local languages.

## 4.2.2 Income and Livelihood

48. Generally, the climatic and livelihood profiles for Garissa and Isiolo are similar to a large extent. Both are hot and dry counties where extensive nomadic pastoralist production dominates, coupled to a limited extent by agro pastoral livelihoods. Over 80 percent of the land in both counties cannot support crop farming, limiting this to areas around rivers such as the Tana, while the existing pastoral and agricultural activities are heavily dependent on rain for sustainability. Meru County on the other hand has a different profile, where the economy is primarily agrarian, and characterized by the growing of a variety of crops and keeping livestock. While the Greater Meru is endowed with good and fertile soils and climatic conditions that allow for agrarian production, project affected areas in Meru such as Igembe North and Tigania East however fall within the semi-arid areas of Meru County. Their climate and land conditions therefore in some areas are similar to those of Garissa and Isiolo County, shaped largely by high spatial and temporal variability of rainfall. Particularly, livestock keeping is common in the Tigania and North Igembe sub counties. To a larger extent therefore diversification in non-pastoral income-earning activities (NPIs), is common and expected, with estimated over 60 percent of the counties's population in these areas engaged in some form of rural self-employment, with retail trade been the most common as the following sections will show.

### iii. Occupation of the Household Head

49. PAP household heads in the area majorly subsistent retail traders and livestock keepers, largely reflecting the settlement patterns (where PAPs concentrate in small towns or urban centres), showing that a substantial number had migrated with their animals in search of water and pasture. At least 49% of the household heads have a secondary occupation, with the only substantially reported numbers applying to to subsistent retail trader (20%), farmer (10%), livestock keeper (26%) and a mixture of others (10%) which includes a substantial number of charcoal burners. The combination of the two group of results shows that at least 40% and 35% of the PAP household heads are retail traders and livestock keepers respectively, either as a primary or secondary occupation.

Table 4-8: Main occupation of PAP Household head

Occupation	Number	Percentage
Subsistent retail trader	149	30
Farmer	24	5
Livestock/Animal Keeper/Sale	110	22
Builder	21	4
Agricultural worker	2	0
Civil servant	61	12
Housewife	20	4
Shop Assistant	28	6
Non-employed home helper	1	0
Boda boda operator	17	3
Employed –NGO/CBO	4	1
Without occupation/employment	29	6
Other (largely charcoal burners)	21	4
Did not respond	5	1
System	492	100

**iv. Sources of Cash income for the households**

50. Following the results in the previous section, it is thus expected that animal husbandry and trading/commerce are the two main (primary) sources of household income at 28% and 38% respectively. These are practiced within a radius of 1 to 5km.

Table 0-9: Main Source of Income

Sector	Number	Percentage
Crop Farming	25	5
Animal Husbandry	136	28
Handicraft	7	1
Construction	13	3
Property rental	9	2
Trading/commerce	185	38
Civil Service	60	12
Pension	3	1
Economic Support: Family or friends	5	1
Economic Support: Government or NGO	5	1
Economic Support: Remittances	6	1
Others	20	4
Did not respond	18	4
	474	100

The average income for these households from the head is Kenya Shillings (KES) 31,992, and KES 9,556 from the spouse. On average, the monthly income of the household is KES 28, 578 from the household head and KES 9,526 from the spouse. These figures however are misleading given that high income was reported by business owners in Isiolo Junction and Modogashe, while most settlements reported incomes of less than 20,000. A secondary source of

income was also reported by some settlements, with 17% and 18% respectively indicating this as Animal Husbandry and Trading/Commerce. It is worth noting that most of this income is not on official records or documented.

**v. Sources of Cash income for the household head**

51. In terms of income sources and income amounts that are potentially affected by the project, 44% noted loss of sale-generated income from affected business, 23% of loss of rent-generated income from house and 8% loss of rent-generated income from owner of business on and affected land/plot/structure, with 98% of these PAPs noting the affected sector is informal. Thus most of these arrangements on rent do not have written agreements while the businesses are not registered. In 96% cases, the impact on the affected structure is full translating to a 97% loss of income being permanent for persons renting these structures.

**vi. Main Household Expenses**

52. The Table below shows the main household expenses with food taking the bigger share of the household income. Other costs such as transport may be attributed to the long distances between the settlements and the lack of a proper public transport system along the route, which sees household uses costly modes such as *Bodaboda*.

Table 0-10: Main Household expenditure (average)

Expense	Monthly average (KES)
House rental	3,040
Food	9,255
Drinking water	2,895
Health	4,680

Transport	6,255
Education	4,591
	30,716

### 4.2.3 Household's Living/Welfare Conditions

#### i. Ownership of Household Assets

53. A mobile phone, radio and bicycle are the three most common types of household assets, reported by at least 99% ,61% and 22% of the sampled PAPs respectively. In the case of the mobile phone, this follows national trends in mobile phone penetration.

Table 0-11: Types of major household assets

Asset	Motorcycle	Bicycle	Truck	Car	Generator	Radio	Tractor	Water Pump	Mobile Phone	TV	Tuktuk
No.	33	107	4	20	30	300	3	31	485	88	2
%	7	22	1	4	6	61	1	6	99	18	0

#### ii. Access to drinking water

54. The main sources of water for the PAPs is *luggas* and community boreholes. The term 'others' refers to a variety of sources including purchase from vendors, shallow wells, community water tanks.

Table 0-12: Sources of drinking water

Water Source	Number <sup>20</sup>	Percentage
Traditional well at home	1	0
Borehole at home	17	3
House with a water tap	22	4
Access to public water taps outside the house	48	10
Access to well/boreholes outside the house	166	34
Access to surface water e.g. river/lugga	241	49
Rainwater	6	1
Other	29	6

#### iii. Sanitation Facilities

55. The main sanitary facilities in use by the PAPs are listed in the table below, with latrines being the most common. OD was significant as well.

Table 0-13: Types of Sanitary Facilities in Use

Sanitary Facility	Number <sup>21</sup>	Percentage
Flush toilet in the house	21	4
Latrine with septic tank	12	2
Latrine without septic tank	282	57
Public toilets outside the house	22	4
Bush/open defecation (OD)	173	35

<sup>20</sup> Numbers do not need to total to 492 as the PAP was allowed multiple responses.

<sup>21</sup> Numbers do not need to total to 492 as the PAP was allowed multiple responses.

#### iv. Sources of Energy

56. At 15%, electricity penetration is notable, but restricted to the larger towns of Tulo Roba and Modogashe.

Table 0-14: Sources of Lighting Energy

Energy Source	Number <sup>22</sup>	Percentage
Electricity (public utility)	74	15
Electricity (power generator)	32	7
Kerosene lamp/lantern	109	22
Oil lamp/lantern	3	1
Wood	5	1
Candle	23	5
Solar panel/lamp	177	36
Other (Torch)	156	32

57. However, such gains are restricted to lighting, with wood/firewood (65%) been the single most common source of cooking energy, and a major cause of environmental degradation.

Table 0-15: Sources of Cooking Energy

Energy Source	Number <sup>23</sup>	Percentage
Kerosene	3	1
Charcoal	29	6
LPG gas	45	9
Biogas	1	0
Dry Plants (wood/firewood)	124	65

### 4.2.4 Access to Social Services

#### i. Transport Mode

58. Although many PAPs own a bicycle, this does not function as the main mode of transport, attributed to the terrain and long distances between the settlements. This means most relies on the public transport system although not well developed with only 1 or 2 buses plying the route, and *bodabodas* – the latter being quite an expensive and insecure although convenient mode. Upgrading the road will therefore have major impact on the modalities of transport and movement of PAPs.

Table 0-16: Main mode of Transport

Mode	No. <sup>24</sup>	Percentage
Bicycle	5	1
Bodaboda	202	41
Bus/Matatu PSVs	286	58
Private Car	39	8
On foot	88	18

<sup>22</sup> Numbers do not need to total to 492 as the PAP was allowed multiple responses.

<sup>23</sup> Numbers do not need to total to 492 as the PAP was allowed multiple responses.

<sup>24</sup> Numbers do not need to total to 492 as the PAP was allowed multiple responses.

Lorry	68	14
Other	7	1

### ii. Access to Education Services

59. PAPs are within reach of the nearest primary schools, owing to a trend to locate public schools near settlements.

Table 0-17: Proximity to Nearest Primary School

Distance	Number	Percentage
0-1km	404	82
2-5km	59	12
6-10km	5	1
More than 10km	16	3
Did not respond	8	2
Total	492	100

### iii. Access to Health Care Services

60. In terms of access to health care services, the majority of the PAPs mainly seek medical care from a government hospital, with the main type of illnesses in the last year been Malaria and Common Cold.

Table 0-18: Proximity to the nearest Health Centre

Type of Facility	Number <sup>25</sup>	Percentage
Public Health facility	442	90
Private health Facility	88	18
Mission/NGO Hospital	2	0
Traditional/spiritual healer	3	1
Chemist/shop	5	1

Table 0-19: Main Household Illness

Illness Type	Number <sup>26</sup>	Percentage
Amoeba/Typhoid	212	43
Malaria	404	82
Tuberculosis	7	1
Common Cold	418	85
Diarrhoea	78	16
Fever	84	17
Hypertension/High blood pressure	51	10
Others	50	10

<sup>25</sup> Numbers do not need to total to 492 as the PAP was allowed multiple responses.

<sup>26</sup> Numbers do not need to total to 492 as the PAP was allowed multiple responses.

61. The nearest facility to the PAPs is a km away, as reported by at least 56% of the PAPs. Others (16%) noted 2-5km, 6% indicating 6-10km and 22% indicating more than 10km away.

#### 4.2.5 Social Cultural Characteristics of Affected Communities

62. The social and cultural characteristics of affected communities, despite being from 3 major ethnic groups do not vary to a large extent, with traditional forms of governance and leadership still permeating modern life. For instance, the clan system is common to all, and in some, such as the Somali, it is society's main organizing institution. In this regard, traditional leaders are considered influential in everyday life as well as major decisions – particularly for consensus building on key matters, and are held in high regard with key roles in dispute resolution. For example, amongst the Somali is the council of elders' systems i.e. *Ugas* who are basically headmen of the various sub clans. Amongst the Borana, are Elders who represent every location. In some cases, as Chapter 10 on the grievance mechanism shows, these dynamics play in formation of grievance committees in some of the sections.
63. It is also important to note that being patrilineal societies, men's dominance in most ritual, social and economic activities particularly stand out amongst the Somali and Borana communities. However, women still make space for themselves as witnessed by the number of women groups encountered, involved in various activities including revolving funds (merry go round, table banking), some whose investments are affected by the proposed road upgrading. These are all dynamics relevant to the consultation strategies, and to designing and implementing the resettlement activities of this RAP.

#### 4.2.6 Household's Perceptions on the Project, available Compensation and Resettlement Options

64. The survey also sought to establish PAPs views on the project household, and available compensation and resettlement options.

##### *i. Awareness on the project and its Impacts*

65. Out of PAPs interviewed, 99% of the PAPs are aware of the proposed project which entails upgrading of the Isiolo-Modogashe road to bitumen standards. The main source of information was the public meetings and local authorities and Consultants. Despite the view of 'too many meetings' on the project, this modality can be perceived as effective in getting the information on the project around. Local authorities (especially chiefs and assistant chiefs) also function as an effective mode passing information and will be critical to future consultations with the community. This can be attributed to their presence on the ground thus ease of reach.

Table 0-20: Main source of information about the project

Main source of Information	Number	Percentage
Members of the family	24	5%
Neighbours	73	15%
National or regional Government	54	11%
Local Authorities	138	28%
Public Meeting	232	47%
Other (KeNHA Consultants)	123	25%

66. Also, 96% of the PAPs were aware that their structures, and/or livelihood sources could be affected by the project. Overall, the road has positive impacts, with the most outstanding impact relating to the improvement of the road and pedestrian footpath network in urban settlements frequently used by members of the household.

PAPs also reckon that there will be improved access to some social services such as health facilities.

This shows that PAPs are concerned with the project's impact on their livelihood, and its correlation to access to food and other expenses. Notably, the explanation given in many cases on the possible negative impact on children's education is due to reduced household income as a result of relocation of their businesses.

Table 0-21: Impact on Household

Theme	Type of Impact (%)				Total
	Positive	Negative	Without Impact	Don't know	
Income	30	57	9	4	100
Expenses	21	33	25	21	100
Food	23	28	28	21	100
Employment of members of HH	32	23	24	21	100
Household children's education	13	40	28	19	100
Household members' health	35	21	21	23	100
Household's access to electricity services	25	7	23	45	100
Household's social network	13	26	21	40	100
Road and/or pedestrian network frequently used by Members of the household	86	4	3	7	100

## ii. Compensation and Resettlement Preferences

67. If assets or livelihood is affected by the project, most interviewed PAPs (91%) prefer cash compensation, with only 7% asking for replacement land or structures.

Table 0-22: Compensation Preference

Compensation Preferred	Number	Percentage
Provision of alternative Land or Structures for my affected land parcel	32	7%
Cash compensation for loss of assets or livelihood	449	91%
Di not respond	11	2%
	492	100%

68. In terms of additional assistance during resettlement, 73% of the interviewed PAPs prefer issuance of a disturbance allowance (which has already been incorporated in the valuation of assets), with 59% asking for the right to salvage, again also already incorporated in the entitlement matrix in later sections of this report.

Table 0-23: Other Assistance during Resettlement

Type of Assistance	Number	Percentage
Assistance for the transportation of the affected assets	180	37%

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The authorities to allow for salvage of materials	288	59%
Compensation to include 15% disturbance allowance	361	73%

## **5 Policy, Legal, Regulatory and Institutional Framework**

### **5.1 Introduction**

69. This RAP has been prepared to identify and guide mitigation of any impact anticipated from the upgrading to bitumen standard of the Isiolo-Modogashe Road. The relevant national policy and legal provisions of the Government of (the Republic of) Kenya, pertinent to displacement and resettlement, as well requirements of OP 4.12 on Involuntary resettlement (and other relevant policies) of the World Bank in which this RAP is anchored are outlined in the sections that follow. In case of conflicts or gaps between Kenya's laws and World Bank's Policies, the latter due to their higher safeguards requirements will prevail.

### **5.2 National Policy and Legal Framework**

70. The Kenyan Constitution 2010 and resultant laws have increasingly shaped how displacement, land acquisition and resettlement is carried out in the country. These clearly outline the key defining principles of participation and engagement, compensation, grievance redress, as the following sections will show.

#### **5.2.1 Sessional Paper No. 3 of 2009 on National Land Policy (NLP)**

71. The National Land Policy (NLP) was designed with an overall objective to secure rights over land, but also providing for sustainable growth and investment. It offers a framework of policies and laws designed to ensure the maintenance of a system of land administration and management, for citizens to access, beneficially occupy, allocate and use the land; but also providing for the functioning of efficient and transparent land dispute resolution mechanisms. The policy out rightly recognizes land as a central category of property, due to its economic, social and cultural relevance, and thus requires the state to provide for the security of legitimate rights and tenure to land, and protection of human rights for all, especially for groups often considered as marginalized and vulnerable. This includes women, minorities, children and persons with disabilities. It provides for citizen participation in decision-making concerning land. NLP recognizes the need for the establishment of a National Land Commission (NLC) to carry out efficient, equitable and sustainable land administration and management. This Policy designates all land in Kenya as Public Land, Community Land and Private Land.

To secure community land, the NLP requires the government to enact laws vesting ownership of community land in the community, document and map out forms of communal tenure (in consultation with the affected groups), and to recognize, protect and register community rights to land/ land based resources, taking into account multiple interests of all land users.

#### **5.2.2 The Constitution 2010**

72. The Constitution 2010 is the supreme law of the Republic of Kenya and binds all persons and state organs, at both national and county levels of government. In Article 10, it obligates all state organs, state officers and public officers who make or implement public policy decisions to the values of respect for human dignity, social justice, human rights, protection of the marginalized, transparency and accountability. The same notions of protection of human rights, fundamental freedoms and the right to dignity of individuals

are entrenched by the bill of rights in Chapter 4, Article 19, while the duty of the State and every state organ to observe, respect, protect, promote and fulfill the same is reiterated in Article 21. In the bill of rights in Article 40, it recognizes the right to property for all Kenyans, allowing acquisition and ownership of any kind of property individually or in association with others. Further down in 40(6) however, this protection excludes unlawfully acquired property. The Act therefore limits and restricts the right of the state to arbitrarily deprive anyone of the right to property, to matters of compulsory acquisition, and where the following set conditions must be met:

- The purpose is public or in the public interest
- The public purpose is carried out in accordance with this Constitution and any Act of Parliament that -
  - Requires prompt payment in full, of just compensation to the person; and
  - Allows any person who has an interest in, or right over, that property a right of access to a court of law.

In Article 40(4), the Constitution breaks with the past, providing for compensation for occupants in good faith of land acquired under compulsory acquisition, even for those who may not hold title to the land.

**73. Chapter Five focuses on Land Matters:**

- On the classification of land (61-64), it recognizes public land as unalienated government land, and not owned by community or individual. Such is vested in the county or national government, and administered on their behalf by NLC. Community land is held by communities identified on the basis of ethnicity, culture or similar community of interest, while private land is held on free or lease hold by individuals.
- Article 66 allows the state to regulate the use/interest/right over any land in the interest of defence – relevant to show that opposition by the 78 Tank Battalion, Isiolo Army barracks (of the Kenya Defence Forces) may invoke such provisions on their right to have the route rerouted – posing a risk of delay to the project.
- Establishes NLC in Article 67 to manage public land, monitor and have oversight responsibilities over land use planning throughout the country, encourage the application of traditional dispute resolution mechanisms in land conflicts and undertake investigation into historical injustices – relevant to the various conflicts over land in the project route.

**74. On Grievance and Dispute resolution**

- Article 66 encourages community based dispute resolution mechanisms on land as long as they are consistent with the spirit of the Constitution; this is aimed at expediting issues of land rights and transfer, and to support economic development.
- Article 162 establishes a court of the same standing as the High Court to hear and determine disputes relating to the use and occupation of, and title to, land.

75. Trade development and regulation, including markets is a function of the County government as per the fourth schedule.

**76. On public participation:**

- As per Article 1(2), all sovereign power belongs to the people of Kenya, who may exercise this directly or through their elected representatives. Article 10 (2) a, b and c outlines the the national values and principles of governance to include democracy and participation of the people; inclusiveness; good governance, integrity, transparency and accountability. Further, Article 27 guarantees equality and non-discrimination. Hence, public participation undertaken within this project should ensure equality and non-discrimination. In Article 33 and 35, the tenets of public participation are outlined i.e. public participation should respect the freedom of

expression of all participants and should protect the right to access information by citizens. Particularly, Article 61 gives the public, individually or as a group, a say in matters of land including acquisition, management, transfer, disposal, or ownership of private, public and/or community land while Article 174(c) is clear that the objects of devolution are to give powers of self-governance to the people and enhance their participation in the exercise of such powers in decision-making, since as Article 174(d) outlines, Communities have the right to manage their own affairs and to further their development,

- The constitution also outlines how both national and County governments should carry out their affairs i.e. through involving the public. In Article 118:(1), Parliament shall— (a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and (b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees. Article 119(1): Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending, or repealing any legislation. (2) Parliament may not exclude the public, or any media, from any sitting, unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.
- Where it concerns the county government, in Article 196(1), a county assembly shall— (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees, (2) A county assembly may not exclude the public, or any media, from any sitting, unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so, Article 201 (a): there shall be openness and accountability, including public participation in financial matters, Article 232(1) (d): The values and principles of public service include the involvement of the people in the process of policy making and (f) transparency and provision to the public of timely and accurate information, Fourth Schedule Part 2(14): The functions and powers of the county are to coordinate and ensure the participation of communities in governance. Counties are also to assist communities to develop the administrative capacity to enhance their exercise of power and participation in governance at the local.

### ***On the protection of Special Interest Groups***

77. The Constitution Part 3 calls for the protection of the interests of certain categories of persons. In Article 53, it protects all children from abuse, neglect, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour; In Article 54, it requires that any person with disability be treated with dignity and respect and to be provided with reasonable access to all places, and information; Article 55 requires the youth be represented and participate in political, social, economic and other spheres of life; and in Article 56 it ensures that minorities and marginalised groups participate and are represented in governance and other spheres of life.

### **5.2.3 The National Land Commission Act, 2012**

78. The Act actualizes Article 67 of the Constitution by providing for additional functions and powers of the National Land Commission, which include to:
- Monitor the registration of all rights and interests in land;

- Ensure that public land under the management of designated state agencies is sustainably managed for the intended purpose;
- Develop and maintain an effective land information management system at national and county levels;
- Correct irregularities where titles to public land were irregularly acquired.

79. About historical land injustices, the Land Laws (Amendment) Act, 2016 allows NLC to receive, admit and investigate all historical land injustice complaints and recommend appropriate redress relevant since the cross border conflicts between the affected counties were often framed as such in conversations. However, the Amendment also sets restrictions under which such injustices can be defined e.g.: the claim has not or is not capable of being addressed through the ordinary court system, and is occasioned by:

- *Colonial occupation;*
- *Independence struggle;*
- *Development-induced displacement for which no adequate compensation or other forms of remedy was provided, including conversion of nonpublic land into public land;*
- *Inequitable land adjudication process or resettlement scheme;*
- *Politically motivated or conflict based eviction;*
- *Corruption;*
- *Natural disaster etc.*

#### **5.2.4 Land Act, No. 6 of 2012, The Land Laws (Amendment) Act 2016 and Land Act Subsidiary Legislation**

80. The Land Act gives effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws, and to provide for the sustainable administration and management of land. Upholding the Constitution, Section 4 (2), obligates state officials to uphold the security of land rights, eliminate gender discrimination related to land and property, protection of the marginalized, encourage communities to settle land disputes through recognized local community initiatives; and enhance participation, inclusiveness and accountability related to decision making on land. Section 5 recognizes Customary land rights whether documented or not, as one of the forms of land tenure in the country. On land acquisition, Section 7 and 9 acknowledges that compulsory acquisition – here defined as the power of the State to deprive or acquire any title or other interest in land – as a method of acquiring and conversion of land.

81. In Part VIII on Compulsory Acquisition of interests in Land, Section 107 upholds the Constitutional Article 40(3) restrictions under which compulsory acquisition may be undertaken i.e.:

- *For a public purpose or in the public interest*
- *Carried out in accordance with this Constitution and any Act of Parliament requiring prompt payment in full, of just compensation to the person; and allowing the person who has an interest in, or right over, that property a right of access to a court of law. Such interested persons in Section 107 (7), and in line with the Matrimonial Act includes the spouse or spouses of any such person, as well as any person occupying the land and the spouse or spouses of such person. Also, and reiterating the importance of the land registry in land acquisition, interested parties include persons whose interests appear in the land registry established under Section 7 of the Land Registration Act No. 3 of 2012.*

82. The powers to compulsorily acquire land are, however only vested in the National Land Commission (NLC), who may act on behalf of national governments agencies including KeNHA. These are required to prescribe the criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land – currently issued under the Land Act Subsidiary Legislation i.e. Land Regulations, 2017 and the Land Value (Amendment) Act. . Section 107 to 133 (and further clarified under the Land Regulations, 2017), provides for clear procedures on land acquisition and compensation, and which are outlined in section 5.5 of this report depending on whether the acquisition affects the public, community or private land. In terms of the settlement, Part IX – Settlement Programmes (sections 134-135) provides for Settlement schemes and programmes to provide shelter (land) and livelihoods to squatters and persons displaced by development projects and resulting to movement and displacement. These are run by the national government under a board of Trustees known as the Land Settlement Fund Board of Trustees, which is mandated to administer the Land Settlement Fund.
83. According to the Land Laws (Amendment) Act, 2016, the law prohibits the unlawful occupation of private, community or public land. Where NLC finds that public land is unlawfully occupied, the commission is required to serve notice to the occupiers. Similarly, at the County level, the County Executive Committee Member (CECM) responsible for land matters is required to give notice if unregistered community land is unlawfully occupied. In both cases, evictions<sup>27</sup> thus must:
- Be authorized in writing, with the authorization copied to the national government administrators in the county and to the Officer Commanding the Police Division of the area;
  - Carried out between 6.00 am and 6.00pm;
  - Undertaken by persons who must identify themselves and carry the letter of authorization; and,
  - Protect property by allowing evictees to carry with them their personal property and possessions, and not destroying any property left.

### 5.2.5 The Land Registration Act, No. 3 of 2012

84. The Land Registration Act 2012 revises, consolidates and rationalizes the registration of titles to land, to give effect to the principles and objects of devolved government in land registration. Section 7 requires the establishment of a land registry containing cadastral maps and names of the land owners while Section 8 details the requirements of such where community land is concerned. These are key in the verification of actual land owners. Section 25 recognizes the certificate of title as *prima facie* conclusive evidence of proprietorship, unless it has been acquired on grounds of fraud and misrepresentation, or acquired illegally, unprocedurally or through a corrupt scheme. The legality of such can be certified through land searches. This explains that parcels where titles were produced, were considered during valuation.
85. Section 15 and 16 mandates the office or authority responsible for the survey of land to prepare and thereafter maintain cadastral maps, for every registration unit, and which is the only office mandated to rectify the line or position of any boundary shown on the cadastral map based on an approved subdivision plan, approved combination plan or any other approved plan necessitating the alteration of the boundary. In addition, Section 21

<sup>27</sup> Evictions can only occur in exceptional circumstances, and require full justification given their potential extremely negative impact on a wide range of internationally recognized human rights.

prohibits any person from defacing, removing, injuring or otherwise impairing a boundary feature or any part of it unless authorized to do so by the Registrar. These are key provisions in dealing with sections of the road which may have already been gazetted in the past and where a RoW already exists.

86. Under Section 93, and upholding the Matrimonial Property Act, if a spouse obtains an interest in land during the subsistence of a marriage for the co-ownership and use of both spouses and all spouses, such property shall be deemed to be matrimonial property. This is key in the consideration of all interests to any parcel of land by NLC during the acquisition process.
87. Section 103. (1) provides guidance on how to deal with any person or persons who knowingly makes a false statement, orally or in writing, in connection with a disposition or other transaction affecting land or those unlawfully occupying land and/or those who may have fraudulently procured the registration or issue of any certificate of title or certificate of lease, or any other document or instrument relating to the land – terming such acts as offences liable to fines and/or imprisonment.

#### **5.2.6 Community Land Act No. 27 of 2016**

88. The Community Land Act gives effect to Article 63 of the Constitution by providing for the recognition, protection, and registration of community land rights, and management and administration of the same. Particularly, it recognizes Community of interest, defined as “*the possession or enjoyment of common rights, privileges or interests in land, living in the same geographical area or having such apparent association.*” Section 5(3) emphasizes the fact that customary land rights have equal force and effect in law with freehold and leasehold rights. In this too, the Act provides for the security of derivative rights, often termed as customary rights of occupancy or individual rights on community land, though not superior to community title. This means that individuals, families, and groups can be acknowledged as the owners of rights to particular parts of the community land as per Section 14. That is, as per Section 27, community members together jointly own the land, but individual members, families and groups may register (lesser) title to specific areas, most usually for house and farm plots, and subject to agreements by the rest of the community– which is relevant given that sections of the project affected area are claimed by individuals or groups, although not registered yet<sup>28</sup>. The law also spells out that a community may seek to convert part or all of its land into fully private properties rather than usufructs, providing this is agreed to by two thirds of community members (Section 21).
89. As regard to compulsory acquisition, and subject to Article 40 (3) of the Constitution and the Land Act, any interest in, or right over community land may be compulsorily acquired by the State in accordance with the law, for a public purpose, and upon prompt payment of just compensation, in full or by negotiated settlement. In these cases, as per Section 6, compensation will be held by the county government, and will be released to the community, as soon as it registers the interest.

#### **5.2.7 The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012**

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<sup>28</sup> Refer to public participation minutes in Appendix C where individuals indicate ownership of ‘plots’ within what is commonly thought as community land.

90. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 – here also referred to as IDP Act for ease of reference, makes provision for the prevention, protection and provision of assistance to persons internally displaced or communities affected by large scale development projects such may happen under the Isiolo-Modogashe road project. The Act applies a human rights-based approach that takes into account the rights and freedoms of Internally Displacement Persons (IDPs) as set out in the Bill of Rights of the Constitution. Article 5 requires the government to prevent and avoid the situation that may lead to the displacement of persons while prohibiting arbitrary displacement in Article 6. Although the Act provides for displacement and relocation due to development projects, this is only lawful if justified by compelling and overriding public interests, where no feasible alternatives exist, and in line with the applicable laws.

Also, before the displacement, the following conditions and procedures must be met:

- Seeking the free, prior and informed consent (FPIC) of the affected persons; implying that a community or aggrieved person can withhold consent, thus halting a project;
- Holding public hearings on the project planning;
- Consulting the affected in the formulation of programs for assistance;
- Provision of an opportune time to challenge the decision before an independent body if the applicable conditions are not followed; and to
- Seek expeditious, efficient, lawful, reasonable, and procedurally fair administrative action.

Where displacement is to proceed, this must respect human rights, in particular taking into account the protection of community land and the special needs of women, children, and persons with special needs. In addition, those affected should be provided full information, and their participation ensured in the planning, management of the displacement, and the mitigation measures, provided with adequate and proper resettlement sites. The presence of a Government official is required during the displacement and relocation, but monitoring should be undertaken by an independent party.

### **5.2.8 Environment and Land Court Act No. 19 of 2011**

91. The Act enacts Article 162(2) (b) of the Constitution; to establish a superior court to hear and determine disputes relating to the use and occupation of, and title to land. The Court functions as superior court of record with the status of the High Court, exercising jurisdiction throughout Kenya, and with a mandate over:
- Land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - Compulsory acquisition of land;
  - Land administration and management; and,
  - Public, private and community land and contracts.
92. At the courts disposal, are interim or permanent preservation orders including injunctions, award of damages and compensation. This shall be an important institution in case of grievances with regard to impacts/displacement that cannot be solved through the project's proposed RAP grievance redress mechanism. All PAPs were sensitized about the presence and functions of this court.

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

93. The Act defines ownership and transfer of matrimonial property, giving equal status to spouses to enter into a contract and to acquire, administer, hold, control, use and dispose

of property whether movable or immovable. Section 7 states that subject to Section 6 (3) i.e. parties to an intended marriage entering into an agreement before their marriage to determine their property rights, ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved. This also includes assets thus implications for facilitation requiring sensitization of PAPs. Section 7 is relevant due to the prevalence of polygamy in sections of the project area, and states:

- *If the parties in a polygamous marriage divorce or a polygamous marriage is otherwise dissolved, the —*
  - *(a) matrimonial property acquired by the man and the first wife shall be retained equally by the man and the first wife only, if the property was acquired before the man married another wife; and*
  - *(b) Matrimonial property acquired by the man after the man marries another wife shall be regarded as owned by the man and the wives taking into account any contributions made by the man and each of the wives.*
- *(2) Despite subsection (1)(b), where it is clear by agreement of the parties that a wife shall have her matrimonial property with the husband separate from that of the other wives, then any such wife shall own that matrimonial property equally with the husband without the participation of the other wife or wives.*

#### **5.2.10 Kenya Roads Act, No. 2 of 2007**

94. PART II, A (3) establishes the Kenya National Highways Authority with the mandate to manage, develop, rehabilitate and maintain national roads such as the Isiolo- Modogashe road. This function extends to the control of national roads and road reserves and access to roadside developments, as well as advising the Minister of Transport on all issues relating to national roads, including where land needs to be acquired for the authority to exercise the mandate spelt out in Section 3. Section 27 (1) gives to KeNHA the powers to request the relocation of utilities to a location or alignment approved by the Authority, at no cost to the Authority. It is however required to give reasonable sixty days' notice of its intention. Failure to comply, KeNHA is allowed to remove the infrastructure at the concerned party's cost.

#### **5.2.11 Traffic Act Cap. 403**

95. Section 91 illegalises the encroachment on a road or on any land reserved for a road.

#### **5.2.12 Valuer's Act, Cap 532**

96. Establishes the Valuers Registration Board, which regulates the activities and conduct of registered valuers (as a person who carries out and prepares valuations in respect of any type of movable or immovable property). The registrar of the Board keeps and maintains an annual register of all registered valuers in the country, requiring such persons to demonstrate sufficient qualifications to practice, and obligates them to professionally conduct their work in a professional manner. If one fails to, or is found guilty of professional misconduct or engaging in dishonest activities as outlined in Section 24, and those activities contrary to the public interest, the Board holds the power to deregister the person. These includes:

- *Incorrect entry in the register or any copy thereof;*
- *Fraudulently procures or attempts to procure the entry in the register of any name or other particulars whether on his own behalf or on behalf of any other person; or*

- *knowingly and willfully makes any statement, oral or written, which is false in a material particular or which is misleading with a view to gaining any advantage or privilege under this Act whether for himself or for any other person.*

Valuation for purposes of this RAP for the purposes of determination of compensation was carried out by a registered and practicing valuer.

### 5.2.13 The County Government Act

97. This Act provides for county governments' powers, functions and responsibilities to deliver services and for connected purposes. It reiterates the role of the county government as to prohibit, control and regulate trade and trading activities within their jurisdiction.

### 5.3 The Land Value (Amendment) Act, 2019<sup>29</sup>

98. This Recent Act has come into place to amend the Land Act, the Land Registration Act and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act; to provide for the assessment of land value index in respect of compulsory acquisition of land. It defines 3 key terms;

- 'Just' compensation in relation to compulsorily acquired land or creation of wayleaves, easements and public rights as a form of fair compensation that is assessed and determined through criteria set out under this Act;
- 'Prompt' to means within a reasonable time of, and in any case not more than one year after, the taking of possession of the land by the Commission; and
- 'full' in relation to compensation for compulsorily acquired land or creation of wayleaves, easements and public rights of way means the restoration of the value of the land, including improvements thereon, as at the date of the notice of intention to acquire the land and any other matter provided for in this Act.

Particularly, it provides for the valuation of freehold land and community land for purposes of compensation to be based on the provisions of this Part and the land value index developed for that purpose by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate within six months of the commencement of this Act. However, it is not foreseen that such a value index will be place by the time this RAP implementation starts.

In addition, the law serves to curb speculation since it disregards any increase in land value within 2 years of a project, unless it can be proven such improvement was independent of the announcement of such a project.

It provides conditions under which payment in good faith can be effected i.e. it is assessed based on:

- the number of persons in actual occupation of the land for an uninterrupted period of six years immediately before the publication of the notice of intention to acquire the land;
- improvements done before the date of publication in the *Gazette* of the notice of intention to acquire the land;
- damage sustained or likely to be sustained by the occupants of the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings.

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<sup>29</sup> This section has been inserted way after the RAP fieldwork was undertaken and the RAP written.

99. However, it locks out unlawful occupants (without the consent of the owner), but extends the payment in good faith to land traditionally occupied by individuals, families or entities pending adjudication. Further, the Act expands the forms of compensation for compulsorily acquired land, which may take any one or more of the following forms:
- Allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;
  - Monetary payment either in lump sum or in instalments spread over a period of not more than one year;
  - Issuance of government bond;
  - Grant or transfer of development rights as may be prescribed; (e) equity shares in a government owned entity; or
  - Any other lawful compensation/

Where an acquisition process is not completed within twenty-four months from the date of publication of the notice of intention to acquire the land, the acquisition will be considered to have lapsed.

Perhaps its 2 most key provisions are that:

- It now allows, NLC (after an award has been made), to take possession of the respective land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the national or county government as the case may be, provided that such taking of possession will not result in persons being rendered homeless. While this payment may be extended over a year's period. Additionally, the Act also provides that where the NLC has taken possession of the land, no order stopping any development of the land may be issued by any court if public funds have already been committed to its development. and
- It establishes the Land Acquisition Tribunal which shall consist of three persons appointed by the Cabinet Secretary (CS), through nominations by the Judicial Service Commission, CS and Attorney general through a notice in the Gazette. The tribunal has jurisdiction to hear and determine appeals from the decision of, the Commission in matters relating to the process of compulsory acquisition of land. This by extension means that the Environment and Land Court will have to act as an appeal court.

#### **5.4 World Bank Policies, and Standards**

100. The World Bank's social safeguard policies consist of the Bank's mechanism for addressing social issues at design, implementation and operation in Bank-financed projects. These provide for a framework for consultation with communities and for public disclosure. The relevant ones include:

##### **5.4.1 OP 4.12 - Involuntary Resettlement**

101. The important elements of WB's involuntary resettlement policy are:
- The recognition that displacement and resettlement can have long term impacts on affected persons, including impoverishment. This therefore requires resettlement planning be treated as an integral part of the project design, to be dealt with from the earliest stages of the project, conceived and executed as a part of the project, and the full costs of compensation should be included in project costs and benefits;

- Advocates for an avoidance and minimization strategy in the development of projects. Compensation is the last resort measure, only after exploration/exhaustion of the first two i.e. this should be the exception, not the norm;
- A census to identify the persons who will be affected by the project and to discourage the inflow of people ineligible for assistance should be undertaken;
- Compensation should:
  - Aim to improve the lives of those affected. Thus displacement and resettlement are conceived as a development opportunity. The restoration of the previous lives and livelihoods to pre-displacement levels is the basic minimum required;
  - Be comprehensive, and covers lost assets, shelter, livelihood, and income; assistance for relocation, including the provision of relocation sites with appropriate facilities and services; and assistance for rehabilitation; In terms of land, a preference for land-based compensation is advocated for where livelihoods are dependent on land. In case of physical relocation, assistance (such as moving allowances) and residential housing or housing sites or as required, and other factors, at least equivalent to the advantages of the old site during relocation and support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standard of living;
  - Be at replacement cost – sufficient to replace lost assets and cover transaction costs;
  - Eligibly cover (a) those who have formal legal rights to land, (b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets and (c) those who have no recognizable legal right or claim to the land they are occupying. However, compensation here varies depending on the category;
  - Be fully provided prior to clearance of right of way/ ground leveling and demolition.
- Particular attention should be paid to households headed by women and other vulnerable groups, such as indigenous peoples, and appropriate assistance should be provided to help them improve their status;
- Adequate involvement and consultation of those affected on the land acquisition and resettlement, including options available;
- Set of grievance redress mechanism to arrest and address emerging issues and concerns by the project affected persons; and,
- A resettlement plan or abbreviated resettlement plan is prepared for all operations that entail involuntary resettlement. The document should be publicly available and disclosed.

#### **5.4.2 OP 4.11 - Physical Cultural Resources**

102. While OP 4.12 provides for the displaced to retain access to cultural property (e.g. places of worship, cemeteries), or to be compensated for the same, it is OP 4.11 that defines these physical cultural resources. Physical cultural resources are considered as above or below ground local objects, sites or structures that groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance. The policy requires that appropriate measures for avoiding or mitigating impacts on cultural resources be established. These may range from full site protection to selective mitigation. Read together with OP 4.12 (15), the mitigation and compensation measures, alternatives and options should be decided and reviewed through consultation with the community, as the public participation minutes (Appendix C) in this report show.

### 5.4.3 OP 4.10 - Indigenous Peoples

103. This policy is in recognition of the identities and cultures of indigenous peoples (also referred to as ethnic minorities, tribal groups, marginalized groups etc.), often inextricably linked to the lands on which they live and the natural resources on which they depend. The policy also takes cognizance that such groups are among the most marginalized and vulnerable segments of the population, while complex gender and intergenerational issues are the norm. The unique characteristics expose such communities to higher risk of impoverishment and impact from development projects, including loss of identity, culture, and customary livelihoods. This thus requires their identification as well as involvement and informed consultation to fully identify their views and support for the project.

### 5.4.4 The World Bank Policy on Access to Information

104. In recognition *that transparency and accountability are of fundamental importance to the development process and critical for enhancing good governance, and development effectiveness*, the policy, taking effect in July 1, 2010 allows public access to information in its possession, as long as it does not appear in the exceptions to this rule. Through proactive Disclosure, the Bank routinely discloses a wide range of documents, through its external website – [www.worldbank.org](http://www.worldbank.org) – as soon as the documents are finalized after key process milestones. The Bank’s InfoShop – recognized in OP 4.12 falls under this.

## 5.5 Scope, Power, Process/Procedures and Compensation in Eminent Domain in Kenya

105. As Section 5.2 shows, the existing legal framework for land acquisition for the project consists of the Constitution of Kenya 2010, the Land Act 2012, the Land Registration Act 2012, the National Land Commission Act, The Land Laws (Amendment) Act 2016, The Land Act Subsidiary Legislation 2017 and The Land Value (Amendment) Act, 2019 Acts. These show that by virtue of the protection of interests in land, there exists limited opportunities for state deprivation of the right to land (property). This must be through acquisition of the land in question or interest in it or through conversion of the interest or title, from communal and private to public land. In this sense therefore, the right to property is not an absolute right since it is limited by the legal requirement that private property rights must bow to the superior rights of the State, when it requires the property for a public purpose, *but*<sup>30</sup> as long as the requirements set in law are met. Actually, the IDP Act indicates public interest is an *overriding* interest.

106. The Constitution puts in place minimum acquisition (and resettlement safeguards) during involuntary displacement of people, to ensure citizens are not disadvantaged in the process. Acquired land can only be aimed for public purpose or meet public interest – which is subject to prompt payment (not later than an year) while also allowing for legal redress opportunities for the deprived person. An understanding of compulsory acquisition therefore means it is limited to cases where all two factors (and by extension, payment on time and access to justice) are met for the act to be considered in line with the legal framework. Any unlawful compulsory acquisition of land not subject to prompt payment in full, of just compensation to the persons affected qualify as *arbitrary displacement* in the IDP and The Land Value (Amendment) Act, 2019 Acts.

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<sup>30</sup> Emphasis added by author.

107. While the Constitution does not provide for a definition of public purpose, this is defined in the Land Act to include *transportation purposes*, public buildings, utilities, security and defense installations and the settlement of squatters, the poor and landless and the internally displaced persons. In this sense, therefore, the upgrading of the Isiolo-Modogashe road does qualify for a case of eminent domain, or a *compelling* case for displacement in line with the IDP Act. In term of process and procedures; however, one relies mostly on the Land Act and the Land Regulations, 2017, while valuation methodology was derived from Land (Assessment of Just Compensation) Rules, 2017 (and the recent Land Value Amendment Act). The process varies depending on the the type of land to be acquired – if private, public, or community land.

### 5.5.1 Compulsory Acquisition of Private Land

108. This largely applies to sections from Isiolo Town to 78 Tank Battalion Isiolo Barracks along A10 where cadastral maps are available indicating land had been adjudicated by cutoff date.

- **Application/Preliminary notice:** the acquiring body (KeNHA) through the Cabinet Secretary Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works submits an application or request in writing for acquisition of land to NLC. The request is rejected if it does not meet the public purpose requirement. In this case, the acquisition of land for construction of the road qualifies as acquisition for a public purpose, both under the said Article 40 as well as Section 2 of the Land Act. Thus NLC will certify, in writing, that the land is required for public purposes or in the public interest.
- **Confirmation on availability of funds for acquisition:** NLC will require KeNHA (by extension the ministry of Transport) to confirm, in writing, that it has sufficient funds for the intended acquisition. The authority has to first deposit the funds for the final survey and registration with the Commission.
- **Land Inspection:** NLC inspects the land to ascertain its suitability for the intended purpose.
- **Gazettement:** NLC publishes a notice of intention to acquire in the Kenya Gazette and County Gazettes (assuming Isiolo, Meru Counties etc. have such), in at least two daily newspapers with nationwide circulation, one local newspaper and affix notices at the County, Sub County and ward offices, and delivers copy to the registrar and all interested persons. An entry is also made in the register of the intended acquisition.
- **Geo-referencing and Authentication of Land:** all land to be acquired is surveyed and geo referenced.
- **Inquiry and Hearing as to compensation:**<sup>31</sup> At least thirty (30) days after publishing the notice of intention to acquire the land, NLC will appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land, having published the notice *Gazette* or county *Gazette* at least fifteen days before the inquiry, and served every interested person. All interested persons are required to deliver a written claim of compensation to the Commission. The Authority would be

<sup>31</sup> Land Act is not clear if this happens before or after the inquiry.

entitled to be heard, to produce evidence, and to call and to question witnesses at such inquiry.

- **Valuation of claims and interests:** NLC undertakes valuation of the claim/interest towards determining the full and just compensation to be payable. Valuation is following the Land Value (Amendment) Act, 2019 and requires the Land Value Index to be developed by the Cabinet Secretary in consultation with county governments and approved by the National Assembly and the Senate. Given this index is not in place (as the Act came into force on 16 August 2019), it is foreseen that the market value provided in the Land (Assessment of Just Compensation) rules 2017 may continue to function until the index is developed. In addition, which despite requests to use the Land Value Index, the Land Value Amendment Act also allows for the following matters to be taken into consideration in assessing the value of land:
  - 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 other land;
  - damage sustained or likely to be sustained by persons interested in the land at the time of the Commission's taking possession of the land injuriously affecting other property, whether movable or immovable or in any other manner affecting the person's actual earnings;
  - if, in consequence of the acquisition, any of the persons interested in the land is or will be compelled to change residence or place of business, the payment of reasonable expenses to be determined by the Commission;
  - 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; and
  - the effect of any express or implied condition of title or law which restricts the intended land use

In determining the damage resulting from diminution of the profits of the land, the Commission shall require proof of existence of the profits including evidence of tax returns.

NLC does not consider:

- *The degree of urgency which has led to acquisition;*
- *Any inconvenience caused to the person interested in the land;*
- *Damage which is likely to be caused to the land after the date of publication in the gazette of the notice of intention to acquire the land or in consequence of the use to which the land will be put;*

Further, the Land Value (Amendment) Act, 2019 is silent on the 15% disturbance allowance is applied previously under the Land (Assessment of Just Compensation) rules 2017.

- **Preparation and service of award:** Upon conclusion of the inquiry, NLC prepares and serves a separate award for each person, and where joint, the shares payable to each person. The final award stipulates the size of the land to be acquired, value in the opinion of the Commission and the amount of compensation payable. This award can be accepted or rejected, in writing.

If accepted, the person forwards their bank details, PIN number and identification documents to the Commission. If one is aggrieved by the award, they can refer the matter to the Land Acquisition Tribunal for determination, and thereafter appeal to the Land and Environment Court.

Note that the Commission, prior to the offer of compensation, also has power to offer several other options of payment to the affected persons as per section 5.3 of this RAP

Prior to this award, the Commission may decide to acquire a remaining part of a building or land, if its use is uneconomical (incase where partial compulsory acquisition had been applied), or the interested party may request the commission to consider so.

- **Payment of compensation:** Once the award has been served, the Commission shall, promptly pay compensation in accordance with the award to the persons entitled to be paid, unless there is no competent person to receive the payment, the person rejects the award or a dispute exists as to who will receive the payment, or the shares to be paid. Payment must be within 1 year after, of taking of possession of the land. In cases where the payment cannot be made, the compensation amount is deposited into a special compensation account held by the Commission, notifying any persons interested accordingly. Interest is also paid awarded amount that has not been paid. This is through opening of a special account into which the Commission shall pay interest on the amount awarded at the base lending rate set by the Central Bank of Kenya and prevailing at that time from the time of taking possession until the time of payment.
- **Formal possession of the land:** After the award is made (and provided the taking of possession will not result in persons being rendered homeless), the Commission is allowed take possession of the land by serving notice on every person interested in the land that on a specified day, possession of the land and title to the land will vest in the GoK. Upon taking possession of the land, the Commission will serve notice of possession of the land and of the vesting of the land upon the registered proprietor and the Registrar, and the land shall vest absolutely free from encumbrances.
- **Surrender of documents of title:** All unsurrendered documents are then requested through writing.

109. As one notices from the above analysis, the process of compulsory acquisition is relatively lengthy and involves a number of agencies and procedural formalities. It would be difficult to provide a timeframe for such a process but experience from other projects and assuming no litigation or objection to the value assigned by the land owners, it could take between 3 – 12 months from the date the process commences to the date the Commission makes an award<sup>32</sup>.

### 5.5.2 Compulsory Acquisition of Community Land

110. The Community Land Act, 2016 provides for prompt and fair compensation of persons affected through compulsory acquisition. However, the country's history is one of compensation of well documented and registered land, while communities such as those in parts of Isiolo/Garissa County have occupied the land for many years without any form of formal registration. The Community Land Act in Section 6 empowers the county government as a trustee of all unregistered community land, on behalf of the communities for which it is held. They are also responsible for adjudication programs for purposes of

<sup>32</sup> In some cases, NLC can be able to provide the land within 6 months if no major hitches encountered

registration of community land, which is yet to happen in areas such as Isiolo/Garissa. In this case, the procedure would entail:

- **Application:** Government through the Commission makes an application to the County Government as a trustee of the land, to set apart the proposed project area for purposes of public interest;
- **A notice of intention to acquire:** Upon receiving the Notice, the County Government gives a notice that it intends to set apart the land in question and cause the notice to be published in the Kenya Gazette. Such a notice shall specify the boundaries of the land required to be set apart and the purpose for which the land is required to be set apart;
- **Valuation:** NLC undertakes valuation of the land similar to the provisions of the Land (Assessment of Just Compensation) Rules, 2017<sup>33</sup>;
- **Payment:** NLC makes prompt payment of full compensation to the respective Garissa/Isiolo county governments who shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land. Any such monies shall be deposited in a special interest earning account by the county government;
  - Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition;
- **Setting Apart:** Once compensation is awarded, the land will be set apart and the County Government will publish in the Kenya Gazette a notice setting the land apart. Once the land is set apart, the land will vest in GoK and ownership in that land will be transferred to the Authority.

111. In addition, since the law also spells out that a community may seek to convert part or all of its land into fully private properties rather than usufructs, providing this is agreed to by two-thirds of community members (Section 21), there is an opportunity to recognize individual rights but within the law requirements where Section 21 (2) insists the community must first register itself with the procedures set out in Section 7.

### 5.5.3 Reservation of Public Land

112. Where land is public:

- **Application:** The national government shall request NLC to reserve public land located within the proposed project area.
- **Gazettement and Vesting:** Subject to Article 66(1) of the Constitution, NLC shall, upon request by the national government, by order in the *Gazette*, reserve such land. The care, control and management of any reserved land will then be vested through gazette in KeNHA for the reserved purpose.
- Assets (e.g. structures, trees etc) on such land will be compensated on a full replacement value according to OP.4.12.

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<sup>33</sup> The Land Value Index proposed in the recent The Land Value (Amendment) Act, 2019 is not in place yet.

## **5.6 Institutional Framework**

113. Based on the preceding sections, several institutions, therefore, have a role to play in the Land acquisition process:

### **5.6.1 National Treasury**

114. Given that social obligations and land acquisition is a national matter, Treasury has the responsibility to ensure the funds for acquisition and compensation are available, and on time. The funds so provided will cater for all the entitled categories as per this RAP.

### **5.6.2 KeNHA (and by extension) Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works**

115. The Cabinet Secretary makes the application on behalf of KeNHA to NLC, for acquisition. The ministry has an obligation to make a compelling case for acquisition for public purpose. KeNHA is responsible for the implementation of the RAP, and any additional livelihood measures. Where, required by NLC during the inquiry, KeNHA

### **5.6.3 National Land Commission**

116. NLC is responsible to acquire the land on behalf of KeNHA. This includes:

- All Gazettement required;
- Making full inquiry into and determining the persons interested in the land, and their notification
- Holding public hearing on the acquisition;
- Valuation of the property to be acquired;
- Preparation and payment of awards/compensation
- Reference of matters to court for determination as outlined in Section 127 of the Land Act.
- Management of grievances on land acquisition and resettlement

### **5.6.4 County Governments of Isiolo, (Garissa) and Meru**

117. County government relevant departments geo-reference, survey and authenticate the land to be acquired. Counties governments also receive and hold in trust any monies payable as compensation for compulsory acquisition of any unregistered community land. They transfer this to the community after registration.

### **5.7.1 Comparison of WB Policy with Kenyan Laws and Legislation**

118. Overall, Kenya legislation departs from WB OP 4.12 in terms of the approach to displacement and resettlement. The most significant of these differences is that while OP argues for avoidance of displacement, Kenyan laws find it justifiable to displace persons if there is public interest or purpose to be achieved. Emphasis therefore is on the conditions to be met, and how the acquisition of properties for public purposes is to be implemented and compensated (minimum conditions to be met and process to be followed). Where displacement is foreseen in the case of WB policy, the emphasis is put both on the displacement as a development opportunity to improve the lives of those affected, and general (economic including livelihoods) rehabilitation of all affected. Table

5.1 outlines the key differences in more detail. However, this is not to say that some similarities do not exist:

1. Specifically, the IDP Act internalizes high-value safeguards techniques embodied in OP. 4.12 such as the application of a free, prior and informed consent process that emphasizes the quality and meaningfulness of affected community participation including the impact that views obtained during consultations should have a say on the final decision. Similarly, public participation is one of the national values and principles of governance/devolution, ensuring transparency and accountability espoused in the Constitution in Articles 1(2), 10(2), 33(1)(a), 35, etc. It is at the core of a people-centered process.
2. Article 40(3) of the Constitution requires prompt payment in full, of just compensation to the person. This is similar to OP 4.12 which requires payment before impact.
3. In terms of compensation, 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 are provided for under the land Act, and should be factored in valuation. In addition, the practice of provision of a 15% disturbance allowance allows for valuation in the local context to be upgraded to some level of replacement cost.
4. Similar to the land for land emphasis in OP 4.12, NLC can offer some land in replacement where applicable or feasible. The IDP Act provides for monitoring of the displacement and relocation, to be undertaken by an independent body, similar to OP 4.12 which provides for monitoring of resettlement activities by the implementing agency to be supplemented by independent monitors as considered appropriate.

Table 0-1: Comparison of WB Policies and Kenyan legislation

Issue	WB Policy	Kenyan Legislation	Recommendation
<b>Overall Approach to Displacement and Resettlement</b>	Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs	The IDP Act and the Constitution protect every human being against arbitrary displacement. However, compulsory acquisition and associated displacement is justifiable for public purpose or in the public interest, and in the Land Value Amendment Act cannot be construed as arbitrary displacement as long as carried out as set by law.	WB OP prevails for exploration of all possible alternatives for minimising displacement including those outlined in section 3.2.
	Improvement of livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.	Restoration of the person and lost assets is the main focus.	WB OP prevails
<b>Eligibility for Benefits</b>	<p>All (a) those who have formal legal rights to land, (b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets and (c) those who have no recognizable legal right or claim to the land they are occupying, are eligible for assistance.</p> <p>WB OP recognizes those who have no recognizable legal right or claim to the land they are occupying are provided resettlement assistance for the land they occupy, and other assistance, provided they occupy the project area prior to an established cut-off date.</p>	<ul style="list-style-type: none"> <li>• Provisions are made for compensation to those who may not hold title to the land and payment made in good faith, with precedence in practice set in areas neighbouring the project area in Isiolo for the Airport under LAPSSET.</li> <li>• Compensation for rights for those who illegally acquired land are not provided for in the Constitution. Some Acts e.g. the Land Act prohibits the unlawful occupation of private, community or public land while the traffic Act makes it an offense to encroach on a road reserve.</li> </ul>	WB OP prevails.

<b>Vulnerable Groups</b>	OP 4.12 requires particular attention is paid to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation. It requires a social assessment and measures to minimize and mitigate adverse economic and social impacts, particularly upon poor and vulnerable groups.	The Constitution calls for the protection of the interests of certain categories of persons. This includes youth, persons with disabilities, minorities and marginalized group to ensure they participate in all spheres of life. However, it does not require a social assessment or the specific application of FPIC where they are concerned	WB OP prevails
<b>Compensation</b>			
<b>Impacts Covered</b>	Comprehensively covers relocation or loss of shelter; loss of assets or access to assets; loss of income sources or means of livelihood, whether or not the affected persons must move to another location	Land Value (Amendment) Act covers loss of land, damage due to severing the land from other land, if a person is compelled to change residence or place of business due to the acquisition, damage due to diminution of profits of the land.	WB OP prevails
<b>Modality</b>	World Bank (WB) OP provides for compensation for land and structures at full replacement costs, defined as the amount sufficient to replace lost assets and cover transaction costs. In applying this method of valuation, depreciation of structures and assets is not taken into account.	The Constitution provides for payment in full, of just compensation to the affected person(s). Land (Assessment of Just Compensation) Rules, 2017 defines this the market value of the land and damage sustained to movable and immovable property.  A sum equal to fifteen per cent of the market value to the amount of compensation is added as disturbance.  However, the recent The Land Value (Amendment) Act, 2019 proposes use of a Value Index that is not yet in place. The Act is also silent on the previously provided 15% disturbance allowance.	WB OP 4.12 on full replacement value prevails whether the person has legal or usufruct rights.
<b>Compensation Preference</b>	Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based.	Preference for cash compensation. However, NLC under the Land Act has power to offer alternative land, issuance of government bond; grant or	Implement both, with land for land being prioritised where applicable. The preference of the PAP should also be

	<p>Payment of cash compensation for lost assets is appropriate where:</p> <ul style="list-style-type: none"> <li>• livelihoods are land-based but the land taken for the project is a small fraction, and the residual is economically viable;</li> <li>• active markets for land, housing, and labor exist, and there is sufficient supply of land and housing; or</li> <li>• Livelihoods are business based.</li> </ul> <p>Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.</p>	transfer of development rights as may be prescribed; equity shares in a government owned entity.	considered as in many cases, cash compensation is preferred by expropriated people in Kenya.
<b>Partial Losses</b>	<p>Partial acquisition is allowed if the impact refers to a small fraction of the affected asset and the residual is economically viable. Considered 20%.</p>	<p>Land Act provides for acquisition of other land on account of severance. If the Commission is satisfied that the partial compulsory acquisition originally intended will render the remaining land/structure inadequate for its intended use or will severely and disproportionately reduce the value of the remaining land, it will instruct the acquiring authority to acquire the remaining land. The Act also provides opportunity for the affected party to request the Commission to acquire a remaining part of a building or land, if its use is uneconomical (incases where partial compulsory acquisition had been applied).</p>	<p>Apply both but subject to the discretion of NLC. PAPs should also be sensitised that they can request for full acquisition where partial had been applied.</p>
<b>Additional assistance (resettlement/rehabilitation) over and above the compensation</b>	<p>WB policy requires rehabilitation for income/livelihood, severe losses, and for expenses incurred by the APs during the relocation process. In addition, offer support after displacement, for a transition period, and provide development assistance in addition.</p> <p>Particular attention is paid to the needs of vulnerable groups, and ensuring they are</p>	<p>No provision for income/livelihood rehabilitation, allowances for severely affected or vulnerable APs, or resettlement expenses but provides for reasonable expense incidental to relocation.</p> <p>Kenyan legislation has no particular provision related to livelihood restoration for affected people.</p> <p>No provisions for development assistance (in context of compulsory acquisition) or assistance after the acquisition.</p> <p>While the Constitution in Article 56 and 57 obligates the state to put in place affirmative action programmes for minorities, marginalized groups</p>	WB Policy prevails

	identified during the census and socio-economic.	and older members of the society, and some Acts e.g. Community Act recognize women, minority, persons with disabilities and marginalized groups have the right to equal treatment in all dealings in land, there are no explicit clauses related to land acquisition apart from their consideration as an interested party (i.e. part owner e.g. in the case of spouses).	
<b>Timing of Land/asset possession</b>	WB OP call for full compensation before taking of land and related assets. Where applicable, resettlement sites and moving allowances are provided to the displaced persons in advance of the impact.	The Constitution and Land Act advocates for prompt compensation. Land Act gives NLC powers to, as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land. Only after the award has been made, and the amount of the offer paid, shall the Commission take possession of the land. However, the new The Land Value (Amendment) Act, 2019 is not in congruence with the Constitution, allowing for possession immediately after an award is made, while extending the payment period to a year.	WB Policy prevails
<b>Procedural and Process Related Considerations</b>			
<b>Cut-off Date</b>	Establishes this and defines it as the date the census begins. The cut-off date could also be the date the project area was delineated, prior to the census, provided that there has been an effective public dissemination of information on the area delineated, and systematic and continuous dissemination subsequent to the delineation to prevent further population influx.	The documents prepared for the project adopt cut off but implementation uses the gazettement of the intention to acquire. NLC adopts the gazettement date which is a date much closer to the project implementation start and which is acceptable by the Kenyan Law.	This report adopts the cut-off date, as highlighted in chapter 7 of this report. <i>Note:</i> in projects where private land is acquired, gazettement of the intention to acquire is the official cut off date. This does not apply to this project.
<b>Consultation and Involvement</b>	Public consultation and participation is the integral part of WB's policy which is a continuous process at conception, preparation, implementation and finally at post implementation period.  Requires PAPs to be informed about their options and rights pertaining to resettlement;	The Constitution of Kenya requires free, prior and informed consent, and involvement in the design of the alternatives/resettlement options.  Land Act requires NLC to appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land. Also provides for the opportunity to reject the	WB Policy prevails

	and consulted on, or offered resettlement alternatives/ choices.	award and for the affected to request a remaining part of a building or land, if its use is uneconomical.	
<b>Grievance Redress Mechanism</b>	Appropriate and accessible grievance mechanisms are established for the affected.	Constitution encourages community based dispute resolution mechanisms on land but also establishes a court of the same standing as the High Court to hear and determine disputes relating to the use and occupation of, and title to, land. Land Act encourages communities to settle land disputes through recognized local community initiatives.  Environment and Land Court Act establishes a court with the same name.	Adopt both, where the project sets up a grievance redress mechanism that incorporates alternative community dispute resolution mechanisms and institution but also offers opportunity for legal redress.
<b>Socioeconomic survey, Resettlement Plan</b>	Resettlement plans should be based on recent information about the scale and impact of resettlement on the displaced population, including socio-economic surveys	No legal basis and procedures, But survey of land to be acquired required, and establishment of persons with an interest in that land.	Both adopted. This RAP is prepared, survey was undertaken and establishment of persons with interest. NLC to verify and Validate at implementation.
<b>Disclosure and Publishing (re)settlement plans/documentation</b>	WB OP requires the draft resettlement instrument to be made available at a place accessible to displaced persons and local NGOs, in a form, manner, and language that are understandable to them. Information on quantification, affected items value assets, entitlements, and compensation/financial assistance entitlements are to be disclosed.  The Bank makes the RAP available to the public through its external website. After the Bank has approved the final resettlement instrument, the Bank and the borrower disclose it again in the same manner.	Decisions regarding land acquisition and resettlement are discussed only between the landowners and the Land Acquisition Authorities.	Implement both, where the awards are discussed with individuals to maintain privacy, but the RAP disclosed with indications of the entitlements considered.
<b>Monitoring and Evaluation of resettlement implementation</b>	WB OP requires arrangements for monitoring and evaluation of resettlement activities by the implementing agency to be supplemented by independent monitors' objective information and performance – of which the Bank indicates in OP 4.12, they can offer financing of technical assistance for monitoring. These arrangements for	The Land Act refers to NLC as the responsible party in implementation of acquisition. The NLC however cannot be taken as independent party given it acts on behalf of the national and county government. – They represent the states interests.  The IDP Act requires the presence of a Government	Implement both WB and IDP Act provisions on monitoring by NLC/KeNHA and independent parties.

	<p>resettlement implementation monitoring and evaluating its impacts should be defined by resettlement plans. Displaced persons and their communities involved in the monitoring.</p> <p>The acquiring authority should continue the monitoring and impact evaluation for a reasonable period after all resettlement and related development activities have been completed.</p>	<p>official when the displacement and relocation is effected and the monitoring by an independent body.</p> <p>No provisions for monitoring after the acquisition.</p>	<p>WB prevails to ensure monitoring beyond the acquisition and RAP implementation.</p>
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## 6 Participation and Consultation

119. Public participation refers to the active participation of stakeholders in collective issues. OP 4.12 requires that affected persons be meaningfully consulted, and should have opportunities to participate in the design and implementation of the project, as well as resettlement programs. Further, displaced persons are informed about their rights pertaining to resettlement and consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives. In addition, public participation is a legal requirement under the Constitution and legal framework which requires a commitment towards citizen involvement and consultation in the planning and delivery of projects and services.

120. It serves in this case a myriad of objectives in the RAP process:

- Helps to bring the community up to date on the progress of the project as well as the next steps to be undertaken given time had lapsed since the design of the project started, and the initial RAPs were undertaken;
- Garner support for the project;
- Helps to identify the owners and affected assets/property;
- Is key to the design of social-culturally sensitive mitigation and grievance redress mechanisms
- Reduces conflict through the early identification of contentious issues while providing accurate information indicating various possibilities, dispel fears and build trust but at the same time managing expectations.

### 6.1 Consultation Method and Approach in RAP Development

121. The approach required a stakeholder analysis, to determine the stakeholders (individuals, groups, institutions/organizations) who will be affected directly or indirectly, positively or negatively by the proposed project, who can contribute to, or hinder its success, and those with an interest in the RAP, have mandate over various issues related to the RAP and general matters that link to the project area. Overall, the key guiding participation principles are outlined in the table below.

*Table 0-1: Principles of Participation and how ensured in the RAP process*

Principle	How observed
Adaptive, Communicative, Meaningful and Pro-active Consultation	<ul style="list-style-type: none"> <li>• Participation was carried out in a non-coercive, open, transparent manner, free from any forms of manipulation, bribery, intimidation or duress.</li> <li>• Information was shared in Swahili as the national language, and where necessary among the Somali and Borana, translations provided by the local chiefs or someone appointed by the administration. Where community needed to undertake discussions, more so among the Somali and Borana, they were allowed to have the conversations in their local dialects, the consultant relying on translations to follow the discussions. However, questions where possible were asked in Swahili.</li> <li>• Information provided was extensive in nature, providing as much detail as was possible but largely revolving around dissemination of key project background and objectives, description</li> </ul>

	<p>of final alignment and its provisions, potential impacts, entitlements and valuation methodology, possible project route alternatives and relocation of cultural property, notice period and self-demolition, grievance redress mechanisms.</p> <ul style="list-style-type: none"> <li>• Effort was set towards simplification of technical processes such as valuation.</li> </ul>
Accessibility	<ul style="list-style-type: none"> <li>• The location for all consultations was accessible to all who wanted to attend; with meetings held within the settlements, and preferably at sites/locations used for their own community meetings e.g. community baraza parks. This therefore meant majority meetings were held in the open air under trees with the exception of Modogashe where the rains required hiring of a social hall, Boji where the meeting was at a primary school within the settlement, Bullo 1 (Meru) where it was held at Harvest Church Hall and in Eldere, where it was held at the AP grounds.<sup>34</sup></li> </ul>
Inclusivity	<ul style="list-style-type: none"> <li>• All PAPs, male and female, youth, land owners, structure owners, tenants etc. were notified of the meetings and involved in the meetings.</li> <li>• The consultant took utmost care to ensure women's voice was well represented. This involved a deliberate effort to ask the women on their opinion on issues raised.</li> </ul>
Right to Questions and Response	<ul style="list-style-type: none"> <li>• In line with Article 33 of the Constitution, stating that public participation should respect the freedom of expression of all participants, the stakeholders were given an opportunity to ask questions, share views or make comments about the planned project activities.</li> <li>• In all cases, the consultant sought to understand and respond to the PAPs concerns. All questions and queries were responded to and clarifications provided<sup>35</sup>.</li> </ul>

122. Public participation was achieved through a variety of information and consultation methods. These were contextualized to the type of stakeholder and complexity of information to be shared or collected.

Table 0-2: Consultation Methods

Stakeholder Type	Consultation Method
Project Affected Persons	<ul style="list-style-type: none"> <li>• Household socio-economic survey and Asset Inventory</li> <li>• Public meeting/baraza</li> </ul>
Institutions	<ul style="list-style-type: none"> <li>• Unstructured interviews through visits to offices.</li> <li>• Some e.g. KeNHA North Eastern regional Office, churches also attended the public meetings</li> </ul>
National and County Government Relevant departments and Agencies: National Land Commission, Survey and Adjudication offices, Office of the County Commissioner	<ul style="list-style-type: none"> <li>• Unstructured interviews through visits to various government offices.</li> <li>• Chiefs/ assistant chiefs also attended the public meetings</li> </ul>

<sup>34</sup> Due to fears of retaliation by the Eldera community (following a recent conflict), it was more of a security measure to hold the meeting at the AP grounds which are considered neutral grounds by both communities.

<sup>35</sup> The consultations showed a shortage of knowledge on acquisition processes.

### 6.1.1 Institutional Consultations

123. A number of institutional actors, both affected and those with interest or influence over the RAP process were visited as per list in Appendix B. Various concerns were raised in these formal and informal meetings, including:

- The importance of the upgrading of the road for the economic development and opening up of the area, and enhancing security; and
- The need for an alternative (bypass) route near Isiolo Junction to 78 Tank Battalion.

### 6.1.2 Community Consultations

124. A total of 15 public meetings targeting the PAPs and local administration were held. A meeting was held in each settlement, with the exception of Ngare Mara where the PAPs are three, thus facilitated to attend the meeting in Gambella.<sup>36</sup> The total attendance of the meetings was 917 persons, with a 28% female versus 72% male attendance. In addition, a meeting with the grievance committee in Isiolo Junction, facilitated by the Assistant County Commissioner was held.

Table 0-3: Summary of Public Meetings

Settlement Name	Date	Venue	Participants	Male	Female	Total Numbers Attended
Tulo Roba	14/5/19	Checheles Open grounds	<ul style="list-style-type: none"> <li>• Consultant</li> <li>• PAPs</li> <li>• Local Administration</li> <li>• KeNHA</li> </ul>	58	31	89
Gambella	15/5/19	Community Baraza Park	<ul style="list-style-type: none"> <li>• Consultant</li> <li>• PAPs</li> <li>• Local Administration</li> </ul>	42	17	59
Ndumuru	15/5/19	Community Baraza Park		34	29	63
Bullo 1	16/5/19	Harvest Church		72	6	78
Kachuru	21/5/19	Community Baraza Park		81	12	93
Yaqbarsadi	17/5/19	Community Baraza Park		16	9	25
Kulamawe	18/5/19	Community Baraza Park		83	40	123
Boji	18/5/19	Boji Primary School		37	17	54
Kambi Samaki	20/5/19	Community Baraza Park		64	20	84
Eldera	22/5/19	AP Camp grounds		9	9	18
Eldere	19/5/19	Community Baraza Park		53	21	74
Bullo 2	22/5/19	Community Baraza Park		24	8	32
Barkuke	23/5/19	Community Baraza Park		19	11	30
Janju	23/5/19	Community Baraza Park		25	20	45
Modogashe	24/5/19	Community Hall		42	8	50
<b>Total Numbers Reached</b>						<b>917</b>

The summary of views from the community meetings is presented below.

<sup>36</sup> Although Isiolo Junction is nearer, these PAPs could only attend Gambella (Meru County) meeting due to inter county boundary conflict. Ngare Mara is one of the areas under contestation between Isiolo and Meru Counties.

### 6.1.3 Summary of the views and consideration in the preparation of this RAP

125. Overall, some of the main consultation findings include:

- The community recognizes the importance of the construction of the road to open up the areas and provide more economic opportunities for them;
- A general shortage of knowledge on land acquisition processes and relevant land legislation, particularly on community land acquisition, compensation processes, and procedures.
- Contested land tenure classification: indications that although the land may be communal, individuals owned the 'plots' they had settled on by virtue of history;
- A reluctance towards the relocation of cultural property such as mosques and public cemeteries, with preference for road re-alignment to avoid impact; Concern over the possible impact on trees that served as community meeting places (see photos in Appendix C for such examples);
- Concerns on compensation; with several issues such as:
  - Timing: PAPs indicated fear that the acquisition would take place before the compensation,
  - Mistrust in the County government as a trustee of community land and thus custodian of compensation funds where the community is not registered.
  - Payment of compensation in cases of land with inter-county disputes and conflict;
  - Lack of legal documents to show ownership of land, as well as lack of formal land transfer documents in case of informal sales between community members;
  - Compensation of assets destroyed by natural calamities (floods, strong winds), during human conflict or demolished by owners;
- View on the need to maintain the current /available RoW in urban settlements;
- Overall fatigue with the number of meetings related to the project, as the people are awaiting physical progress/ commencement of works.
- Questions related to need to include new developments and improvements on land past the cutoff date;
- Need to reconstitute or make changes to the grievance redress committees;
- Changes in the PAP and Asset inventory, with some PAPs claiming they had been captured in the initial RAP but since removed and
- A general feeling of marginalization.

126. The views raised in this process have been incorporated in the preparation of this RAP. For instance,

- Sensitization on land reform and acquisition process is recommended in chapter 11 on RAP implementation;
- Refer to Chapter 3 on alternatives proposed to reduce displacement;
- Chapter 10 on GRM shows how the proposed mechanisms are shaped by public consultation, including the incorporation of traditional institutions;

- Chapter 7, 8, and 9 reflect elements of eligibility and livelihood restoration that recognizes proposals by the community.

## 6.2 Future Consultation with Project Affected Persons

127. Consultation with the PAPs and the general community was conducted at the early stages of project development during the review of the engineering designs, and later during the preparation of the draft RAPs.<sup>37</sup> This consultation has continued in the course of the update of the RAP, with the exercise taking on a sensitization - consultation approach, thus providing as detailed as possible and necessary information to the PAPs to enable them to participate better in the process. However, this does not preclude the need for future engagement and continued consultation and involvement of those affected by the project. It is expected that KeNHA will continue with this process, ensuring all future consultations are meaningful, conducted in good faith, and treated as a 2-way process with feedback on issues previously discussed provided. A number of key areas exist for further consultations:

- Possibility for road realignment to avoid cultural property, especially the cemeteries and mosques before, during and after the life of the project; community preferences are clear but feedback is required
- Consideration of alternatives for the Isiolo Junction section including prospects of a bypass; Community preferences are clear and this feedback was stated that the project was maintaining the existing 30 M RoW.

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<sup>37</sup> See Appendix E for a list of some of these meetings.

## 7 Eligibility Criteria

128. Criteria for Eligibility, as advocated for by OP 4.12 is applied in this RAP. The following categories of displaced persons are eligible for some form of assistance or compensation:

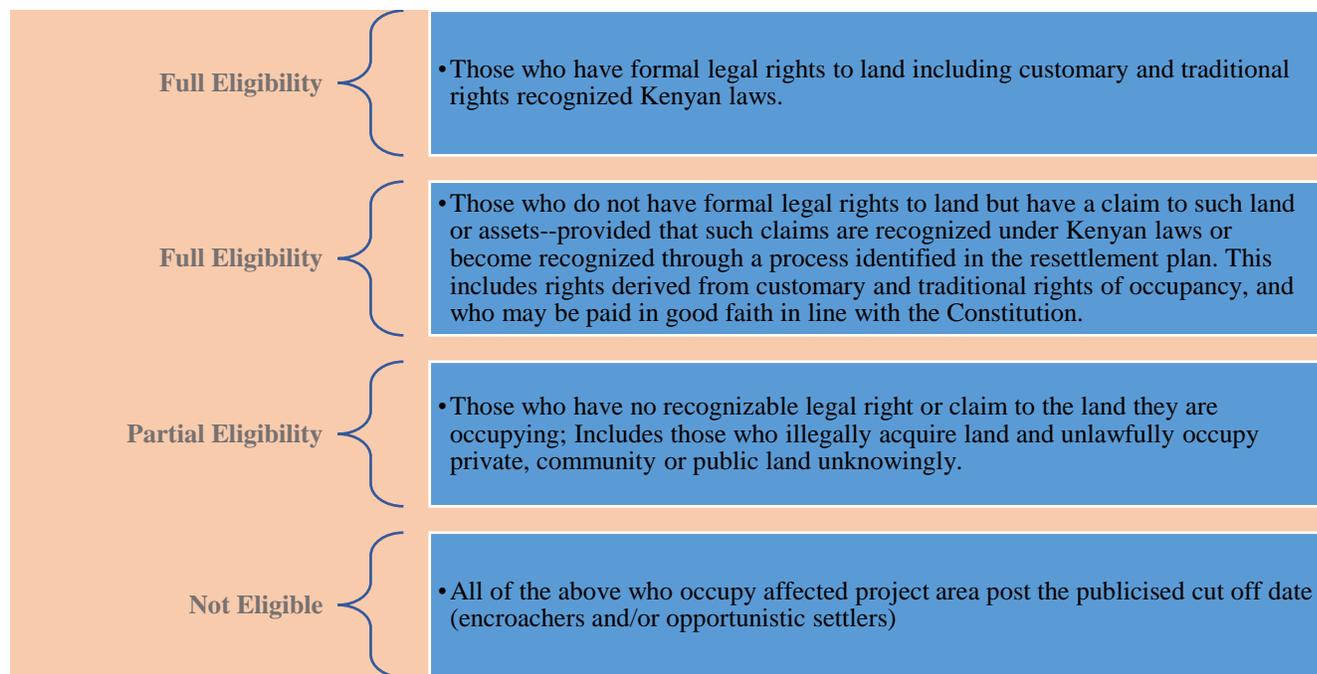


Figure 0-1: Eligibility Criteria

129. Displaced persons include persons facing direct economic and social impacts that result from the proposed project, and are caused by the involuntary taking of land (which includes anything growing on or permanently affixed to land, such as buildings and crops) resulting in (i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location.

### 7.2 Eligible Groups

130. Eligibility can be claimed by individuals or collectively as a group. For instance, in the case of community land, a ‘community’ can be defined based on usufruct rights to the land in question. In such cases, communities permanently losing land and/or access to assets and or resources will be eligible for compensation.

Table 0-1: Eligible Categories of Individual and Groups under this RAP

Type of Loss	Definition of Entitled Person (EP) or Group
Loss of Land	Owner(s) of land as per land record at cut-off date
	Groups/community with customary right of occupancy and use
Loss of living quarters and other physical	Legal owner of structure

structures	Residential Tenants occupying the structures
Loss of Commercial structures	Legal owner of structure
	Business Tenants occupying the structures
Loss of religious/cultural structures/assets	Individual owner e.g. of a grave
	Community or Households dependent on communally held services / assets e.g. mosques
Displacement from rented, occupied or commercial premise	Owner of Business/ Business persons occupying the premise
Loss of tree crops or standing crops	Owner(s) of tree and crops

## 7.2 Cut-Off Date

131. According to OP 4.12, the cut-off date is the date the census of PAPs begins. 2 cut off dates exist in the project area.

Table 0-2: Cut Off Dates

Section	Date Set in Initial RAP	Current cutoff date
Isiolo Junction (Tulo Roba) to Yaqbarsadi/ Yaqbarsathi	18 <sup>th</sup> December 2017, and communicated in the public meetings.	18 <sup>th</sup> December 2017 upheld and communicated in the public meetings
Kulamawe	Half section of the settlement (up to AP roadblock on way from Isiolo town set as 18 <sup>th</sup> December 2017.  Second half from roadblock to end of settlement (on way to Boji) set as 12 <sup>th</sup> December 2017.	18 <sup>th</sup> December 2017 upheld and communicated in the public meeting
Boji to Modogashe	12 <sup>th</sup> December 2017, and communicated in the public meetings	12 <sup>th</sup> December 2017, upheld and communicated in the public meetings

132. Any developments after the cut-off date are not eligible for compensation. The cutoff date helps in curbing opportunistic behavior among the project affected, preventing an influx of developments within a project's footprint in anticipation of compensation, as is common with speculators.

## 8 Project Impacts, Entitlement Matrix, and Valuation Criteria

### 8.1 Project Impacts

133. The upgrading to bitumen standards of the Isiolo-Modogashe road will lead to both positive and negative impacts.

#### 8.1.1 Project Benefits – Positive Impact

134. The road upgrade is proposed with an overall objective to promote sustainable growth and investment in the area.

*Table 0-1: Positive impacts*

Improved Road Infrastructure	This is the primary benefit derived from the upgrading works. Currently, parts of the road are clogged with sand making it difficult to maneuver through, while others have deteriorated, often forcing vehicles to adopt side tracks. Due the rains particularly, the road is impassable in many sections, which will change after the upgrade.
Improved access to basic social services	Improving infrastructure provides for better access to social services such as health and education.
Expand economic opportunities and promote investment and economic growth.	The road will act as an engine of economic development. It is expected to open up the area for development and spur investments in a region that has been marginalized for long. Specifically, the area is a major artery to regions like Somalia and Ethiopia for trade.

#### 8.1.2 Potential Negative Impacts

135. The project has significantly high impacts in terms of groups to be affected, with 98% been individuals/persons, while the rest includes an array of institutions such as a women group, church, company, institutions or a government agency. In addition, several community projects e.g. a water kiosk are affected which broadens the impacts of the project, given that such facilities are used by whole communities.

##### *i. Overall Types of Impacts*

136. Majority of the PAPs are individual asset owners (64%), as compared to tenants.

*Table 0-2: Categories of PAPs*

Settlement	Asset Owners	Tenants			Asset owner /tenant	Institutions/ groups	Total
		Residential	Commercial	Commercial/ residential			

Ngaremaraa	3						3
Kambi Samaki	19						19
Kachuru	49	19	21				89
Eldera	32	7	3				42
Janju	38						38
Yaqbarsadi	19	2	1			1	23
Barkuke	44		1			1	46
Gambella	36	8	1				45
Boji	71	1	1			2	75
Ndumuru	66	30	21	1			118
Bullo 1	41						41
Bullo 2	27						27
Eldere	51	3	24	1	1		80
Kulamawe	78	4	25	1		4	112
Modogashe	115	3	106			4	228
Tulo Roba*	0	0	0	0		0	0
<b>Total</b>	<b>689</b>	<b>77</b>	<b>204</b>	<b>3</b>	<b>1</b>	<b>12</b>	<b>986</b>

\*1-At the Isiolo junction area, also known as Tulo Roba, the project road has been fitted in the existing 30M RoW and hence the impact has been reduced by design engineering interventions.

137. In terms of the nature of impacts, a total of 974 project affected persons will be physically displaced in terms of losing structures, and/or shelter<sup>38</sup>. This includes tenants also losing shelter and have to find alternative accommodation for their families or businesses.

Table 0-3: Physical Displacement of Individual PAPs<sup>39</sup>

Settlement	Asset Owners		Tenants		Both Asset owner and Tenant	Totals
	Male	Female	Male	Female	Female	
Ngaremara	2	1				3
Kambi Samaki	10	9				19
Kachuru	34	15	18	22		89
Eldera	13	19	6	4		42
Janju	27	11				38
Yaqbarsadi	11	8	1	2		22
Barkuke	29	15		1		45
Gambella	20	16	9			45

<sup>38</sup> Excluding institutions

<sup>39</sup> Excluding institutions, groups etc.

<b>Boji</b>	38	33	1	1		73
<b>Ndumuru</b>	59	7	21	31		118
<b>Bullo 1</b>	41					41
<b>Bullo 2</b>	14	13				27
<b>Eldere</b>	32	19	16	12	1	80
<b>Kulamawe</b>	50	29	20	9		108
<b>Modogashe</b>	72	43	62	47		224
<b>Tulo Roba</b>	0	0	0	0		0
<b>Totals</b>	452	238	154	129	1	974

138. On the other hand, economic displacement affects 497 PAPs who will lose their source of income directly through the demolition of the structure they use for business, structures they may have rented out or tenants running businesses who may need to relocate. 293 PAPs will suffer both physical and economic impact.

Table 0-4: Economic Displacement

	Asset Owner		Tenants	
	Male	Female	Male	Female
<b>Ngaremara</b>		1		
<b>Kambi Samaki</b>	4	5		
<b>Kachuru</b>	25	12	12	9
<b>Eldera</b>	4	5	2	1
<b>Janju</b>	10	3		
<b>Yaqbarsadi</b>		3		1
<b>Barkuke</b>	4	2		1
<b>Gambella</b>	7	2		
<b>Boji</b>	8	11		
<b>Ndumuru</b>	45	5	7	15
<b>Bullo 1</b>	10			
<b>Bullo 2</b>	8	12		
<b>Eldere</b>	12	8	14	11
<b>Kulamawe</b>	18	11	17	8
<b>Modogashe</b>	34	26	61	45
<b>Tulo Roba</b>	0	0	0	63
<b>Total</b>	<b>189</b>	<b>104</b>	<b>113</b>	<b>91</b>

## ii. Land Requirements

139. The project has an existing corridor for the proposed works.

140. Three land tenure systems are found in the project area, with the importance of structuring the distribution of property rights within the affected communities and areas:

Private: Rights are assigned to individuals, groups, institutions, corporate or commercial entities etc. Sections of Isiolo town (Tulo Roba) area have been adjudicated and assigned to individuals. The Road project is not acquiring any land in this category.

- State (Public) land, where property rights are assigned to some authority in the public sector. Here, the 30M RoW at the first 4Km section and 60M RoW on the rest of the road are public land vested or under the custody of KeNHA, a government agency under MoTIHUD.
- Customary: Majority of Isiolo and Garissa counties, largely occupied by pastoralists groups fall under this tenure system. In addition, this is administered by un registered ‘communities’ under the right of commons.

141. The project has an existing RoW and the design has largely utilized the same to fit the proposed works. Where any land will be required outside the current reserve, and there is any dispute, and where it is not possible to resolve such in time (and to avoid the delays in the project), the compensation funds shall be deposited into a special compensation account held by the NLC, and notifying any persons/actors interested accordingly, up to the time when the issue will be resolved. This is already provided for in the Kenyan Law.

### iii. Impact on Vulnerable Groups

142. Vulnerable groups comprise of particular groups of socially distressed people, who may suffer disproportionately from the effects of the resettlement, compared to other project affected persons. They may include, women headed households, disabled, chronically ill, the elderly<sup>40</sup> etc. These were identified in order to design additional mitigation measures, over and above the compensation applying to all other PAPs. In the project affected area, majority vulnerable comprise of women headed households, showing women in the project area are more at risk of impoverishment if proper mitigation measures are not designed.

Table 0-5: Vulnerable groups

Settlement Name	Gender		Vulnerability Type							
	Male	Female	Female household head	Female household head with low education	Elderly	Elderly with no/little education	Elderly female	Elderly female with little	Disabled	Total
<b>Ngaremara</b>		1	1							1
<b>Kambi Samaki</b>		4	3	1						4
<b>Kachuru</b>	2	14	9	4	2	1				16
<b>Eldera</b>		15	12	2				1		15

<sup>40</sup> 65 and above in the Kenyan context.

<b>Janju</b>	4	2		1	2	3				<b>6</b>
<b>Yaqbarsadi</b>	4	7	4	2	4	1				<b>11</b>
<b>Barkuke</b>	3	10	8	2	2	1				<b>13</b>
<b>Gambella</b>	3	14	5	6	2		2	1	1	<b>17</b>
<b>Boji</b>		19	15	3	1					<b>19</b>
<b>Ndumuru</b>	12	5	3	2	8	4				<b>17</b>
<b>Bullo 1</b>	7				4	3				<b>7</b>
<b>Bullo 2</b>	2	5	3	1	1	2				<b>7</b>
<b>Eldere</b>	5	11	10		6					<b>16</b>
<b>Kulamawe</b>	7	20	13	6	7	1				<b>27</b>
<b>Modogashe</b>	11	38	30	5	12	2				<b>49</b>
<b>Tuloroba</b>	0	0	0		0					<b>0</b>
	<b>60</b>	<b>165</b>	<b>116</b>	<b>35</b>	<b>51</b>	<b>18</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>225</b>

#### iv. Loss of Structures

143. Where structures have a defined outline by virtue of having a wall, floor and roof, a categorization was devised that includes:

- Permanent structures: Houses/structures with modern finishes including concrete and natural stone. The main determinant has been the presence of these materials in the floor or wall.
- Semi-permanent structures: Using Sawn timber, timber off-cuts or sun-dried bricks. or cemented floors
- Temporary structures: Typically thatched roofs, earth floor, manyattas and *dhash* etc.

144. These comprise of houses, latrines, *manyattas/Dhash*, mosques, church hall, shades/sheds etc. For other types of structures which do not fall neatly into these categories, these are mentioned in the table below. Majority of the permanent structures are found in the bigger towns such as *Tulo Roba*, Modogashe and Kulamawe carry most of the structures to be affected.

Table 0-6: Nature/Type of Structures to be affected

	House	Manyatta/Dhash/hut	Shop/Kiosk/Hotel/bar	Kitchens	Shed <sup>41</sup>	Shade <sup>42</sup>	Latrine	Gate/Fence/Wall	Tank/water pan/kiosk	store	Others <sup>43</sup>	Total
<b>Ngaremara</b>	3		1	0	2	0	0	1				7
<b>Kambi Samaki</b>	6	16	0	0	3	1	1	1	1		1	29
<b>Kachuru</b>	34	5	24	9	2	2	0	5		2		83

<sup>41</sup> Refers to an animal shelter

<sup>42</sup> Structure meant to shield the family from the sun...often used as a resting area.

<sup>43</sup> Includes foundations, parking lots, septic tanks etc.

<b>Eldera</b>	35	13	11	0	1	0	1	4			1	66
<b>Janju</b>	4	29	9	0	5	0	2	8				57
<b>Yaqbarsadi</b>	16	8	4	5	4	2	0	0		1	2	42
<b>Barkuke</b>	17	32	2	0	3	0	2	24				80
<b>Gambella</b>	31	0	10	5	4	1	3	1				55
<b>Boji</b>	62	47	17	2	2	2	2	5	2		4	143
<b>Ndumuru</b>	37	0	46	5	2	4	0	0		2	2	98
<b>Bullo 1</b>	10	0	5	2	0	28	0	0		1	1	47
<b>Bullo 2</b>	8	28	4	0	0	0	0	4	1		1	45
<b>Eldere</b>	48	29	15	0	2	8	1	18				121
<b>Kulamawe</b>	88	26	34	13	13	5	26	56	13	3	18	282
<b>Modogashe</b>	94	39	92	0	3	3	29	55	3	1	12	328
<b>Tulo Roba</b>												
<b>Total</b>	493	272	274	41	46	56	67	182	20	10	42	1503

#### v. Cultural and Religious Property

145. There are 5 cemeteries within the towns of Kambi Samaki, Bullo 2, Kulamawe and Modogashe with the latter hosting 2, 1 on one either side of the proposed road corridor.

To ensure that these are not affected, and in line with the culture of the people in the area, the project has adopted the available 15 metre CoI to fit the proposed works. From the community information, the cemeteries are estimated to host approximately 650-800 graves and which have been avoided entirely.

Table 0-7: Public/private Cemeteries

Settlement	Facility	Estimated Number of Graves
Modogashe	Public cemetery	500
Modogashe	Public cemetery	100
Kulamawe	Contested if owned by individual	50-53
Kambi Samaki	Contested if owned by individual family or community	15
Bullo 2	Public cemetery	10

146. Also, a mosque is affected in Modogashe, Tulo Roba, Yaqbarsadi, Kulamawe (2 both male and female), and Boji, with indications that while some community members were willing to relocate the structure, in some there was outright opposition to those prospects. In Barkuke, a fence owned by a mosque is affected. In Tulo Roba, a church hall is affected.

To mitigate all these socio-cultural impacts, the project has adopted a defined RoW of 30metres in the aforementioned settlements to avoid the relocation of such facilities unless where absolutely unavoidable.

### vi. *Loss of Community Services and Structures*

147. Several community structures essential for the provision of much-needed services such as water and education are affected, as per the table below. Particularly, for the affected water projects, this has a potential to cause harm to the PAPs given that water scarcity in the semi-arid and arid areas is already a major problem, with impact on a whole community.

Table 0-8: *Affected Community Facilities*

Settlement	Affected Community Facility
Bullo 2	Community Water Kiosk
Boji	Community Water Kiosk
Modogashe	2 Community Water Kiosks
	Youth Polytechnic
Kulamawe	2 Community Water Points
	Social Hall

To mitigate all the loss of Community Services impacts, the project has considered establishing new investments to replace the old assets with better quality facilities that will be undertaken for the entire project. This will ensure improvement of livelihoods in the aforementioned settlements since the project will incorporate other related infrastructures to add onto those that will be relocated.

### vii. *Impact on Public Services and Structures*

148. Impacts occasioned by the project on public institutions include the following:-

Table 0-9: *Affected State/Public Institutions*

Settlement	Affected State/Public Institution
Eldera/Eldere	Chief's Office
	Administration Police Camp
Kulamawe	Chief's Camp
	Kula Mawe Primary/nursery School ( 4 classrooms)

To mitigate all these socio-cultural impacts, the project has adopted a defined RoW of 30metres in the aforementioned settlements to avoid the relocation of such facilities unless where absolutely unavoidable. The public assets if being affected in any way will be replaced with better quality facilities through the project.

149. For some of the affected public facilities, their relocation to strategic places is crucial for the co-existence of some communities. In the case of Eldere/Eldera, the Affected AP camp is crucial for security purposes and will be improved through the project.

## 8.2 Entitlement Matrix

150. To mitigate the above mentioned, impacts, an entitlement matrix was drawn.

Table 0-10: Entitlement Matrix

Type of Loss/Affected Right	Defined PAP/Eligibility	Indicative Areas	Compensation Strategy	Other Forms of Assistance/Entitlements
<b>Land</b>				
Permanent Loss of any type of Land regardless of severity <sup>44</sup>	Private Landowner (individual or group) with legal document e.g. title. In case of individual, spouse included.	Isiolo Junction/ Tulo Roba area	<ul style="list-style-type: none"> <li>• Provide PAP with cash compensation at full replacement cost.</li> <li>• If residual is unusable, or 'orphan' land, subject to case by case NLC determination and recommendation for full acquisition of land.</li> </ul>	<ul style="list-style-type: none"> <li>• All compensation before notice to relocate.</li> <li>• 15% disturbance allowance</li> <li>• Maintained access to unaffected remaining land thus need for access provision in detailed road design.</li> <li>• Access to Grievance mechanism.</li> <li>• Right to request for orphan or residual land to be acquired if not economically viable.</li> <li>• Owner eligible to participate in livelihood restoration activities if they wish.</li> </ul>
	Private Owner with no legal documents e.g. title but land gazetted for adjudication prior cutoff date i.e. legalizable owner or some form of recognized land. In case of individual, spouse included.	Majority sections of Meru  Modogashe	<ul style="list-style-type: none"> <li>• Compensation of the land at replacement value on good faith, NLC to access the closed registry to determine the land owner.</li> <li>• If residual is unusable, or 'orphan' land, subject to case by case NLC determination and recommendation for full acquisition of land.</li> </ul>	
	Un registered community but with user rights	Isiolo and Garissa County sections	Cash compensation at replacement value. Funds deposited with the County as a trustee until community registers. Those with Registered Rights to get cash compensation at full replacement cost.	

<sup>44</sup> Temporal loss of land due to occupation by contractor or KeNHA during construction not covered in this RAP, thus compensation often at commercial rates to be negotiated outside this RAP.

	Unlawful occupant of public, private and communal Land	Whole route	No compensation for land	• Access to Grievance mechanism.
Temporal loss or damage to Land/Property during inspection to ascertain the suitability of the land for acquisition for the road upgrading.	Private, public or community land/property owner		Payment in full, of just compensation for any damage resulting from the entry. The amount to be negotiated directly with the owner of the land/property	• Access to Grievance mechanism.
<b>Individual and Institutional Structures</b>				
Loss of all structure types irrespective of use.	Owner of Structure regardless of legal ownership/registration status (and their spouse).	Whole route	Cash compensation at full replacement cost free of depreciation and transaction costs	<ul style="list-style-type: none"> <li>• 15% disturbance allowance</li> <li>• Right to Salvage</li> <li>• Right to request for orphan or residual structure to be acquired if not structurally viable.</li> <li>• Owner eligible to participate in livelihood restoration activities if they wish.</li> <li>• Access to Grievance mechanism.</li> </ul>
	Business Tenants		3 months restitution based on assessed monthly incomes and a 3 months relocation notice	Access to Grievance mechanism.
	Residential Tenants		3 months relocation notice	Access to Grievance mechanism.
<b>Communal Assets/structures</b>				
Socio infrastructure e.g. boreholes	Community/Users of the services and assets	Whole route	<ul style="list-style-type: none"> <li>• Provision of replacement facilities within the settlement, with a higher capacity to serve more community members.</li> <li>• No cash compensation</li> </ul>	• Access to Grievance mechanism.
Cultural/Religious heritage sites/assets e.g. cemeteries, mosques, Graves	Community/Public		<ul style="list-style-type: none"> <li>• First option is re-alignment of road route to avoid the facilities where feasible.</li> <li>• If no re-alignment: <ul style="list-style-type: none"> <li>○ Purchase of land or assistance in identification of alternative sites.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 15% disturbance to realize religious and cultural rituals.</li> <li>• Access to Grievance mechanism.</li> </ul>

			<ul style="list-style-type: none"> <li>○ Cash compensation only where recognized committees exist to facilitate and oversee the relocation and replacement of facilities.</li> <li>○ Where no committees exist, KeNHA in collaboration with community forms one and facilitates required safeguards to ensure money is used for the right purpose, or agreement on whether KeNHA hires a contractor to work with the community to redesign and rebuild the facility. KeNHA pays the contractor on community approval of completion of works.</li> <li>○ In all cases, KeNHA facilitates rebuild of a bigger facility.</li> </ul>	
	Individual/Family owners		<ul style="list-style-type: none"> <li>● Cash compensation.</li> </ul>	<ul style="list-style-type: none"> <li>● 15% disturbance to realize religious and cultural rituals.</li> </ul>
<b>Business and Income</b>				
Loss of business	Business building owner (if premises rented out) regardless of legal ownership/ registration status	Whole route	3 months rental income per tenant lost verification by NLC	<ul style="list-style-type: none"> <li>● Eligible to participate in livelihood restoration activities such as markets proposed by KeNHA in some of the settlements.</li> <li>● Access to Grievance mechanism.</li> </ul>
	Owner of Business		3 months transitional assistance based on existing monthly income	
<b>Trees</b>				
Loss of all types of trees	Individual/ group owner regardless of legal status of owner	Whole route	Cash compensation at full replacement cost using KFS rates	<ul style="list-style-type: none"> <li>● Right to salvage</li> <li>● Access to Grievance mechanism.</li> </ul>
	Community as owners and users (in the latter where the owner is an		Cash compensation at replacement value to owner.	

	individual but community uses the (tree)			
<b>Loss of Public Utilities</b>				
Power lines	Public	Whole route	Physical relocation and reinstatement of access by relevant authorities.	
<b>Vulnerability</b>				
Any losses incurred by the vulnerable	Female household heads, elderly, persons living with disabilities.	Whole route	<ul style="list-style-type: none"> <li>• Provide PAP with cash compensation at full replacement cost for lost assets</li> <li>• Compensation in kind measures be adopted where additional need is established</li> </ul>	<ul style="list-style-type: none"> <li>• Priority in processing/ disbursement of compensation</li> <li>• Priority eligibility to livelihood restoration interventions e.g. markets. Where KeNHA has proposed markets in some settlements, vulnerable get preferential treatment in getting strategic locations in new market centres while the markets will be designed to take into consideration accessibility by the physically challenged.</li> <li>• Employment priority in project related jobs.</li> <li>• Recommendation for additional assistance by county and national government programmes such as the Inua Jamii programme if they qualify.</li> </ul>
<b>Unforeseen impacts, if any</b>				
Design of additional mitigation measures by KeNHA on a case by case basis	Private, public or community land/property owner	Whole route		

### 8.3 Valuation Criteria, Methodology, and Process

151. As the previous section in this chapter has shown, several items are affected and a value needs to be attached/associated through a valuation process. Here valuation is defined as the art or science of establishing the value (worth) of a particular interest in property for a specific purpose and at a particular moment in time; taking into consideration all the features of the property, and considering the relevant underlying dynamics of the market. Therefore, asset valuation is a way of objectively determining the worth of an asset by a qualified professional. In Kenya, the Valuers Act cap 532 prescribes who is qualified to undertake valuation, providing for a registered valuer under the Valuers registration board, and in practice the valuer should be licenced to practice as at the time of valuation of the property. According to the International Valuation Standards Council (IVSC) there are 3 main approaches towards valuation, and a myriad of different detailed methods under these:<sup>45</sup>
- i. **A Market approach derives the value of property by** comparing the asset with identical or comparable (similar) asset for which price information is available. Attributes of similar property in similar location, condition, type etc. are considered, then one makes reasonable adjustments till one arrives at a value. Under this, the most common is the comparable transactions method (also called the guideline transactions or sales comparison method), and which uses information on transactions involving assets that are similar to derive an indication value.
  - ii. **The Income approach** provides an indication of value by converting current and/or future cash flow to a single current value i.e. the value of an asset is determined by reference to the value of income, cash flow or cost savings generated by the asset. For instance, the rent achievable from a property is estimated for a period of time, or sales, and then in some cases, the operating expenses are subtracted from the income. A multiplier can then be applied to net income. The basic assumption here is that one expects a return on an investment.
  - iii. The third is **the Cost approach** (also commonly referred to as the contractor's test/method). This estimates how much it would cost to build the asset under valuation. Given its basic assumption is that one will pay no more for an asset than the cost to obtain an asset of equal usefulness or purpose in normal circumstances, the approach therefore provides estimate value of the cost of putting up a new building, then depreciation is computed to achieve depreciated replacement cost of the building. If land is involved, the final value estimate is arrived at by adding the value of the land and the depreciated replacement cost of the building.
152. Under this, methods such as replacement cost (value by calculating the cost of a similar asset offering equivalent utility) and reproduction (value by calculating the cost to recreating a replica of an asset), and summation (value of an asset by the addition of the separate values of its component parts) are most common, noting in this case, replacement cost replicates the asset and adjusts for physical deterioration. The replacement method here is thus called Depreciated Replacement Cost approach.

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<sup>45</sup> International Valuation Standards Council, 2017.

153. These valuation methods are methods traditionally used when acquiring properties of various nature. The reliability of each approach however depends on the availability and comparability of market data as well as the motivation and thinking of purchasers, or valuer making adjustments where necessary to fit the local context.

154. Generally, this RAP has adopted the three approaches of valuation (with adjustment where needed) as follows:

- Land valuation is based on Market approach where comparable sales of similar parcels of land are adjusted from location to location to arrive at a value for undeveloped land.
- Income approach is applied where the property is revenue earning such as rental houses which are capitalized in perpetuity.
- Cost approach is used for structures owned and occupied by the project affected persons whereby the cost of the construction is estimated at rates available in the market or professional documents are multiplied with the area to come up with a value of the structure.

### **8.3.1 Overall Adopted World Bank Recommended Full Replacement Cost Method**

155. Overall, this RAP adopts the World Bank recommended replacement cost method, which requires the rate of compensation for lost assets be calculated at full replacement cost, that is, the market value of the assets (without considering depreciation) plus transaction costs. Ideally, the calculation of replacement costs should be based on:

- Fair market value at the time of dispossession;
- Transaction/legalization costs;
- Transitional and restoration (land preparation and reconstruction) costs; and,
- Other applicable payments.

156. This report therefore has assumed that “replacement cost” refers to the cost of buying or creating an alternative new asset that provides the same utility as provided by the subject property. However, arriving at the specific figures relies on a variety of the above mentioned valuation approaches/methods as will later be shown in the following sections. In appraisal practice, an approach to value is included or eliminated based on its applicability to the property type being valued and the quality of information available.

Principles in the replacement cost approach adopted in this RAP include:

- No depreciation: The physical deterioration of the asset is not considered: This simply translates to assessing “replacement cost” as if the structure being valued is new and has been constructed using modern materials and current standards, design, layout, and quality of workmanship;
- Right to Salvage: The ability to use the asset’s construction materials during relocation or after demolishing is not discounted in the replacement method, but rather considered as an additional benefit to the PAPs;
- Application of a Disturbance Allowance: A 15% disturbance allowance of the total compensation for assets and livelihood has been effected.
- All PAPs are entitled to a three months’ notice to relocate.

157. To arrive at any figure, a comprehensive PAPs and assets inventory had to be developed. Therefore, all assets within the asset inventory for the initial two RAPs were physically verified through transect walks along the proposed route, of which sections were already beacons by KeNHA. Where no beacons were available, the land acquisition plan/map coordinates were fed into GPS devices and used to verify the location of the assets as within or without the proposed route. An asset (and PAP inventory) form was filled for each PAP and their associated assets, tenants recorded etc.
158. The exercise was undertaken by registered valuers working in collaboration with the local administration e.g. a chief, assistant chief or an elder nominated by the office of the chief. The exercise noted the existence of the assets on ground. Where new assets had come up after the project cut off, these were not added into the inventory as the cut off was upheld, with verification of such including questions to the owners on construction dates as well as verification by the accompanying local administration representative. All assets not in the proposed RoW were removed from the original list and the reasons why explained to the owner.
159. In some cases, assets previously in the inventory but could not be verified due to alleged natural calamities or conflict will be retained in the inventory but no value is attached to them as compensation for these will largely be an administrative decision by KeNHA rather than a professional one.
- i. **Land:** The basis of valuation of land is Market Value. Market Value is the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing, wherein the parties had each acted knowledgeably, prudently, and without compulsion. Discussions show that majority land changes hands in the absence of any documentation with verbal agreements considered binding due to the strong community ties, and others based on written agreements, while most areas so considered as community land are actually claimed by individuals who often sell to others. This explains the use of the terminology of 'plots' versus land, and is behind is one of the major reasons why the community insisted the consultant uses the term 'plots' – to reflect the indication that there has been a process to informally demarcate it as a parcel. Such transactions were used to place a value on community land given these funds will be held in trust by the county government. It is important to note that all cases, whether private or community land, permanent acquisition applies as the law does not allow occupation of road reserves.
  - ii. **Structures:** All types of structures were assessed as long as they fall within the proposed road corridor, and meet the cutoff date requirement. Main structures as well as ancillary structures were inspected ranging from main houses of modern designs to local temporary structures used for both commercial and residential use. The ancillary structures that are stand alone were also inspected including pit latrines, bathrooms, water tanks, cow shades, sheep and goat units, poultry houses and dog kennels among others. Structures such as septic tanks which cannot stand alone were captured as improvements on the main structures thereby increasing the value for such structures. The valuers

inspected every property where access was provided as at the time of inspection with a property-by-property inspection for fixed assets strategy been employed, and the application of the International Property Measurement Standards (IPMS) while measuring the built up/plinth areas of the structures using a tape measure.<sup>46</sup> Photos of structures were taken for each of the structures where the owners allowed access. These are attached in the schedule as evidence of inspection. A number of factors was considered while valuing structures:

- Type of structure: House, latrine, *Manyatta/Dhash*,
- Size
- Type of construction materials,
- Stage of construction/level of completion - if it's a construction site,
- Accommodation details
- Quality of finishes,
- Impact on structure etc.

Three types of structures were established:

- Permanent structures: Houses/structures with modern finishes including concrete and natural stone. The main determinant been the presence of these materials in the floor or wall.
- Semi-permanent structures: Using Sawn timber, timber off-cuts or sun-dried bricks. or cemented floors
- Temporary structures: Typically thatched roofs, earth floor, manyattas and *dhash* etc

However, to determine the applicable rates for a type of structure, the cost/contractors test was used. The rates applied were obtained from the Institute of Quantity Surveyor of Kenya (IQSK) quarterly published construction rates the latest being the 1<sup>st</sup> quarter of 2019. The valuation basis of all structures was the full Replacement Cost. Depreciation was not taken into account.

- iii. **Trees:** Trees were assessed based on 3 types/ levels of maturity – Young, Average/Medium and mature. Rates were obtained from the Forests (Fees and Charges) Regulations 2016 (The Forests Act, 2005). The rates were gazetted by then Ministry of Environment, Natural Resources and Regional Development Authorities, vide legal notice no. 21 of 2016. The consideration for fruit trees was based on perennial crop and not yield per unit.
- iv. **Crops:** No crops were found along the route as at inspection time, due to an ongoing long drought.
- v. **Businesses (Lost business/rental income):** Loss of income due to relocation of structures can have detrimental impact on households. Therefore, compensation to business owners and landlords as well as business tenants alike was taken into account. This is because it will take some time to reestablish the business and for rental properties compensation shall be

<sup>46</sup> Where valuers are undertaking valuation work relating to real estate assets or liabilities, they must have regard to the International Property Measurement Standards wherever applicable.

made depending on the duration it will take to construct/replace the structure/ building. Business Tenants shall be compensated to take care of the time they will be looking for alternative accommodation for their businesses. Since formal business records could not be ascertained, this was on a pro rata basis. Rental allowance was triangulated through asking several tenants in the same business as the sizes of rooms rented out are standardized. Landlords are entitled to a 3 months' allowance per tenant lost. All the persons identified as at of the cutoff date in this category will be compensated regardless of their legal status.

- vi. **Community Assets:** Valuation of community assets such as water pans were based on discussions with local authorities on comparable costs of for instance drilling one through a private firm.
- vii. **Cultural Property and Heritage:** The public participation undertaken shows a preference by the community for the realignment of the road to avoid cemeteries and other cultural/religious assets such as mosques, shrines and graves. An estimate has been provided to value such where there were visible construction, to allow for a replacement value if any asset is going to be affected. Disturbance (if any) is considered through the addition of the 15% disturbance allowance for undertaking some of the cultural/religious ceremonies and rituals that may be required in line with local beliefs and customs during physical relocation.

In case, where a chance find of buried or underground cultural heritage related sites, remains or artifacts are found, KeNHA through National museums of Kenya (NMK) shall provide for a chance find procedures in procurement documents and instructions to contractors.

### 8.3.2 Payment Options

160. Cash compensation is proposed as the preferred option for individual/private assets and loss of income.

In the case of community assets, the payment options also vary. Religious assets, if impact cannot be avoided, can be paid in cash where most have committees in charge of the mosque thus can organize for relocation. The alternative is to also hire a contractor to work with the committee and redesign, relocate the mosque. However, assets such as community water kiosks will be in kind compensation and relocation.

## 9 Resettlement and Income Restoration

161. Where possible, large scale resettlement should be avoided. This is due to its possible impacts; production systems may be disrupted and people may be impoverished when their productive assets are lost. Community networks are weakened, kin members dispersed and loss of cultural identity where people move for long distances. Therefore, involuntary resettlement should be avoided where possible or minimized and possible alternatives explored.

### 9.1 Resettlement and Relocation

162. The location of the road i.e. majority in a rural setting, is a major advantage in terms of resettlement. This largely means that although communities have settled in towns along the route, the prospects of getting resettlement land (where compensation is provided) in the vicinity (cost allowing) will not be a major challenge. This means social support systems and networks will not be majorly disrupted, affected persons can still consider themselves as part of their current 'communities' and derived the same advantages from the road been constructed. To their disadvantage, these will have ceded the prime locations for business to the road through acquisition. *(However, in urban areas such as Isiolo Junction and Modogashe as explained in earlier sections, resettlement and relocation for a project point of view i.e. been undertaken by the project is likely to be challenging due to the lack of land that may be preferred by the PAPs in large numbers and within the proffered locations. The same has been mitigated as indicated elsewhere in this report).* Options available were discussed and agreed on with the community. As section 4.2.6 shows, part of the interviewed PAPs would prefer cash compensation, while the rest would like replacement land and/or structures.

Table 0-1: Options for Physical Resettlement

<p><b>a) No resettlement is considered:</b></p> <ul style="list-style-type: none"> <li>Where alternatives are too expensive or policy objectives cannot be met.</li> </ul>	<p><b>b) On site resettlement where:</b></p> <ul style="list-style-type: none"> <li>Population densities are too low</li> <li>It is possible to consolidate affected members in one area without having to relocate them</li> </ul>	<p><b>c) Partial Resettlement where:</b></p> <ul style="list-style-type: none"> <li>Whole site is not required for project</li> <li>It is possible to minimize or isolate land take</li> <li>Fraction of affected community requires physical relocation.</li> </ul>
<p><b>d) Resettlement to nearby and Multiple Sites, where:</b></p> <ul style="list-style-type: none"> <li>Full resettlement is necessary but depends on the structure of the community and land market</li> </ul>	<p><b>e) Resettlement to Margins of Developed Areas, as they:</b></p> <ul style="list-style-type: none"> <li>Offer cheaper land than central areas but still have access to utilities and infrastructure</li> </ul>	<p><b>f) Resettlement to Distant Sites, as</b></p> <ul style="list-style-type: none"> <li>Land costs and availability considerations favorable</li> <li>But sites lack employment opportunities and wider social support networks.</li> </ul>

163. While options a,b,c and d are most favourable and will eliminate the problem of host communities, e must be based on the discussion and agreement with the affected person, while f is highly discouraged in this context.

## 9.2 Livelihood Restoration

164. Even where temporary loss of business is involved, this has a potential to impact on or result in long term impoverishment of the project affected persons. In addition, resettlement should be pursued as a development option, seeking to improve the lives of those affected. This requires specific and deliberate strategies in investment in the lives of those affected.
165. Chapter 4 on the socio-economic baseline shows that the project affected are engaged in two main affected activities i.e. Livestock production and various entrepreneurial activities, with the most prominent being retail trading. It is important to note that the livestock based livelihoods will not be adversely affected given the land requirement for the land is minimal compared to the existing land. Therefore, no pasture land is affected. The key consideration will be the replacement of the few affected watering points.
166. Transitions to new livelihoods can be faced with challenges, thus as a rule of the thumb, should be avoided to the extent possible. Thus additional livelihood support should largely be geared towards what is existing rather than introducing new activities given that long term livelihood components in restoration can take a long time to generate results. The key principles here include:
- Adopt a multi-strategy approach: to ensure some can succeed and households have some options;
  - Maximize project opportunities, but be careful of creating dependency where project has a limited life;
  - Be realistic about what is achievable;
  - Focus on sustainable strategies;
  - Match PAPs to opportunities - build on existing knowledge/ expertise where possible and provide early capacity building;
  - Consider limitations to participation in livelihood restoration interventions; some groups may need affirmative action to benefit from livelihood programs; and
  - Supporting existing enterprises; (and Alternative Enterprises with caution).

### 9.2.1 Wage and Enterprise Based Livelihoods

167. Given the pre dominance of wage and enterprise based livelihoods (and as the RAP shows, a large number of businesses run by structure owners and tenants are affected, this should essentially start from maximizing the possible and available project based opportunities:
- A Local Buying Program during the construction of the road will assist with building capability and capacity in the local supply chain. It focuses on the capacity and capabilities of local businesses in the region of the project as suppliers of various materials, goods and services;
  - Provision of employment in the project: semi and unskilled jobs will be reserved for project affected persons and the community in general through working with local committees to identify those to work in the project. This would however require a mention in the contracts with project contractors to ensure and demonstrate temporary or longer term employment of local workers.

- Enhancing the social investment as part of the proposed road infrastructure: KeNHA has proposed service roads and markets at Ndumuru, Kachuru and Kulamawe markets, while the specific location for bus bays which have been proposed will be determined during construction. Two (2) locations have been identified to have lorry parking namely Ndumuru and Kulamawe Markets. The basis of identifying these sites was largely the existing trading and trucks/vehicle parking behaviours as observed by the design consultant. Such facilities will be enhanced to have a larger economic impact on the cited locations. For instance, the lorry parking could better be designed as rest stops to integrate some economic activities targeting the women and youth. All these will be informed and confirmed through the needs assessment for the project.

168. Others will include entrepreneurial training for existing small businesses that will be affected by the road upgrade through its land acquisition, as well as support with small grants for women and vulnerable groups. The findings already show that a number of these exist, are functional and are impacted directly by the project.

### **9.2.2 Additional Social and Economic Projects**

169. KeNHA has already advertised for a social needs assessment for the identification of additional social and community programmes to benefit the project area as a whole. Although such projects cannot be earmarked for the PAPs, they play an important role in livelihood and restoration of services.

### **9.2.3 Wage and Special Attention to Vulnerable Groups**

170. Affirmative action in proposed projects (depending on what is implemented) should be taken to ensure the vulnerable groups benefit. This can be achieved through recommendation of the said groups, or bringing to their attention of the existence of the programmes, its cycles and application process, which can be achieved through collaboration with the relevant social support and funding organizations/offices at the county level.

## 10 Grievance Redress Mechanism

171. A key principle of any project implementation is to prevent or minimise grievances rather than going through a redress process. This can be achieved through commitment to a human rights based approach towards displacement and resettlement, considerate project design, ensuring full participation and consultation of the Project Affected Persons and establishing extensive communication and coordination between the affected communities, and the project.
172. Involuntary displacement and resettlement is therefore prone to grievances, which if not handled swiftly can significantly delay the successful completion of the project. The RAP implementation process therefore provides opportunities for the PAPs to air and articulate their queries, concerns, issues, complaints, dissatisfaction or sense of injustice or unfairness, and seek to have these resolved amicably, and in the shortest time possible. Any landowner, structure owner, tenant, or other PAPs should be able to file a grievance for any disagreeable decision, practice or activity, arising from land acquisition, relocation, compensation, or any other topic related to the project. Therefore, a Grievance Redress Mechanism (GRM) here defined as a mechanism, or set of procedures and processes, or organizational systems and resources, to be used as a means to hear, address and resolve issues and complaints related to project implementation (which can include to entitlements, mitigation measures and other arising issues), in a timely manner is key for project success. The stakeholder input handled through these systems and procedures may be called grievances, complaints, feedback, or any other functionally equivalent term.

### 10.1 Objective of a Grievance Redress Mechanism

173. Essentially, GRMs are designed as a conduit for soliciting inquiries, inviting suggestions, and increasing community participation in a project. To the extent that projects are able to achieve success on these dimensions, particularly, an effective GRM mechanism can be useful in various ways:
- Generating public and stakeholder awareness about the project and its objectives;
  - Increasing stakeholder involvement in the project;
  - Improving project outcomes: through timely resolution of issues and problems, GRMs can contribute to timely achievement of project objectives such as timely acquisition and resettlement to enable project completion on time;
  - Providing feedback to different levels of the project on project performance i.e. providing project staff with practical suggestions/feedback;
  - Acting as an early warning mechanism, GRMs can identify and resolve implementation problems in a timely and cost-effective manner: They help teams catch problems before they become more serious and widespread, before they escalate, thereby preserving project funds and its reputation, and avoiding time-consuming disputes. Therefore, acting as an effective risk management tool;
  - Building community-project relations, through creating and maintaining trust with affected persons and community stakeholders, thus enhancing the project's legitimacy among stakeholders;
  - Allowing staff involved in project implementation to be more accountable, transparent and responsive to PAPs;

- Deterring or curbing fraud and corruption; and,
- Assessing the effectiveness of internal organizational processes but also improving the operational processes and performance of an organization.

### 10.2.2 The Isiolo-Modogashe Project Based Grievance Structure

174. This RAP proposes a four-tier grievance redress mechanism for ALL project affected persons whom are Non Title Holders. This structure consists of Locational Grievance Redress Committee (SGRC), Sub County Grievance Redress Committee (SCRGC), County Project Grievance Redress Committee (CPGRC), and lastly, the Courts of Law as outlined below.
175. Specifically, given the areas in Isiolo and Garissa Counties are predominately inhabited by muslims, the Islamic principle or notion of *maslaha*, often translated as the ‘common good’, ‘preventing harm; or ‘benefit’ for individuals and the society as a whole, is a very important concept within the framework of Muslim jurisprudence. Particularly, *maslaha* serves as a key tool in finding solutions to everyday social, economic and individual problems in a muslim society. Its large tenets are enhancing peace, coexistence, social justice, reconciliation and development etc. For instance, a man and wife who have quarreled can ask for *maslaha* i.e. reconciliation or a man is allowed to live on a property without paying rent i.e. *maslaha* is extended to them.

It is mainly administered through a council of elders of reknown reputation and who have knowledge of customs and culture of the local communities. However, the name given to this council varies e.g. between the Borana and Somali Communities who inhabit the project affected area, and in some cases, closely works with the local chief’s office. The council is not elected. Although, the mandate is to resolve conflicts including land related conflicts; natural resources related conflict e.g. pasture; interclan conflicts; among others, the application of *Maslaha* to jurisprudence is biased given women are excluded from the council. In addition, in its quest to push for reconciliation, the process involves forcing on individuals decisions thought to be ‘for the common good’ which may not always ensure the victim receives justice. For instance, in areas where gender based and other forms of sexual based violence are rampant, the system is recognized as contributing to the rise of such cases due to the nominal compensation required from offenders, while those who go against the council’s decision (fair or not), can be excommunicated but as a last resort.

Irrespective, elders decisions are strongly respected. Thus this RAP has adopted the involvement of representatives from these councils or their variants in the GRM committees. Among the muslim communities, the Borana have the *Ugas*, while Somali have the *Jalab* i.e. council of elders. Among the Meru, although not muslims, the *Njuri Ncheke* are formed by respected and (considered) incorruptible members of the community, chosen on the basis of wisdom and knowledge of the traditions – while also serving as the apex of the Meru traditional judicial system and their edicts apply across the entire community. These elders, as the next sections show have been incorporated into the committees but depending on the context and request of the community.

Table 0-1: GRM composition and Functions

Level	Institution	Membership <sup>47</sup>	Functions
First	<b>Locational Grievance Redress Committee (LGRC)/Project Affected Persons Committee (PAPC)</b>	<ul style="list-style-type: none"> <li>Established at the community level in each settlement (Locational).</li> <li>Varies from a 7 to 15-member committee depending on the unique conditions of the settlement (see table 10.2)</li> <li>Membership is drawn from a variety of actors including project affected persons but based on representation of various interests (structure/land owners, affected institutions where needed, persons are living with disabilities, the council of elders' representatives, multiple ethnicities where required, religious groupings, etc.), and cognizance of local dynamics.</li> <li>A representative of the local government administration, i.e. chief or assistant chief is a default member.</li> <li>For authority, the local chief or assistant chief representation in the committee will be the convener and chair of the committee.</li> <li>At activation, the groups will select a vice chairperson and secretary. The secretary must be someone who can read and write in English.</li> </ul>	<ul style="list-style-type: none"> <li>Assist PAPs to file a complaint.</li> <li>To address PAPs grievances as 1<sup>st</sup> point of contact, within 15 days and at no cost to PAP.</li> <li>Publicize the grievance management procedures.</li> <li>Receive, review, investigate and keep track of grievances through the grievance logs/register.</li> <li>Adjudicate and develop redress options for the raised grievances.</li> <li>Monitor fulfillment of agreements achieved through the committee.</li> <li>Provide inputs into the monitoring and evaluation process, i.e. monthly reports on grievances.</li> </ul>
<i>If no amicable solution or settlement is reached, the aggrieved person is not satisfied or does not hear from the LGRC within the required time limits, they can escalate the grievance to the next level</i>			
Second	<b>Sub County Grievance Redress Committee (SCGRC)</b>	<ul style="list-style-type: none"> <li>5-10-member committee.</li> <li>Joint Membership drawn from the sub county level actors i.e. <ul style="list-style-type: none"> <li>1 representative of the National government administration,</li> <li>1 representative of the county administration, preferably the sub county administrator;</li> <li>(Similar if KeNHA choose to use the same committee during project implementation) 1 representative of the contractor);</li> <li>PAPs representative chosen 1 from each location (with consideration for gender)</li> <li>Representatives of an NGOs, and or Council of elders (or other necessary institutions as need arises)</li> </ul> </li> <li>The Sub county administrator office will provide the secretariat for the committee.</li> </ul>	<ul style="list-style-type: none"> <li>Escalation Mechanism to determine grievances unresolved by LGRC - within 15 days and at no cost to PAP.</li> <li>Providing inputs into the monitoring and evaluation process, i.e. quarterly reports on grievances handled.</li> </ul>
<i>If no amicable solution or settlement is reached, the aggrieved person is not satisfied or does not hear from the SCGRC within the required time limits; they can escalate the grievance to the next level</i>			
Third	<b>County Project Grievance</b>	<ul style="list-style-type: none"> <li>5-10-member committee.</li> <li>Joint Membership drawn from:</li> </ul>	<ul style="list-style-type: none"> <li>Escalation Mechanism to determine grievances</li> </ul>

<sup>47</sup> KeNHA may choose to use same committees, or revamp them when the contractor and supervising engineers come on board, during road construction, roping in their representatives as needed. This would ensure no parallel committees exist in the same area.

	<b>Redress Committee (CPGRC)</b>	<ul style="list-style-type: none"> <li>○ Deputy County Commissioner, as the chair;</li> <li>○ Representative of the Consultant (where some RAP aspects such as livelihood restoration will be implemented via a consultant and who acts as the secretary to the committee);</li> <li>○ Project sociologist;</li> <li>○ Resident Engineer;</li> <li>○ Sub-county administrator(s), 1 for each affected sub county;</li> <li>○ Locational Chiefs (2 representatives);</li> <li>○ Council of elders' representatives (1 each where applicable/drawn from the <i>Njuri Ncheke, Jalab</i> and <i>Ugas</i> respectively amongst the Meru, Borana and Somali communities);</li> <li>○ Representative of KeNHA;</li> <li>○ Chosen PAP reps along project corridor (directly affected residents and business operators) but 1 from each sub county.</li> <li>○ Other relevant institutions where need arises e.g. Representative of NEMA.</li> </ul>	<p>unresolved by SCGR - within 15 days and at no cost to PAP.</p> <ul style="list-style-type: none"> <li>● Responsible for monitoring the complaints - handling performance at lower levels.</li> <li>● Providing inputs into the monitoring and evaluation process i.e. quarterly reports on grievances handled.</li> </ul>
<i>The aggrieved person can go Court as a last resort. Given the above mechanism it is not foreseen that many disputes will end up in court.</i>			
<b>Fourth</b>	<b>Court of Law</b>	<ul style="list-style-type: none"> <li>● The Land and Environment court will act as the last tier as high court i.e. appeal court that deals specifically with land and environment related disputes of which displacement and valuation are part.</li> </ul>	<ul style="list-style-type: none"> <li>● PAPs not happy with the project process free to seek legal redress and at their own cost. The legal option will only act as avenue of last resort and will be sought after all other redress mediums have been exploited and exhausted.</li> </ul>

Table 10.3 represents the scope or type of grievances that can be handled by the project committees.

Table 0-2: GRM composition and Functions

Nature/Type of grievances that can be handled by project based committees	Nature/Type of grievances outside the scope/mandate of project based committees
<p>In practice, some of the possible grievances that can be anticipated or are most likely to occur during implementation of the Isiolo-Modogashe Road RAP and which can be handled by the project based committees:</p> <ul style="list-style-type: none"> <li>● Misidentification and/or omission of genuine assets and PAPs from the PAP and Asset register;</li> <li>● Errors are committed in recording of PAPs details concerning property and valuation;</li> <li>● Disputes over valuation of affected assets, including disagreement over the proposed entitlements, or unit applied;</li> <li>● Disagreements on modes of payment e.g. whether cash or in kind;</li> <li>● Disagreement over resettlement measures or sites, for instance on the citing of the site, type of assistance offered, loss/decrease of business or income due to relocation etc.;</li> <li>● Interruption of community social or other services and infrastructure e.g. water, access to pastures</li> </ul>	<p>Grievances that may be triggered by project but which needs to follow the normal judicial or ombudsman or other set government processes include:</p> <ul style="list-style-type: none"> <li>● Complaints clearly not related to the project, based on an initial screening.</li> <li>● Complaints constituting criminal activity and violence e.g. Gender based violence, Sexual violence, Child abuse.</li> </ul>

<ul style="list-style-type: none"> <li>• Damage to un-expropriated assets such as land, crops and trees during acquisition.</li> <li>• Disputes or contestations over the ownership of valued assets/property; two or more people claiming an asset or business (owner and the operator are different persons);</li> <li>• Disputes over parcels limits, either between the affected person and the Project, or between two neighbours;</li> <li>• Conflicts and disputes over plot/parcel boundaries, or even inter-county boundary competing claims, the first been between the PAP and the project, or PAP and their neighbor;</li> <li>• Infighting between families due to succession, divorce, fights over right to inheritance, lack of spousal consultation in disposal of assets or compensation funds;</li> <li>• Disagreements over ownership shares of joint property or assets;</li> <li>• Disagreements over the classification of assets to be acquired, for instance classification of private versus community land;</li> </ul> <p>However, note this does not preclude the PAP from escalating the issue to a legal process if unable to reach a satisfactory result through the project based process. The list only serves to indicate the project may be involved fully in the resolution or partially (through collaboration with relevant state agencies such as NLC).</p>	<ul style="list-style-type: none"> <li>• Commercial disputes: e.g. contractual matters as per contracts.</li> <li>• Corruption, coercion, or major and systematic violations of rights and/or policies</li> </ul>
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### 10.2.3 Other Systems of Grievance Redress

176. **National Land Commission:** The NLC complains and grievance address system also remains open to the PAPs who will not be happy with the awards given. The commission is mandated to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress and to encourage the application of traditional dispute resolution mechanisms in land conflicts. It carries out its mandate through various means including holding public inquiries. Note that NLC can also choose to work with the project set committees to address and resolve some issues. Particularly, the locational and sub county level committees would be useful for the verification of claims raised to NLC in the public inquiries, while the county level committees may be useful in county boundaries resolution.

Table 0-3 LGRC Status and Composition in 15 Settlements

Settlement Name	Status of Previous Committee <sup>48</sup>	Steps Taken	No. of SGC members <sup>49</sup>		Groups represented <sup>50</sup>
			Male	Female	
Tulo Roba (Isiolo Junction)	<ul style="list-style-type: none"> <li>Had a previous Committee formed in the Isiolo-Kulamawe initial RAP</li> <li>Committee concerned that during initial formation, PAPs not well represented and thus splinter groups emerged (one old committee and second with some old and representatives of PAPs).</li> </ul>	<ul style="list-style-type: none"> <li>Meeting was held, chaired by the DCC and the 2 groups agreed to resolve the divisions.</li> <li>Committee revalidated in public meeting</li> <li>Some old members retained and new ones added to represent relevant groups thus only 1 committee accepted by the community now exists.</li> </ul>	6	3	Youth, Persons Living with Disabilities (PLWD), Women/Vulnerable, Elders, Administration, Business people, Minority ethnicities, Religious/Institutions
Gambella	<ul style="list-style-type: none"> <li>Had a previous Committee formed in the Isiolo-Kulamawe initial RAP.</li> </ul>	<ul style="list-style-type: none"> <li>Committee revalidated in public meeting.</li> <li>Some members retained and additional ones added e.g. to ensure both Christians and Muslims balance. Proposal for the representation of small businesses shot down.</li> <li>The committee might need an addition of 1 to 2 persons to represent Ngaremara area which has too few PAPs to form a GRC<sup>51</sup>.</li> </ul>	7	2	Youth, Elders, PLWD, Women/Vulnerable, Administration, Religious (Muslims and Christians)
Ndumuru	<ul style="list-style-type: none"> <li>Had a previous Committee formed in the Isiolo-Kulamawe initial RAP</li> </ul>	<ul style="list-style-type: none"> <li>Old members who did not live in the settlement anymore removed, and replaced.</li> <li>New members reviewed.</li> </ul>	8	2	Youth, Elders, Business people, Women/Vulnerable,, Religious, Administration, Absentee owners
Bullo 1	<ul style="list-style-type: none"> <li>Had a previous Committee formed in the Isiolo-Kulamawe initial RAP.</li> <li>The committee was contested as largely represented one clan.</li> </ul>	<ul style="list-style-type: none"> <li>New Committee constituted with a few of the members in the old committee re-elected.</li> <li>Committee represented the 3 main clans in the area.</li> </ul>	8	2	Administration, Structures, Land owners, Women, Business owners, Elder ( <i>Njuri Ncheke</i> ), Youth, Women
Kachuru	<ul style="list-style-type: none"> <li>Had a previous Committee formed in the Isiolo-Kulamawe initial RAP</li> </ul>	<ul style="list-style-type: none"> <li>GRC committee formed.</li> <li>Section has 2 communities (Meru and Borana) fighting over the land thus the large committee.</li> </ul>	9	3	Administration, Land owners, Elder, Religious, Youth, women/vulnerable, Business owners

<sup>48</sup> This applies and refers to the locational committees.

<sup>49</sup> The names and contact numbers for the Committee members are in Appendix F.

<sup>50</sup> Some groups have multiple representatives.

<sup>51</sup> Settlement has only 3 PAPs.

Yaqbarsathi/ Yaqbarsasi	<ul style="list-style-type: none"> <li>Had a previous Committee formed in the Isiolo-Kulamawe initial RAP</li> </ul>	<ul style="list-style-type: none"> <li>Old committee disbanded as some members had land conflicts with neighbours.</li> <li>New GRC committee formed devoid of members with conflicts.</li> </ul>	4	2	Youth, Elders, Women, Land Owners, Structure Owners, Administration
Kulamawe	<ul style="list-style-type: none"> <li>Had a previous Committee formed in the Isiolo-Kulamawe initial RAP but covering section up to AP road block within the settlement.</li> <li>Kulamawe-Modogashe RAP had not formed a GRC in Kulamawe i.e. the section after the barrier had not been included</li> </ul>	<ul style="list-style-type: none"> <li>New committee formed to represent the whole settlement.</li> <li>Community insisted on membership of 15, as the settlement was densely populated and the main affected groups e.g. women, youth needed more representation.</li> </ul>	10	5	Institutions, Public utilities and community infrastructure, Women/Vulnerable, PLWD, Youth, structure owners, Elders, Men, Administration
Boji	<ul style="list-style-type: none"> <li>Kulamawe-Modogashe RAP had not formed a GRC</li> </ul>	<ul style="list-style-type: none"> <li>GRC committee formed</li> </ul>	9	2	Administration, Institutions, Elders ( <i>jalab</i> ), Women/Vulnerable, Youth PLWD, CBOs/Women Groups, Business owners
Camp/Kambi i Samaki	<ul style="list-style-type: none"> <li>Kulamawe-Modogashe RAP had not formed a GRC</li> </ul>	<ul style="list-style-type: none"> <li>GRC committee formed</li> <li>Committee dominated by Borana as Somalis had been displaced in an inter-community land conflict.</li> <li>Committee needs modification (at activation stage) to ensure Somali representation or separate committee formed amongst the Somalis.</li> </ul>	5	2	Administration, Institutions, Religious, Elders, women/Vulnerable, Structure owners, Youth
Eldera	<ul style="list-style-type: none"> <li>Kulamawe-Modogashe RAP had not formed a GRC</li> </ul>	<ul style="list-style-type: none"> <li>GRC committee formed</li> </ul>	5	2	Administration, Institution/Religious, Elders ( <i>Jalab</i> ), Women/Vulnerable, Youth
Eldere	<ul style="list-style-type: none"> <li>Kulamawe-Modogashe RAP had not formed a GRC</li> </ul>	<ul style="list-style-type: none"> <li>GRC committee formed</li> </ul>	7	2	Landlords/structure owners, Business owners, Elders ( <i>Ugas</i> ), Women/Vulnerable, PLWD, Youth
Bullo 2	<ul style="list-style-type: none"> <li>Kulamawe-Modogashe RAP had not formed a GRC</li> </ul>	<ul style="list-style-type: none"> <li>GRC committee formed</li> </ul>	4	3	Administration, Elders, Women, Institutions/Religious, Youth
Barkuke	<ul style="list-style-type: none"> <li>Kulamawe-Modogashe RAP had not formed a GRC</li> </ul>	<ul style="list-style-type: none"> <li>GRC committee formed</li> </ul>	5	2	Administration, Women, Elders, Youth, Institutions/Religious,
Janju	<ul style="list-style-type: none"> <li>Kulamawe-Modogashe RAP had not formed a GRC</li> </ul>	<ul style="list-style-type: none"> <li>GRC committee formed</li> </ul>	4	3	Administration Elders, Youth, Institutions/Religious, Women/vulnerable
Modogashe	<ul style="list-style-type: none"> <li>Kulamawe-Modogashe RAP had</li> </ul>	<ul style="list-style-type: none"> <li>GRC committee formed.</li> </ul>	10	2	Administration, Youth, Elders,

	not formed a GRC	<ul style="list-style-type: none"> <li>Owing to the two locations both within Modogashe the community members agreed to have A GRC of 12 members, six members from Modogashe and six from Komor Bulla location.</li> </ul>			institutions/Religious, Women/Vulnerable, Business owners, Structure owners, PLWD, Land Owners
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### 10.3 Grievance Redress: Process, Procedures and Timelines

177. Grievance procedures may be invoked at any time, depending on the complaint. No person or community should experience any further impact until any complaints he/she has raised are satisfactorily resolved, following the procedures below (also summarised in Figure 10.1).

#### *i. Grievance uptake: Receipt and Lodge/Register*

A number of avenues will be made available to the PAPs for communication of grievances, e.g. through email, sms/text messaging, telephone (including a toll free number), face to face interactions with members of the committees, by post e.g. to KeNHA, and at different levels, for instance, at the settlement or KeNHA's north eastern regional Office.

Ideally, at the locational level, and despite the use of the variety of channels, the secretary of the Locational Grievance Redress Committee (LGRC) is responsible for receiving, referencing, registering, and filing all grievances. He/She will listen to the complainant and where necessary (e.g. if the complainant does not speak or write Swahili/English) assist in filling the grievance form (see Appendix G). Both the complainant and secretary will sign the form after the complainant verifies the accuracy. Ideally, a grievance should be lodged orally or in written form and in the language the complainant is comfortable in. The secretary then translates this into an English form.

#### *ii. Sorting and Processing: Acknowledge, Assess and Assign*

A written acknowledgment of receipt of the grievance is sent to the aggrieved person within 5 days, having been signed by the chairperson of the committee, and showing that the grievance has been received, will be logged and reviewed for eligibility, and if eligible, and will generate an investigation. This is key for accountability and shows the complainant the committee takes him/her and the grievance seriously.

The committee sits, and since various types of grievances or complains will be lodged, and not all will be handled by the LGRC, this siting will first assess the eligibility of the issue for the GRM mechanism while those not related to project eliciting an immediate response and referral to the right process or organisation. Such may include complaints constituting criminal activity and violence.

The grievance officer engaged for the project then logs the grievance into the grievance log or register (see Appendix H), giving each case a unique number, date complaint was lodged, complainant (if not a sensitive issue), nature of the complaint, and in later stages action taken, or not taken, with reasons for the latter. Ideally, the use of the secretary ensures a centralized logging and tracking system – very essential for accountability.

For eligible complaints, these are categorized as (a) comments, suggestions, or queries; (b) complaints to be handled by LGRC; (c) complaints to be referred directly to KeNHA and other parties. Some e.g. (a) above may only require an immediate clarification or a simple explanation, while for b type of complaints, these will be assigned priority for investigation. In each, the action required is written down in the grievance register.

**Collaborative:** Not all complaints should be handled through a GRM. For example, grievances that allege corruption, coercion, or major and systematic violations of rights and/or policies are normally referred to organizational accountability mechanisms or administrative or judicial bodies for formal investigation, rather than to GRMs for collaborative problem solving.

### *iii. Verification and Investigation*

The SGRC will then hold a meeting on the grievance and may work in consultation with the aggrieved person. In this step, they will also gather information on the grievance and decide on the corrective action within 15 days since date of grievance lodge. The proposed action will be lodged in the register.

### *iv. Develop and Communicate Response*

The committee will inform the complainant – through a meeting, followed by a summarised written communication of the decision and resolution - of the results of investigations and the actions proposed, seeking to seek agreement on the response. The actions can be:

- Direct action to resolve the complaint;
- Further assessment and engagement with the complainant and involving other actors to jointly determine the best way to resolve the complaint.

Two possible scenarios can result from this meeting:

- The aggrieved party accepts the proposed corrective action: A written agreement is developed, detailing the time frame for implementing the corrective action as well as a responsible party. This is signed by the LGRC chairperson or relevant party (for instance KeNHA) and the aggrieved party, and the corrective action commences. The acceptance is also lodged in the log, and later the completion date will be lodged after verification that recommended action was undertaken by the SGRC, or concerned party.
- The aggrieved party rejects the proposed corrective: The default position is that case/matter is referred to the Sub County Grievance Redress Committee (SCGRC) who have 15 days to resolve the issue, following procedures similar as above. However, if the LGRC is able to review the resolution through engaging the affected party, and reach a satisfactory decision/resolution this is encouraged i.e. appeal mechanisms at the LGRC would take a shorter time than referring the case to SCGRC.  
If the project based GRM does not result in an action acceptable to the aggrieved party, he/she can resort to the judicial recourse.

### *v. Action: Implement Response and Review if Successful*

When there is agreement between a complainant and the GRC i.e. acceptance of a proposed action thus enabling the process to move forward with the proposed action or stakeholder process, then the response should be implemented.

***vi. Close out or refer the grievance***

Where the response has been successful, the secretary of the committee should document the satisfactory resolution. It is best to have the complaint countersign to show their satisfaction with the response. The grievance is then indicated as closed.

***vii. Monitoring, Evaluation and Providing Feedback***

At all levels, regular progress monitoring of grievances filed, their status and actions taken and recommendations/resolution will be constantly undertaken. The PMU is specifically responsible to monitor and track grievances, assessing the extent to which progress is being made to resolve them, and generate quarterly reports. These reports and data/lessons generated should be used to make policy and/or process changes to minimize similar grievances in the future or to adapt the GRM to correct or remove inefficiencies.

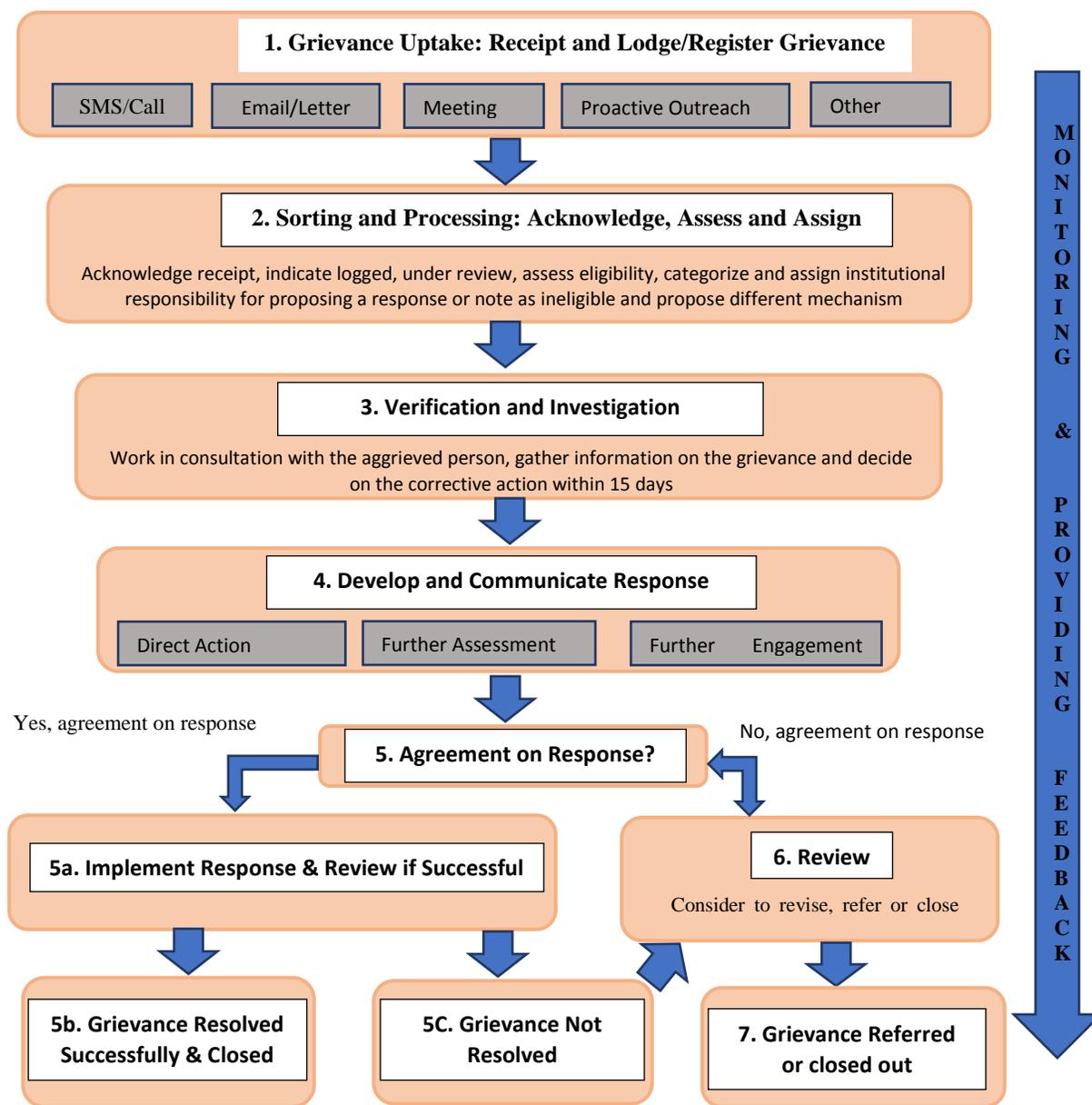


Figure 0-1: Summarized Project Based GRM Process

**10.3.1 Documentation**

178. At all levels, documentation will be ensured, including the grievance registers, grievance forms. Every meeting should be minuted and the minutes signed by the relevant parties.

**10.3.2 Sensitization and Capacity Building**

179. To create demand for the GRM mechanism, thus avoidance of escalation of issues to court, KeNHA will undertake:

*i. Sensitization of the PAPs on the grievance mechanism and its procedures*

The effective working and use of the LGRC and SCGRC depends on the awareness of its existence. Therefore, PAPs need to understand and support the purpose of the project GRM. The RAP consultant undertook some level of sensitization but comprehensive exercise is required to publicize the existence of the GRM, its procedures, the levels, and other relevant information. The communications strategy should also reach out to poor and marginalized groups, who often cannot access GRMs.

Communication methods and materials shall include meetings, project website, bulletin boards in strategic sites (for instance at the chief's office) brochures summarizing the GRM process, and where possible be translated into the local languages as resources permit. Particular messages which need to be reinforced continually may include:

- The project based GRM is cost free: there are no financial charges to access or have the committees hear a dispute;
- The GRM is open to all;
- There exist mechanisms to escalate an issue if one committee is not able to address it satisfactorily;
- There is no retribution for complainants i.e. they are not punished;
- The types of grievances that can be submitted;
- The procedures to lodge a complaint and timeframes;
- Confidentiality can be assured where needed; and
- The project welcomes suggestions, recommendations and grievances as they help improve the project's policies and systems.

*ii. Capacity building of the various committees*

Committees such as the LGRC and SCGRC will undergo training e.g. on best practices in resettlement, grievance redress, monitoring and evaluation to enable them be more effective in their work. The Grievance Committee members will also need to be oriented to the grievance management system outlined in this RAP. The capacities of the Grievance Committee members will also need to be built around issues of conflict identification, conflict information analysis and conflict resolution.

This exercise shall include detailed terms of reference for the committees.

### **10.3.3 Phasing out of Committees after Project Completion**

180. Often, development programmes form various committees and tend not to phase them out, after completion of the project. Committees such as the LGRC can easily metamorphosise, increasingly undertaking activities not within their mandate, and cause conflict with other institutions. Therefore, after completion of the RAP implementation (and more ideally, the road construction), KeNHA will hold official phasing out ceremonies to acknowledge the committees and indicate the end of their terms of reference.

### **10.3.4 Client Commitment to Grievance Redress: Process, Procedures and Timelines**

181. The success of procedures and activities in the previous sections greatly depend on KeNHA's commitment towards ensuring the effectiveness and efficiency of the system thus requiring:

- Regular monitoring,
- Commitment to learning and adapting systems; and
- Provision of sufficient budgets and tools (e.g. grievance registers, forms, files) to cover their operation and implementation of functions. However, these will not be compensated but serve on a voluntary basis. Costs to be covered by the project will only include transport, communication, meals and sitting allowance.
- Continuous capacity building of the committees.

## 11 RAP Implementation Institutional framework

182. The Ministry of Transport, Infrastructure, Housing, Urban Development, and Public Works is responsible for the implementation of the project on behalf of the Government of the (Republic) of Kenya. The primary responsibility for the implementation of this RAP, however, remains with the Kenya National Highways Authority (KeNHA) the implementing Agency under the State Department for Infrastructure. Within KeNHA the Environment and Social Safeguards department (headed by a Deputy Director) under the Directorate of Highway Planning & Design will monitor and oversee the day to day actual RAP implementation activities. Therefore, KeNHA as the implementing agency is tasked with ensuring the RAP is implemented in line with the national legal framework and World Bank's Safeguards policies.

183. In the same capacity, the Principal Secretary (Ministry of Transport) has overall oversight over the project and has the responsibility to source from Treasury the required and sufficient funds to implement this RAP. This, in line with the requirement of the Land Act, should be before the start of the acquisition process. Given the multi-sectoral nature of RAP matters, for the successful implementation of this RAP, KeNHA will be assisted and interface with several other sector ministries, government departments, agencies, and firms. The most key stand alone organizations in the RAP process, include:

- **National Treasury:** On matters of project funding to ensure smooth flow of financing to implement the RAP, as the costs towards land displacement and resettlement will be financed from GOK funding. Often social obligations such as RAPs are not passed on to financiers (e.g., the World Bank) or contractors;
- **Ministry of Lands and Physical Planning:** Tasked with matters related to physical mapping, land adjudication and settlement, survey, land administration and registration, the ministry is key in support of the land acquisition process and settlement of boundary matters between the conflicting counties;
- **Ministry of Interior and Coordination of National Government:** This is tasked with ensuring internal security and safety so as to create an enabling environment for the RAP implementation, given the insecure nature of some of the affected areas. This will be organized through the Provincial Administration Services i.e. Office of the County Commissioner, roping in when necessary the departments of the Kenya Police and/or Administration Police. This ministry's also organizes for the County Development Implementation and Coordination Committee (CDICC) review of the project, while the Office of the County Commissioner (both at the County and local level) is well suited to mobilize the stakeholders, particularly PAPs, given its grassroots orientation. It has the power to call and chair meetings as well as settle disputes. The chief knows the people and issues in their locations and is at a great advantage to provide reliable information and way forward on diverse issues on RAP. The chief has the mandate and experience to arbitrate local issues without going to court.
- **National Land Commission:** As an independent government commission, established with a mandate to monitor the registration of all rights and interests in land, initiate

investigations into historical land injustices, and monitor and have oversight responsibilities over land use planning throughout the country, NLC is mandated by law;

- To undertake compulsory acquisition and payment of the compensation funds to the PAPs. NLC implements the request to acquire land from KeNHA through notification by the Cabinet Secretary in charge of Ministry of Transport. NLC gazettes and inspects the affected properties. It also prepares the awards and facilitates the taking of possession of the subject land, upon payment of the compensation to the PAPs. In addition, the Commission, conducts grievance resolution in the asset verification process. The NLC has established county offices with in Isiolo, Meru and Garissa Counties;
- Handle land disputes or refer them to Court: This will be key to the Isiolo-Meru, Isiolo-Garissa inter county/community boundaries conflicts, as well as other numerous intra community land conflicts.  
In this Project, NLC will validate the affected persons, their assets, provide awards, and compensate, on behalf of KeNHA.
- **State Law Office and Judiciary** is responsible for legal matters regarding land ownership, succession, and a variety of other conflicts. The swift working of this institution may be a major determinant if some PAPs can receive their compensation on time or not, following ongoing disputes and those that may be referred therein.
- In recognition of the devolution process, **County Governments** have a major role to play in this RAP. The County Governments of Meru, Isiolo and Garissa will be responsible for:
  - Ensuring that the RAP is acceptable to the residents and upholds constitutional ideals;
  - Regulating trade and providing markets within its area of jurisdiction; and any markets constructed by KeNHA will be handed over to the relevant County Government for management.
  - Holding in trust all unregistered community land on behalf of the communities for which it is held;
  - Holding in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land, and
  - (If the communities so wish) assisting in the registration of the land and communities.

In addition, relevant county departments such as lands, roads, public works, urban development and Physical Planning, and Education, Youth, Sports, culture and gender will be relevant for surveying and land adjudication, as well as cohesion, peacebuilding, conflict resolution & civic education related matters.

- **Non-Governmental Organizations:** Both Kenyan legal framework and World OP 4.12 see a role for the third sector which includes Non-Governmental Organizations (NGOs). Though this may include RAP implementation, providing security perceptions, and social communication, the most pronounced is a monitoring role to ensure human rights are upheld in the process. Their responsibility will be to ensure that the RAP is implemented as planned, and should there be any departure or alterations of circumstances the PAPs are consulted and not adversely affected. NGOs have the role to sensitize the people and empower them to realize maximum benefits from the project.

Other specific roles for NGOs will include:

- Mobilization and provision of project information and citizen engagement;
  - GRM monitoring;
  - Prevention and Sensitization on Gender Based Violence (GBV) and Prevention of Sexual Exploitation and Abuse (PSEA), including assisting KeNHA set up a referral system to ensure PAPs experiencing such receive the care and assistance required by law;
  - NGOs will train PAPs to enhance their business skills following compensation. Where required, KeNHA can outsource training and capacity building of the committees to NGOs. Planning and implementing livelihood restoration and development can also be undertaken by an NGO.
- An **independent firm** will also be required for the final evaluation of the RAP, while KeNHA may choose to outsource the preparation of RAP information dissemination and sensitization materials such as pamphlets on the GRM mechanism to firms.
  - **Traditional and opinion Leaders** are critical to the success of the resettlement process. These play an important role in conflict resolution, which may be important for the interaction between the affected community members and the management of the project. Traditional and opinion leadership will receive some orientation in the RAP process on issues that may arise, their expected roles prior to implementation of the project, among others.

## 11.1 Institutional Arrangements

The projects institutional arrangement involves a Project Implementation Unit (PIU) established within KeNHA headquarters and with support on the ground through Project Social Safeguards experts, and CLOs, a County Project Grievance Redress Committee (CPGRC) and Project Affected Persons Committee (PAPC), formed at a locational level.

### 11.1.1 KeNHA Project Implementation Unit (PIU)

184. The Project Implementation Unit (PIU) is the core implementation team within KeNHA and is responsible for all technical work to accomplish resettlement preparation and implementation tasks, as well as coordination within other government ministries and agencies. Its overall task will be coordination, planning, implementation and monitoring of the land acquisition, compensation and income restoration activities. The membership includes:

- Head, department of Environment and Social Safeguards, so as to ensure where required, policy and strategic decisions can be undertaken with ease and speed.
- Project Engineer(s)
- Sociologist
- Surveyor
- Land Valuer
- Road Reserve Protection Officer

- Information and Communications Technology (ICT) officer
- Communications Officer
- Accountant
- Legal Officer
- Other relevant representatives from KeNHA's departments, including monitoring and evaluation will be roped in on need basis.

185. A mix of KeNHA national (headquarters) staff and the North eastern regional office based in Isiolo shall be ensured, with the KeNHA North Eastern regional Office providing the representation for the PIU for easier accessibility. The key roles of the PIU are to:

- Provide overall leadership, technical advice and guidance in the implementation of the RAP;
- Assist with resolving strategic-level issues and risks;
- Provide coordination required with other actors including ministries and agencies involved in the RAP implementation;
- Study the approved RAP report and draw a final program of implementation ensuring it is practical, feasible and realistic to the local context;
- Organize the public disclosure of the approved RAP;
- Support the grievance redress mechanism i.e. serves as the third tier in the GRM;
- Verify all resettlement sites proposed by the community and/or NLC;
- Ensure the rights of the vulnerable are upheld all through the implementation process;
- Train or organize the capacity building of RAP committees e.g. LGRC and SCGRC;
- Handle all communication and public relations related to the project and land acquisition;
- Define, verify, evaluate and modify, as well as communicate possible modifications on the RoW; and,
- Overall monitoring and evaluation of the RAP implementation, hiring the external RAP implementation and support actors (e.g. monitoring agency, firms, NGOs), and responding to implementation problems identified in internal and external monitoring reports.

Implementation and Coordination functions will be achieved through regular meetings and workshops such as:

- Developing a detailed software-based work plan, showing the sequencing of activities, and responsible actors/institutions, to be updated weekly;
- Put in place and maintain a simple database to keep track of all compensation and grievances;
- Internal KeNHA progress meetings to track progress and identify bottlenecks requiring immediate action to facilitate process flow;
- Site meetings as and when necessary, or need arises;
- Monthly meetings with PAPs;
- Writing and circulation of written monthly/quarterly progress reports;
- Monthly coordination meetings with NLC, and other key bodies, including the county government to review progress identify bottlenecks and strategic decisions to be undertaken; and define the following month's work plan.

### 11.1.2 County Project Grievance Redress Committee (CPGRC)

186. The County Project Grievance Redress Committee (CPGRC) at each of the affected county's level in addition to its grievance resolution role will play a crucial role in Rap implementation. The membership is as outlined in Table 10.2.

The key roles of the CPGRC are:

- Verification of the PAPs list
- Identify resettlement sites, or assist NLC to identify possible resettlement sites, or land for purchase in cases of land for land compensation;
- Co-coordinating the orderly relocation and occupation on the new/relocation site(s) where necessary;
- Resolving project grievances;
- Enforcing against influx of illegal traders and occupants into the existing RoW;
- Facilitating trainings, awareness creation and counselling sessions; and
- Monitoring implementation of the RAP.

### 11.1.3 Project Affected Persons Committee(s)

187. Community representation in the RAP implementation is through Project Affected Persons Committee (PAPC), formed at a locational level.<sup>52</sup> The membership varies depending on the unique situation in each settlement/location but ranges from representation of project affected vulnerable persons, youth, land/structure/business owners, institutions etc. Special consideration was given for the local administration, religious and council of elders' representatives. Particular, effort was made to integrate traditional institutions of authority and conflict resolution within the settlements, which meant these categories need not be affected by the project. All committee members were elected through a clear and transparent selection process and criteria based on the following factors:

- They must be selected by the community members of the affected area;
- They must be residents of the affected area (unless in special conditions where the community requested for a representation of absentee landowners who live in a nearby town);
- Be well known and respected in the community; and
- Not engaged in any of the current land (boundary) conflicts.

The membership therefore includes:

- Locational Chief, as the chair;
- Elected PAPs committee members including representatives of:
  - Business owners representative
  - Residential Tenants
  - Vulnerable persons

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<sup>52</sup> Note that this committee is not necessarily different from the grievance committee. However, its outlining under this section tends to highlight more of its general RAP implementation tasks.

- Youth
- Other interest groups as may arise or need to be contextualized to the specific location.

188. A mechanism will also be established to enable community representatives to be replaced if they prove unable to perform and fulfill their roles in an adequate manner. However, to enable the community representatives to do their work properly they should be facilitated with all the necessary requirements that include but are not limited to forms and registers, sitting allowances, etc.

The key roles of the committee are:

- Checking against speculators;
- Conducting public awareness/consultations with the affected people, including mobilizing communities that are affected by the project;
- Resolving disputes that may arise from the PAPs;
- Monitoring and evaluating the RAP process at the grassroots level;
- Enhance employment opportunities and, conduct training and counselling of the PAPs (socially and economically);
- Advice KeNHA and NLC on the traditional and cultural rituals required for relocation of cultural property;
- Providing local/community knowledge beneficial for the success of the activities including land acquisition; and to
- Foster trust between the project and the affected communities. Their involvement in helping the identification of the interests existing on the land and in the verification process of identifying affected occupants/owners is key in winning the trust of the affected community.

## 11.2 Institutional Arrangements for Coordination across Jurisdictions

189. Implementing this RAP (and the road project a large) will involve several institutions, working together and at times across jurisdictions. Figure 12.1 shows the central location of KeNHA, and some of the possible interactions envisaged due RAP implementation. Largely, KeNHA is best placed to undertake the coordination of the various organizations involved in the RAP, directly through its PIU (and technically backed by other senior KeNHA management when need arises), and/or through the mother Ministry of Transport (leveraging on the clout of both the Permanent and Cabinet Secretaries where needed). An institutional task force whose main functions will be checking for compliance, safe operations, monitoring, escalation and resolution of inter-agency concerns etc. will be formed, and whose membership will be determined on need basis or emerging issues. This will include representatives from:

- The Kenya National Chamber of Commerce and Industry (KNCCI),
- Children's Office
- Respective affected Counties
- Frontier Counties Development Council (FCDC)<sup>53</sup>

<sup>53</sup> The Frontier Counties Development Council brings together counties in Kenya's Northern Frontier of Garissa, Isiolo, Lamu, Mandera, Marsabit, Tana River and

- Labour Office
- KeNHA
- And when the contractor comes on board, a representative from the contractor and supervision engineer,

190. Since the task force will be useful even during the road construction, additional representation with due time, will be drawn from the Directorate of Occupational Safety & Health Services (DOSHS), The National Environment Management Authority (NEMA), The National AIDS Control Council (NACC), and others (as per need to invite/incorporate).

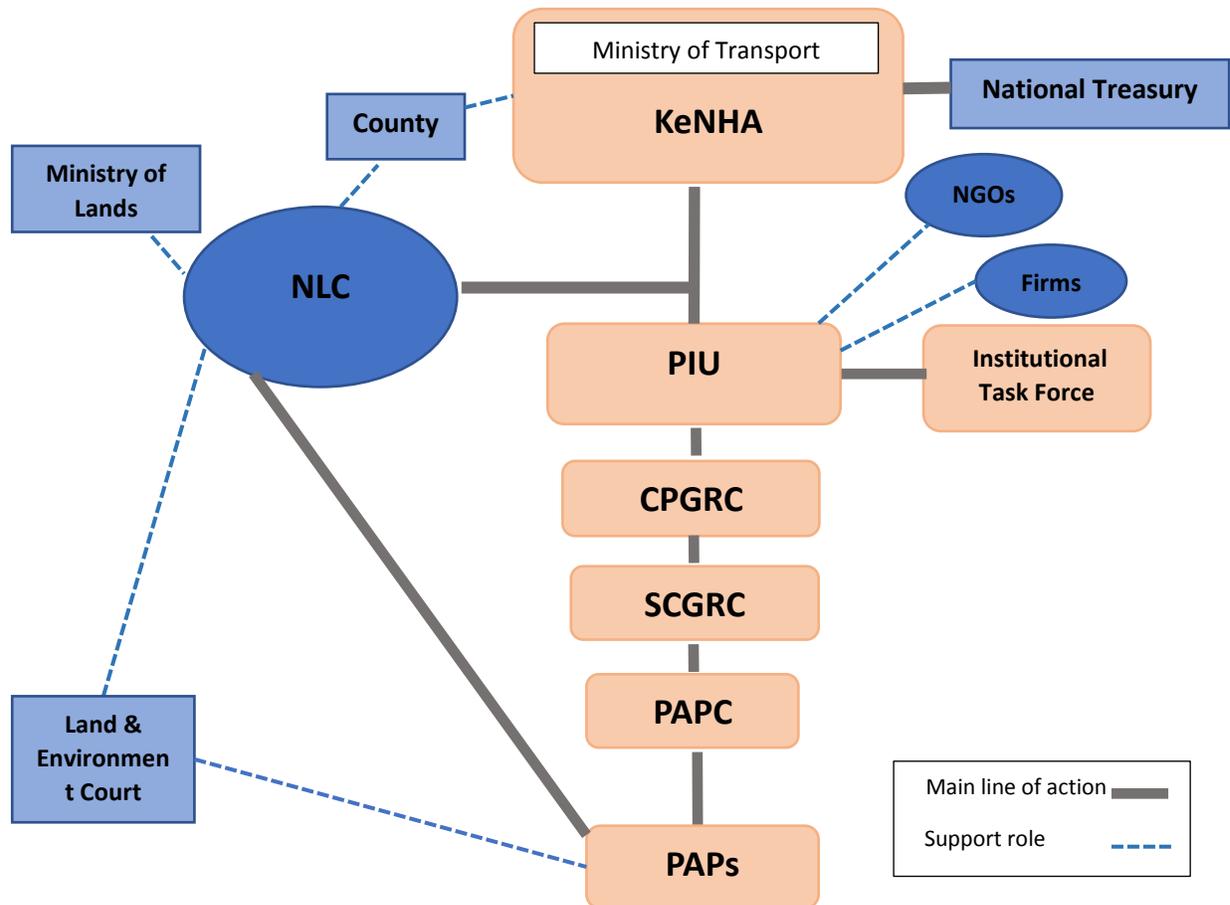


Figure 0-1: Organizational Chart for Implementation of the RAP

### 11.3 RAP Implementation Principles

191. The implementation of this RAP will be guided by a number of principles that are important for its success:

Wajir. It is an endeavor by the frontier counties to come together to accelerate the social economic development of the area especially in advancing peace and development so as to harness the development potential of the region.

- In line with the World Bank safeguard policy OP 4.12, KeNHA will further seek to avoid and minimize displacement through review of the road design, exploring options outlined in Chapter 3 of this RAP;
- Costs associated with displacement, restoration of livelihoods and resettlement (if any) will be internalized into project costs to ensure adequate financial arrangements will be committed to the resettlement;
- Affected persons will be continually consulted and kept informed in a transparent manner and through the provision of all necessary information to allow for their informed participation in the process. Towards this, the PIU will develop a community engagement plan to guide their strategy towards engaging the affected community, the general population, and other relevant stakeholders;
- Fair, transparent and consistent compensation standards will be maintained across the board;
- PAPs will be offered options for land or cash compensation where applicable;
- Where actual resettlement and land for land compensation is involved, displaced persons will be presented with a range of viable options for their resettlement, including several possible resettlement sites;
- Compensation will be provided in a timely manner based on the agreement with PAPs, and prior to displacement;
- Compensation will seek at minimum, to restore the livelihoods of the PAPs living or doing business in the affected area, including those with customary rights, as well as those lacking legally recognized rights, as long as they settled in the area by the cut off dates; Those who illegally acquired land may not receive compensation for land but their investment in developments and livelihoods will be recognized;
- Although preferred by many households, and given that experiences in some resettlement programmes in Kenya has shown that cash compensation can be detrimental, KeNHA will offer financial counseling to the PAPs to ensure payments are used in a productive manner;
- The RAP will be implemented in a gender-sensitive and culturally respectful manner considering a culturally appropriate approach to grievance redress and livelihood restoration; and as required by law, through the involvement of spouses in resettlement and compensation matters;
- Early attention will be paid to the cultural property such as mosques and cemeteries as their presence may need consideration in the redesign of aspects of the road, while participation has shown these as possible areas of conflict with the project;
- The special and unique needs for Vulnerable and Marginalized Groups (VMGs) will be taken into consideration in the implementation of the RAP;
- KeNHA will establish a GRM mechanism at the start of the resettlement planning and implementation, and as outlined in chapter 10, or set up better systems to address community concerns and complaints are addressed effectively and in a timely and transparent manner;
- KeNHA has a team dedicated to the implementation of this RAP.
- Context sensitivity will be a driving force, to avoid exacerbating existing or new inter community conflicts.

#### **11.4 Project Implementation Procedures and Process**

192. Implementing this RAP involves a number of procedures and processes, some sequentially and others happening simultaneously.

#### **11.4.1 Approval**

193. KeNHA and the World Bank will review and approve the RAP.

#### **11.4.2 Disclosure**

194. The RAP will be disclosed upon receiving approval from the WB. Public disclosure of the RAP has to be made to PAPs, County and other stakeholders for monitoring of the implementation. Disclosure will be in the form of:

- i. The RAP will be posted on KeNHA's website and the World Bank's external website;
- ii. The RAP will be available at KeNHA, and a copy to the County governments;
- iii. Availing the RAP summary (translated into the national language, and local languages) at the local settlement level.
- iv. Each PAP will be informed of their entitlements.

The full disclosure of the RAP will be undertaken in the local language(s) in areas accessible to the PAPs..

#### **11.4.4 Formation and Capacity Building of Committees**

195. The implementation of the RAP will require capacity building and orientation of the settlement grievance committee and the sub-county grievance committees. The institutional task force will be formed and oriented to their roles. As indicated earlier, KeNHA can directly undertake the exercise of capacity building or outsource to an NGO or firm of experts. At implementation, it will be necessary to undertake revamping and continuous training of these committees to ensure their proper functioning to serve the purpose. Additional members can also be co-opted at implementation to increase capacity.

#### **11.4.5 Sensitization and Counselling**

196. This will cover a number of issues including the project, its impacts and a description of the implementation mechanism for implementation, financial counseling and appropriate use of compensation funds including moreover, the use of joint accounts for spouses where possible, avoidance of gender based violence related to compensation funds, etc. Similar to capacity building, this can be undertaken by KeNHA or outsourced. It is important that all messages are consistent, realistic and practical so as to manage expectations and community fear.

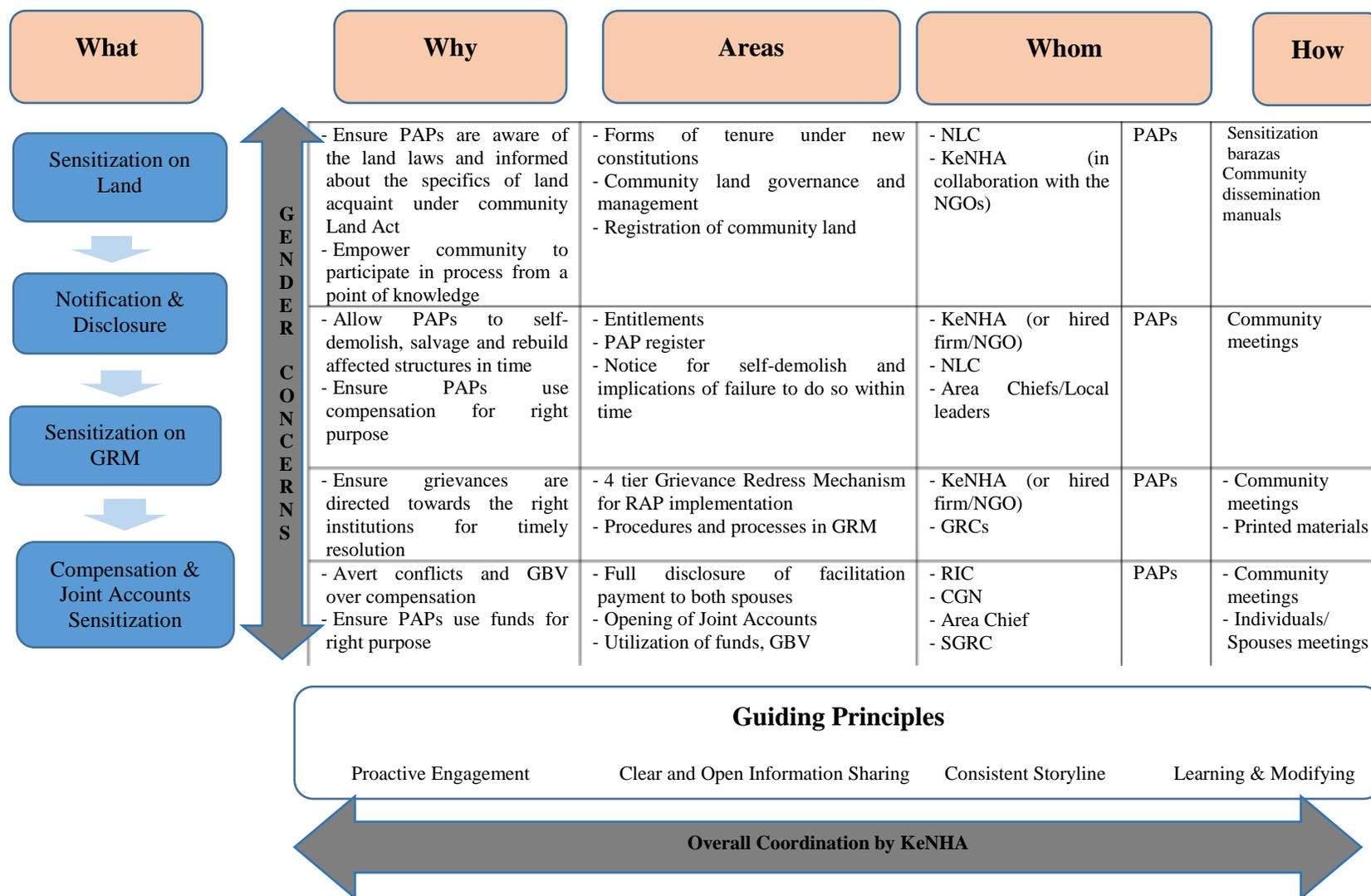


Figure 0-2: RAP Information Sharing and Sensitization Strategy

#### **11.4.6 Land Acquisition and Compensation Payment Procedures**

197. NLC will undertake valuation of all the affected assets including those for Non Title Holders as per this RAP, using procedures outlined in the Land Act, Land Regulations, 2017 and Land Value (Amendment) Act 2019, and summarized in sections 5.4.1 and 5.4.2 of this RAP but with a view towards reaching replacement cost.

The PAPs will be allowed to open individual and joint Bank accounts in banks of their choice. If a PAP does not have an account, the project will facilitate the opening process through the invitation of banks for open days on specific agreed upon days within the settlements, to ensure accessibility to the vulnerable and reduce time delays in travel to the county headquarters for the opening of the same.

Funds will be deposited directly to Bank accounts for all categories of PAPs as described in the entitlement matrix prior to the takeover of the project site, and a follow up is done to confirm to the PAPs that funds have been disbursed. Where payment is directed to an individual, joint accounts (for spouses) are encouraged to curb complains of disposal of family property.

198. There is a low level understanding of compensation processes and as such civic education will form part of the RAP implementation process.

#### **11.4.7 Notice to Relocate and Relocation of the affected structures/assets**

199. Once the compensation has been paid out to respective PAPs, a notice of self-demolition will be issued by NLC. This RAP proposes a minimum 3 months' notice to PAPs. In case a PAPs fails self-demolish his or her own structure within the notice period, KeNHA will commence the road in disregard of the removal of the structure.

## 12 Implementation Schedule, Costs, and Budgets

### 12.1 Financial Responsibility and Authority

200. The overall financial responsibility for facilitation of affected structures are solely mandated to KeNHA and by extension, the Ministry of Transport, Infrastructure, Housing, Urban Development, and Public Works. It is their responsibility to ensure the funds are available before acquisition starts.

#### 12.1.1 Cost Per Item Per Settlement

Table 0-1: Cost per Settlement

Settlement	Land (as per asset register)	Structures	Trees	Graves	Income	Total Compensation Sum
Ngare Mara	Nil	1,334,000.00	120750.00		17250.00	1472000.00
Kambi Samaki	Nil	1,761,340.00			195500.00	1956840.00
Kachuru	Nil	10,470,980.00	51750.00		1114350.00	11637080.00
Eldera	Nil	11,900,372.50			289800.00	12190172.50
Gambella	Nil	7,535,145.00	132825.00		172500.00	7840470.00
Bullo 1	Nil	1,914,750.00			122475.00	2037225.00
Boji	Nil	34,864,780.00			575000.00	35439780.00
Barkuke	Nil	2315870			93150.00	2409020.00
Yaqbarsadi	Nil	5,063,335.00			51750.00	5115085.00
Eldere	Nil	17,813,730.00			1059150.00	18872880.00
Ndumuru	Nil	12,751,602.50			1318475.00	14070077.50
Bullo 2	Nil	2,456,285.00		0	517500.00	3370535.00
Modogashe	Nil	160,239,390.00		0	5756670.00	186696060.00
Kulamawe	Nil	82,391,836.25		0	1483500.00	85703836.25
<i>Tulo Roba</i>	0	0	0	0	0	0
Janju	Nil	1,109,060.00			224250.00	1333310.00
<b>Totals</b>	<b>Nil</b>	<b>353,922,476.25</b>	<b>305,325</b>	<b>0</b>	<b>12,991,320.00</b>	<b>367,219,121.25</b>

## 12.1.2 Land Acquisition Costs for sections under adjudication and Community Land

The project has an existing corridor for the proposed works.

### 12.1.3 Overall Budget

201. The estimated budgetary costs for the RAP (with the mitigation measures adopted in the design and with realignment interventions discussed above, the estimated RAP cost while utilizing the available corridor is Kshs. **566,051,989.44**.

Table 0-2: Estimated RAP Budget

Item	Cost estimate with the existing alignment plus design interventions
Land	0 (alignment adopts 30metres in settled areas and maintains existing RoW outside settlement)
Loss of Structures	353,922,476.25 (free of Isiolo junction)
Income Loss	12,991,320.00 (free of Isiolo junction)
Graves	0 (realignment avoids graves)
Trees	305,325.00 (free of Isiolo junction)
Livelihood Restoration Activities	100,000,000.00
Monitoring and Evaluation (external and internal)	25,000,000.00
Subtotal	492,219,121.25
Contingency Costs (15%) of Subtotal	73,832,868.19
<b>Total</b>	<b>566,051,989.44</b>

## 12.2 Implementation Schedule

202. The proposed RAP implementation activities will take place in three stages, i.e.

- i. RAP Preparation Phase: Largely preparatory work towards RAP review, approval and disclosure.
- ii. RAP Implementation Phase: Actual resettlement activities including inspection of the assets, inquiry, PAPs Sensitization and training on utilization of funds, Preparation and Issuance of awards & payments, management of grievances and livelihood restoration.
- iii. Monitoring and Evaluation of the process

Table 0-3: RAP Implementation Schedule

ISILOLO MODOGASHE RAP IMPLEMENTATION SCHEDULE																
Activity	Responsibility	2019					2020									
		Nov	Dec	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Sep	Oct	Nov	Dec	
Review and Approval of final RAP	PIU, WB															
Disclosure of RAP on websites and stakeholders	PIU, WB															
Sensitization of PAPS on RAP through Information Disclosure	PIU															
Establishment and operationalization of GRC Committees	PIU (NGO/firm)															
Gazettement of Intention to Acquire, inspection of the assets, inquiry, PAPS Sensitization and training on utilization of funds, Preparation and Issue of awards& payments	NLC															
Start of physical Relocation of PAPS and grace period to allow salvage of asset materials of affected assets	NLC															
Grievance Redress	Committees, PIU															
Livelihood Restoration activities	PIU (NGO/firm)															
Monitoring and evaluation	PIU (NGO/firm)															

## 13 Monitoring and Evaluation

203. Monitoring refers to routine and systematic collection of data relating to project resources, activities and performance with an aim to assessing performance or to guide implementation. In this manner, it provides regular feedback and early indications of progress, or lack of progress thereof, allowing for speedy adjustments to ensure RAP objectives are met. It informs on whether project activities and outputs are going on as planned, and thus points to the likelihood of whether the objectives will be met or not – thus providing opportunities to feed back into the project process, and effect changes where necessary, towards the actualisation of the objectives of the RAP. Evaluation on the other hand, focuses on the performance of a project versus intended objectives, through asking the principal question; is the project producing the anticipated impact or outcomes? In other cases, as apply to this RAP, it is the periodic i.e. mid-term and final assessment of an ongoing or completed project. In combination, Monitoring and Evaluation (M&E) enable the assessment of progress as well as overall success and effectiveness of the implementation of the resettlement and compensation processes and measures, and the resultant outcomes and impacts.

### 13.1 General Objectives of M&E

204. Monitoring and Evaluation is a specific requirement of the World Bank OP 4.12, which is necessitated as part of the process framework, a comprehensive description of the arrangements for monitoring the activities and process set forth in the resettlement instrument, in this case the RAP. The main goal of M&E is to review with an aim to facilitate adaptation of actions or performance towards the achievement of the objectives of the RAP i.e. the improvement or at least restoration of the social and livelihood resources of the PAPs at their pre-project level.

M&E will aim at achieving the following:

- Monitoring if the resettlement process is being managed in line with the set objectives, methods and desired outcomes.
- To monitor and report on the effectiveness of RAP implementation, including the progress of disbursement of facilitation/compensation, the effectiveness of public consultation and management of grievances.
- To check if timelines and implementation schedule is being adhered to and met;
- To assess compliance with requirements established in national legislation and international best practices and safeguards;
- A feedback tool to identify emerging or potential problems and challenges as early as possible, to allow timely intervention in implementation arrangements, processes, packages etc.
- Assess un-identified project related adverse risks or impacts that may have not been unforeseen for enhanced mitigation and management.
- To assess the level of PAPs satisfaction with the compensation and resettlement process;
- To assess if RAP actions, compensation and rehabilitation measures undertaken are adequate in restoring livelihoods or sustaining/improving pre-project living standards.

205. Based on the above, the monitoring and Evaluation of RAP implementation will be based on the RAP itself, the existing Kenyan legal framework, and World Bank Safeguards policies.

The responsibility for M&E rests with the KeNHA's Project Implementation Unit, with expected reporting to the higher levels of company management. It is KeNHA's responsibility to ensure that the process is well facilitated and adequate staffing is available more so for internal monitoring, as well as setting up the right procedures to guide the exercise.. These functions, as the next sections will show, can be exercised through partnerships with other stakeholders such as external firms.

### 13.2 Isiolo-Modogashe RAP Monitoring and Evaluation Framework

206. A comprehensive M&E framework should seek to track progress on 5 key areas of RAP inputs, activities, output, purpose/ objectives and the goal/ long-term objective (Figure 13.1). These relate broadly to the 2 main components of a monitoring plan i.e. RAP performance and RAP impact/outcome monitoring, and under which a variety of questions can be used as a key guide in the monitoring process as table 13.1 below shows. The third, a completion audit can dwell on both areas.



Figure 0-1: Key areas to track progress in RAP

Table 0-1: Key questions to guide monitoring and evaluation

Level in result chain	Sample Key Questions to ask/guide	Corresponding Components of a Monitoring Plan
<b>Inputs</b>	<ul style="list-style-type: none"> <li>• Are resources being used efficiently?</li> <li>• What interventions, measures and resources are needed?</li> </ul>	(Internal) Performance monitoring
<b>Activities</b>	<ul style="list-style-type: none"> <li>• Have planned activities been completed on time and within the budget?</li> <li>• What are we doing? Are we doing it right?</li> <li>• What unplanned activities have been completed?</li> <li>• What factors are affecting (in an enabling or disabling manner) the implementation of activities?</li> </ul>	(Internal) Performance monitoring
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• What direct tangible outputs has the RAP implementation delivered?</li> <li>• Are we implementing the measures/interventions as planned?</li> </ul>	(Internal) Performance monitoring
<b>Purpose/objectives</b>	<ul style="list-style-type: none"> <li>• What changes have occurred as a result of the outputs? To what extent are these likely to contribute towards the project purpose and desired impact?</li> </ul>	(External) Impact Evaluation

	<ul style="list-style-type: none"> <li>• Has the RAP achieved the changes for which it can realistically be held accountable?</li> <li>• Are interventions working or making a difference?</li> <li>• What factors are affecting (in an enabling or disabling manner) the achievement of results as stated in the RAP and work plans?</li> <li>• To what extent and in what ways does KeNHA (and its implementing partners) need to modify its activities or manner of working to in light of results coming out of its reflection exercises?</li> </ul>	
<b>Goal/ long-term objective</b>	<ul style="list-style-type: none"> <li>• To what extent has the RAP implementation contributed towards its longer term goals? Why or why not?</li> <li>• What unanticipated positive or negative consequences did the RAP proposed measures/interventions have? Why did they arise?</li> </ul>	(External) Impact Evaluation

Source: Global Fund (2009) and International Federation of Red Cross and Red Crescent Societies (2007)

### 13.2.1 Internal Performance Monitoring

207. Internal performance monitoring allows KeNHA to measure physical progress against milestones and schedule of required actions established in the RAP. This will be a continuous routine process aimed at monitoring the resettlement and compensation process and ensure that the RAP implementation process desired outcomes is achieved efficiently and effectively throughout the project lifecycle.

208. Internal monitoring will be undertaken by KeNHA Project Implementation Unit and shall be integrated into the overall project management. The process will involve collection of relevant resettlement information, analysis, and documentation to inform the project RAP monitoring process.

209. The PIU – the key person being the M&E officer – after every major activity updates the M&E database. For instance, to monitor the delivery of the consultations held with the PAPs as scheduled, after the meeting, the title of the meeting held, date, number of participants (male and female), issues discussed etc. should be updated in the database. In addition, after every compensation cycle undertaken by NLC, KeNHA will update the compensation schedules. The monitoring team will track the progress of the grievance handling, get updates on compensation disbursement. However, in a RAP as large as this, involving numerous activities and types of PAPs, ideally a software based M&E programme would serve best, making it easier and efficient to produce monthly reports for review. The reports generated will be used to make decisions where adjustments are needed to ensure the RAP implementation process achieves the desired results, and on time.

### 13.2.2 Midterm Impact evaluation

210. The midterm impact evaluation will gauge the effectiveness of the RAP and its implementation in meeting the needs of the affected population i.e. assesses the satisfaction of affected people with resettlement initiatives and, thus, the adequacy of those initiatives. Its focus is largely on the effects of resettlement or compensation, although it will incorporate some performance aspects. For instance, it will purposely validate the work done by the PIU

in monitoring, to ascertain that the targets are met and the objectives of the RAP are adhered to.

211. Any lessons learnt and recommendations to KeNHA on how to improve performance and impacts will be the main deliverable from this exercise. The report will advise KeNHA management of changes necessary to improve implementation of the RAP towards the achievement of its objectives, including strategies on how to implement those changes.
212. The most prominent and widely adopted guideline for evaluations is the five criteria of Relevance, Effectiveness, Efficiency, Impact and Sustainability from the Development Assistance Committee of the Economic Cooperation and Development (OECD/DAC). This also allows for cross-cutting issues, such as poverty, gender and environment, to be taken into consideration.

Criteria	Questions to ask in RAP
Relevance	<ul style="list-style-type: none"> <li>• Is the RAP design appropriate in the context?</li> <li>• Are the livelihood restoration measures, stakeholder engagement methods and content, institutions formed, GRM etc. suitable and sensitive to the context?</li> <li>• Is the compensation and livelihood restoration in line with applicable legal and international standards?</li> </ul>
Efficiency	<ul style="list-style-type: none"> <li>• Is the RAP implementation timely, and undertaken in a cost-effective manner?</li> <li>• Have resources been used cost effectively?</li> <li>• Do the results -- quantity and quality -- justify the resources expended?</li> </ul>
Effectiveness	<ul style="list-style-type: none"> <li>• To what extent were planned RAP outputs/results versus the planned actions/schedule achieved?</li> <li>• What are the reasons for the state of achievement?</li> <li>• To what extent are all the categories of PAPs been reached?</li> <li>• Are there any outstanding issues related to compensation payments (rates, amounts and timing)?</li> <li>• What is the quality of technical planning, coordination and partnerships established</li> <li>• What supports and barriers have affected achievement of the RAP objectives?</li> <li>• What is the general feedback from the affected population?</li> <li>• What are the lessons learnt in the RAP implementation so far, and what improvements need to be made, and how? Is there a need to adjust or propose additional compensation and/or livelihood restoration measures?</li> </ul>
Impact	<ul style="list-style-type: none"> <li>• Have PAPs re-established themselves in the resettlement sites?</li> <li>• Is PAPs livelihood restoration or improvement happening?</li> <li>• How are vulnerable groups or persons fairing?</li> <li>• Are there unanticipated positive or negative consequences?</li> </ul>
Sustainability	<ul style="list-style-type: none"> <li>• Can the livelihood outcomes of the RAP be sustained beyond the life of the RAP?</li> <li>• Will impacts continue to be realized after the end of the RAP?</li> </ul>

Figure 0-2: OECD Criteria in RAP Evaluation

213. Essentially, evaluation should be as participatory as possible. Therefore, evaluators will involve and interview PAPs (and other stakeholders), to ascertain their knowledge and concerns about the resettlement process, their entitlements, and the rehabilitation measures. It uses a variety of avenues to collect data, including:

- Document review, entailing review of the grievance registers, sensitisation material to assess their appropriateness etc.;
- Semi-structured interviews with a sample of the PAPs from the various settlements and covering all types/categories of PAPs, including the vulnerable, and those who have gone through the GRM process;
- Resettlement sites and Livelihood observation;
- Survey of a sample of PAPs to assess their socio-economic life against the baseline to check if lives/livelihoods improving, and to assess their satisfaction with the compensation/rehabilitation methods and entitlements, timing of payments etc.;
- Meet the various committees to assess their ability to do their work, note their challenges and provision of necessary resources to facilitate effective work;
- Key Informant Interviews (KIIs) which enable a more in-depth process of inquiry among selected participants and other stakeholders.

214. Overall, an external evaluation will assist KeNHA meet accountability and transparency thresholds. Evaluation therefore should be facilitated by an external and independent M&E specialist (individual or firm) for purposes of evaluating compensation and resettlement activities, and verification if undertaken according to the RAP.

### 13.2.3 Post-Implementation Evaluation (Completion Audit)

215. Upon completion of the RAP implementation (at least 6 months but not more than a year later after project completion), KeNHA will undertake an audit to determine if the outcome of the RAP complies with the objective of the RAP towards restoration or improvement of the standard of living of the PAPs. It verifies if all commitments were delivered, and whether mitigation measures had the desired effect. If the outcome of the audit reveals that these objectives may not have been realized, KeNHA will institute follow-up measures, as they may deem appropriate. This documents the lessons learnt for feeding into implementation of other RAPs, and future projects.

216. The audit is undertaken by an external independent third party, and will take into account the baseline conditions, the results of resettlement monitoring, and midterm review. In addition, the auditors will make their own assessments, surveys and interviews in the field and with Project-Affected- People.

### 13.3 Monitoring Indicators

217. A variety of monitoring indicators that KeNHA and/or its implementing partners can use are indicated in Table below. This should be supplemented by the evaluation questions raised in diagram 13.1.

*Table 0-2: Monitoring Indicators*

Activity/Parameters	Indicators
Basin Information on the PAP and Demographic changes	<ul style="list-style-type: none"> <li>• Name of persons/institutions/groups affected</li> <li>• Average education attainment, Marital Status, age</li> <li>• Employment status and income earnings (average)</li> </ul>
Assets Acquisition	<ul style="list-style-type: none"> <li>• Amount (area) of private land acquired</li> </ul>

		<ul style="list-style-type: none"> <li>• Amount (area) of communal land acquired</li> <li>• Amount (area) of government land acquired</li> <li>• Number, type and size of private building acquired</li> <li>• Number, type and size of community buildings acquired</li> <li>• Number, type and size of cultural buildings acquired</li> <li>• Number, type and size of government buildings acquired</li> <li>• Number and types of trees acquired</li> </ul>
Compensation payments to PAPs		<ul style="list-style-type: none"> <li>• Number of PAPs compensated, by type of PAP</li> <li>• Number of PAPs promptly paid disaggregated by gender</li> <li>• Number of PAPs not paid promptly and reasons</li> <li>• Amounts of money paid to PAPs</li> <li>• Payment free of transfer costs</li> <li>• Use of compensation cash by PAPs</li> <li>• Options provided in compensation by PAP (land for land versus cash for land/assets), and adoption by PAPs</li> </ul>
Restoration of assets		<ul style="list-style-type: none"> <li>• Number of PAPs with restored assets disaggregated by gender and asset type</li> <li>• Number of PAPs without restored assets</li> <li>• Size, construction and durability of replacement houses.</li> <li>• Number of restored or relocated cultural sites and assets (graves, mosques).</li> <li>• Notice period for relocation</li> </ul>
Restoration of livelihoods	of	<ul style="list-style-type: none"> <li>• Number of occupied (re-established) Rental Units, and average monthly rental income</li> <li>• Number of re-established businesses, and average monthly income</li> <li>• Number of livelihoods specific training held by type, gender and thematic areas covered.</li> <li>• PAPs perception of the usefulness of the training</li> <li>• Application of training in PAPs livelihoods</li> </ul>
Assistance to Vulnerable	to	<ul style="list-style-type: none"> <li>• Number of vulnerable PAPs assisted by type and gender</li> <li>• Type of assistance provided to vulnerable PAPs</li> <li>• Number of vulnerable PAPs not assisted and reasons</li> </ul>
Disclosure, Community participation, public engagement and Access to Information		<ul style="list-style-type: none"> <li>• Disclosure of RAP on KeNHA, and World Bank websites.</li> <li>• Availability of RAP at county level.</li> <li>• Disclosure of RAP summary at settlement level, in a language understood by the PAPs</li> <li>• Number of settlement level consultative meetings held, by type</li> <li>• PAPs awareness on RAP and entitlements</li> <li>• Number of County and National Government leaders engaged/briefed about the RAP</li> <li>• Number of PAP consultative meetings held</li> <li>• Type of information provided in meetings</li> <li>• Type of issues raised at public consultation meetings, and response rate</li> <li>• Number of participants attending public consultation meetings related to displacement disaggregated by gender</li> <li>• Modes and language of communication.</li> <li>• Minutes of meetings held and lists of attendance</li> <li>• Number of people seeking information on displacement and compensation</li> </ul>
Access to Social Services		<ul style="list-style-type: none"> <li>• Restored access to and functioning social services e.g. water</li> </ul>
Grievance management		<ul style="list-style-type: none"> <li>• Number of PAPs sensitised on the grievance mechanism, gender</li> <li>• Activation of GRCs, and timing</li> <li>• Formation of SGRC, and timing.</li> <li>• Capacity building of Grievance committees and timing; thematic areas of training, and frequency of training</li> <li>• Number of complaints/ grievances registered/received by type and whom (gender) at each level</li> </ul>

	<ul style="list-style-type: none"> <li>• Number of grievances resolved promptly (within the duration allowed in the grievance redress mechanism) at each level</li> <li>• Number of grievances not resolved in time but completed</li> <li>• Number of outstanding grievances not resolved</li> <li>• Average timelines for resolution of grievances disaggregated by the various levels of grievance redress mechanism/institutions and disaggregated by different types of grievances.</li> <li>• Number of grievances referred to the SGRC</li> <li>• Number of grievances referred to KeNHA's PIU</li> <li>• Number of grievances referred to Level 3 (Courts of Law Number of complainants satisfied with response and grievance redress process</li> <li>• Number of PAPs that have access to the GRM</li> <li>• Provision of necessary resources/tools for work (grievance forms, registers, files etc.) per Grievance committee</li> </ul>
Training and Capacity Building	<ul style="list-style-type: none"> <li>• Number of training held disaggregated by target group/institutions and issues</li> <li>• Number and type of committees trained disaggregated by gender</li> <li>• Number and type of participants trained disaggregated by gender</li> <li>• Themes discussed in various trainings</li> <li>• Committees perception on usefulness of training</li> </ul>
Process Management	<ul style="list-style-type: none"> <li>• Number of KeNHA staff dedicated/involved in RAP implementation</li> <li>• Number of implementing agencies/firms by function</li> <li>• Number of coordination meetings between various stakeholders.</li> </ul>
Changes in Household Baseline	<ul style="list-style-type: none"> <li>• Refer to indicators used under Chapter 4 to track changes in educational attainment, health etc.</li> </ul>
Cultural and Gender sensitive Concerns	<ul style="list-style-type: none"> <li>• Cultural appropriateness of the methods, modes used in compensation, consultation etc.</li> <li>• Incorporation of cultural relevant institutions in RAP institutions</li> <li>• Gender violence cases related to RAP implementation</li> <li>• Change in social-cultural setting of the PAPs triggered by RAP</li> <li>• Participation of women in RAP implementation</li> <li>• Changes to the status of women</li> </ul>

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1.7 Vulnerability.....

1-widow..... 2-orphan ..... 3 Household headed by children under 18yrs ..... 4-sick ..... 5-disabled ..... 6-elderly over 65yrs 7- (others) specify .....

**1.8 Other household members:** Provide information on other household members specifying their relationship with the Head of the household

No.	Name of Household Member	Relationship to Head of the household	Gender	Age	Occupation		Education	Can read and/or write	Main language spoken by majority at home
			1-M 2-F		Primary	Secondary		1 – Yes 2 – No	

**Relationship with the household head:**

1- Spouse  2- Son/Daughter  3- Parent (Father/Mother)  4- In-laws  5- Brother/Sister  6- Brother/Sister-in-law  7- Nephew/Niece  8- Grand-son/daughter  9- Cousin  10- Other parent  11- Other (specify) .....

**Primary and secondary occupation (multiple responses possible)**

1-subsistent retail trader  2-farmer  3-Livestock/Animal Keeper/Sale  4-Builder  5-Agricultural worker  6-Civil servant  7-Student  8-Housewife  9-Shop Assistant  10-Self-employed craftsman/woman  11-Employed craftsman/woman  12-Non-employed home helper  13 Boda boda operator  14-Employed-NGO/CBO  15-Without occupation/employment  16-Other.....

**Education:**



- 1- Bicycle: .....   
  2- Motorcycle: .....   
  3- Truck: .....   
  4- Car: .....   
  5- Canoe/Boat .....   
  6- Generator: .....  
 7-Radio:.....   
  8- Tractor...   
  9- Water pump:.....   
 10- Mobile Phone: .....   
 11- Television:.....   
 12-TukTuk: .....

### 5. Access to social Services

5.1 Main mode of transport.....1-Bicycle   2-Bodaboda   3-Bus/Matatu PSVs   4- Private Car    5-On foot    6- Lorry   7-Other (specify).....

5.2 Nearest Primary School..... 1. 0-1km    2. 2-5km    3. 6-10km    4. More than 10km

5.3 Where do you seek medical treatment..... 1-Public Health facility    2-Private health Facility    3- Mission/NGO Hospital  
 4 – Traditional/spiritual healer    5 – Chemist/shop    6- Other (specify)

5.4 Nearest health Facility..... 1. 0-1km    2. 2-5km    3. 6-10km    4. More than 10km

5.5 What main disease(s) did you or a member of your household suffer from in the last one year? (multiple responses possible)

- 1-Amoeba/typhoid: .....   
2-Malaria: .....   
3-Tuberculosis: .....   
4-Common cold:.....   
 5-Diarrhoea .....   
6-Fever:.....  
7-Hypertension/High blood pressure:.....   
 8- Other specify

### 6. LIVELIHOOD – (MULTIPLE RESPONSES EXPECTED)

#### 6.1 Sources of CASH income for the household head

No.	Source of income	Sector	Average Distance (km)	Monthly Income of the Household		
				Nb.	Member of the Household	Amount
1.	Main source :				Head of the household	
					Spouse	
					Adult child	

				Other: .....	
2.	Secondary source :			Head of the household	
				Spouse	
				Adult child	
				Other: .....	

- Sector:**  1- Crop Farming  2- Animal husbandry  3- Fishing and/ or fish-farming  4- Handicraft  5-Construction  
 6-Property rental  7- Trading/Commerce  8- Civil service  9- Pension  10-Economic support: Family or friends  
 11- Economic support: Government or NGO  12-Economic Support: Remittances  13- Other (specify).....

6.2 Other types of affected household production (Identify income sources and income amounts that are potentially affected by the project)

No.	Affected Asset	Income			Affected	
		1- Type of Income	2- Sector	3- Amount/M onth	4- Type of Impact	Duration of Impact
1.						
2.						
3.						
4.						

**Type of income:**

- 1- Rent-generated income from house on an affected plot of land
- 2- Rent-generated income from owner of business on and affected land plot
- 3- Rent-generated income from person undertaking agrarian activities on affected land
- 4- Sale-generated income from affected business
- 5- Income generated by the sale of products from an affected land plot
- 6- Income from an employee of an affected business
- 7- Income generated by the sale of fishing products in an affected area
- 8- Employment-generated income for a farm worker operating on an affected plot of land

9- Other (specify)

**Sector:**

1- Formal

2- Informal

**Type of impact:**

1- Partial impact

2- Total impact

**Duration of impact:**

1- Temporary impact

2- Permanent impact

**7. MAIN EXPENSES OF THE HOUSEHOLD – (Multiple response expected)**

(Specify amounts based on the reference period of your choice–Week, Month OR Year- in each category)

No	Main expenses of the household	Amount		
		Choose the reference period :	Week	Month
1.	House rental			
2.	Rental of agricultural land			
3.	Agricultural input			
4.	Food			
5.	Drinking water			
6.	Health			
7.	Transport			
8.	Education			
9.	Other (specify): .....			
10.	Other (specify): .....			
11.	Other (specify): .....			

**8. HOUSEHOLD’S PERCEPTIONS IN RELATION TO THE PROJECT AND TO AVAILABLE COMPENSATION AND RESETTLEMENT OPTIONS**

8.1 Are you aware of the Isiolo-Kulamawe-Modogashe road Project?

1- Yes 2-No

8.2 What is your main source of information about this project? .....

- 1- Members of your family    2- Neighbors    3- National or regional Government    4-Local authorities  
5- public meeting    6 - other.....

8.3 Are you aware that your Land structures or livelihood sources could be affected by this project?  1- Yes 2-No

8.4 In the event that your assets or livelihood is affected by the project, what type of compensation would you prefer?

- 1- Provision of alternative Land or Structures for my affected land parcel  
 2 Cash compensation for loss of assets or livelihood

8.5 In the event that you would be affected, what other type of assistance would you need during resettlement? ***(More than one possible answer)***

- 1- Assistance for the transportation of the affected assets.  
 2- The authorities to allow for salvage of materials  
3- compensation to include 15% disturbance allowance  
 4- No assistance                       5- Other (specify): .....

8.6 How do you think this project could affect your household?

No	Theme	Impact	
		Type	Explanation
1.	Household income		
2.	Household expenses		
3.	Household food		
4.	Employment of members of the household		
5.	Household children’s education		
6.	Household members’ health		
7.	Household’s access to electricity services		
8.	Household’s social network		

9.	Road and/or pedestrian network frequently used by		
10	Other (specify): .....		

**How affected:**  1- Positive     2- Negative     3- Without impact     4- Don't know

**ii.Asset Inventory Tool****ISIOLO-KULAMAWE-MODOGASHE RESETTLEMENT ACTION PLAN (RAP)****ASSET INSPECTION SHEET**

Household No / unique Identifier .....

**A) GENERAL DETAILS OF AFFECTED ASSET OR LIVELIHOOD**

Village / Cluster	Location	Sub County	County
Plot Number	PAP category <sup>54</sup>	Ownership / Rented	GPS coordinates / Photo Number

**Codification****PAPs Category:**

1 – Land owner, 2-Structure Owner, 3 – Crop / tree Owner, 4-Livelihood Owner, 5- tenant, 6- employees.

**B) DEMOGRAPHIC DATA OF PAP**

Name of the owner (HH)	ID	Telephone	Gender	Age
Spouse Details	ID	Telephone	Gender	Age
Household size				
Education Level				
Livelihood / Income Streams				

**C) VULNERABILITY PERSONS**

No	Vulnerable Parameter	Answer
	Is the Household headed by a woman	
	Is the HH headed by child under 18yrs	
	Is the HH headed by a disabled Person	
	Is the HH headed a chronic ill person	
	Is the HH headed by elderly over 65yrs	

Yes (1) or No (2)

<sup>54</sup> Structure owner could be PAPs or Institutions owning land, structures, livelihood or community assets

**D) LAND AFFECTED** (Yes/no).....**Total Size** (acre/square meters).....

**Area Acquired**.....(acres) **LR Number** .....**Title Deed Issued / Not Issued**.....(Attach Copy)

**Status of Landownership / Land Successions** .....

**E) STRUCTURE** .....(partial / total impact) tick appropriately  
.....(commercial/residential)

TYPE OF STRUCTURE affected	Accommodation Details-no. of rooms	NATURE OF MATERIAL			Size in sq ft	GPS coordinates	PHOTO NUMBER.
		Wall	Roof	Floor			

**F) LOSS OF LIVELIHOOD**

S/NO	Type of Business	Average Daily Income Ksh.	Affected Total / Partial	Type	Owner of the business Name (ID and address if not member of the household)	Employées Name (ID and address)

**G) CROPS GROWN**

TYPE OF CROP	AREA IN SQUARE FEET	Name (ID and address if not member of the household)

**H) TREES GROWN**

TYPE OF TREE	AGE OF TREES			Name (ID and address if not member of the household)
	YOUNG	MEDIUM	MATURE	

**D) TENANTS**

List the Names and Telephone Numbers of Residents Tenants in the Structure

**TENANT'S / EMPLOYEE INFORMATION USING STRUCTURE OR BUSINESS**

<b>Name of Tenant</b>	<b>Gender</b>	<b>Rent Amount (Kshs)</b>	<b>Telephone</b>	<b>ID Number</b>

## Appendix B – List of Institutions and persons met

### Names of Institutions

No.	Name	Institution
1.	Allan Machari	County Commissioner Meru
2.	Naomi Kamau	NLC-Meru
3.	Cheramgoi Langat	DCC- Igembe North
4.	John Ondego	County Commissioner Isiolo
5.	Dr Hussein Asa	Medical Superintendent MOH-Isiolo
6.	Godfrey Gachoya	D/OC Administration Police
7.	Stephen M.Kamande	ACC Sericho Ministry Interior
8.	Sr. Sylvia Ombaka	Isiolo Mission School
9.	Engineer Sharif Duba	Ewaso Nyiro North Development Authority
10.	Joshua Rume	National Government Surveyor (at county)

**Appendix C – Minutes of Grievance Redress Meeting at Isiolo Junction and other Community/Public (PAPs) Meetings**

## **Appendix D – Lists of Attendance**

- i. List of Attendance for Community/Public (PAPs) Meetings**
- ii. List of Attendance for All Other Meetings/Interviews**

## Appendix E – Lists of Meetings held during Initial RAP preparation

### i. Isiolo-Kulamawe section

Date	Venue	Male	Female	Total
24-11-2017	Kulamawe Chief's Office	52	21	73
24-11-2017	Yaqbarsathi Asst. Chiefs Office	15	11	26
27-11-2017	Ndumuru Market	16	23	39
28-11-2017	Gambella Market	18	13	31
29-11-2017	Bullo Market	22	18	40
29-11-2017	Kachuru	55	39	94
1-12-2017	Ngare Mara Methodist Church	37	19	56
1-12-2017	Isiolo Junction area	35	11	46

### ii. Kulamawe-Modogashe Section

Date	Venue	Time	County
18.11.2017	Eldera market	10 a.m.	Isiolo
19.11.2017	Janju village	10 a.m.	Isiolo
20.11.2017	Barkuke Market	10 a.m.	Isiolo
21.11.2017	Bullo Market	8 a.m.	Isiolo
21.11.2017	Eldere	2.p.m	Isiolo
22.11.2017	Kambi Samaki	10a.m	Isiolo
28.11.2017	Modogashe I	10 a.m.	Isiolo
29.11.2017	Modogashe II	10a.m	Isiolo
03.12.17	Boji	10a.m	Isiolo

## **Appendix F – Names and Contacts of the Locational Grievance Committee members**

**Appendix G - Grievance Redress Form**

<b>1. Grievance Form</b>			
Grievance Number		Date	
Name of the Recorder		County	
Sub County		Settlement	
<b>2. Information About the Complainant</b>			Forms of Receiving the claim/grievance
Surname			<input type="checkbox"/> Phone Line <input type="checkbox"/> Community/ Information Meetings <input type="checkbox"/> Mail <input type="checkbox"/> Informal <input type="checkbox"/> Other
First Name			
Preferred method of Contact (Telephone Number, email etc.)			
Do you wish to raise your grievance anonymously (Yes/No)			
Do you wish that your identity is not disclosed without consent (Yes/No)			
The language desirable for communication (tick)	Swahili Meru Somali Borana Other.....		
<b>3. Summary of Grievance</b>			
Description of Incident or Grievance or Claim: What is the complaint about? What is the claim? What happened? Where did it happen? Who did it happen to? What is the result of the problem?			
<b>4. What is the basis of your claim?</b> Do you have any other matters or facts (including supporting documents) that you would like to share?			
<b>5. What would you like to see happen to resolve the problem?</b>			
<b>6. Have there been previous efforts to resolve the Complaint? Yes/No</b>			
<b>7. Please describe any response received from and/or any actions taken earlier. Please also explain why the response or actions taken are not satisfactory</b>			
<b>8. Complainant Signature</b>		Date:	
<b>9. Chairperson Signature</b>		Date:	

**Appendix H – Grievance Register**

<b>Case No</b>	<b>Date Received</b>	<b>Complainant Name (if confidentiality is not required)</b>	<b>Complainant contacts (Phone, email etc.)</b>	<b>Complaint or Incidence Description</b>	<b>Actions Taken to Collect information</b>	<b>Action Taken/ Responsibility</b>	<b>Satisfaction with Actions Taken</b>	<b>Escalation of Grievance</b>	<b>Closure Date</b>	<b>Signature</b>

Table 0-1: Views, Concerns and Questions from PAP meeting at Isiolo Junction/Tulo Roba

Question/Issue	Response
The socio economic questionnaire did not capture institutions.	The socio-economic questionnaire survey covered households only. In the case of institutions, the information required was different e.g. the contact of the person in charge was captured in the asset inventory tool. Institutions were also covered by the key informants interviews.
Are both sides of the road affected?	If KeNHA adopts a 60m corridor, all sides are affected but it depends on the proximity of structures/land to the corridor coordinates. However, impact may vary from one side to another, some partially, others in full.
What is the exact size of the new corridor compared to the old?	According to the road classification, the corridor should be 60m. This is an increase of 30m from the existing road wayleave.
Can you tell us the names of those affected?	Those affected cannot be announced in the meeting until the PAP register is finalized. But anyone within the 60m corridor is affected and covered in the valuation exercise. Disclosure of the affected persons will be done once the documents have been cleared by the Client.
Care should be taken to ensure those who get their 'riziki' from the road are not affected or left worse off.	The alternatives have been noted and will be highlighted in the report. However, should the proposed route be maintained, proper mitigation measures are proposed. Compensation will be paid to the businesses along the road reserve. The census survey has identified these individuals who are present in the project area before the cutoff date.
Part of us were pastoralists but all land is now occupied. The same government that allowed such and which is supposed to take care of us now wants 'kunyanyasa'. Now our houses are affected and this adds to our stress.	The concerns are duly noted and will be reflected in the report for consideration. All affected structures and land will be compensated at replacement cost. The World Bank standards will be used to make sure that no one is impoverished or left worse off.
If land not developed, does this qualify for compensation?	Land parcels not developed qualify for compensation as long as not illegally acquired. Compensation will be paid to legitimate owners by NLC who are constitutionally mandated to handle land compensation.
Why is it that the GRC composition is not well balanced? Small scale businesses should have a representative.	Amendments to ensure the GRC is well balanced can be made and this will be discussed later in the meeting. However, amendments will be subject to certain criteria to be discussed later. All PAPs categories will be presented in the GRC if community wishes so.
In the cases where there is land dispute in court, which person/name did the consultant capture?	Where land had disputes, there is a section for remarks which captures both names of persons in dispute. Once the courts determine, NLC will pay the rightful person. However, such cases can only be captured if brought forward. The project RAP grievance mechanism will be in place to help resolve all the disputes.
Isiolo Junction is one of the most populated location in the county hence the proposed project will affect kindergarten schools and patients accessing hospital. A number of the PAPs are elderly and have lived here for 30 years, and the project will cause a lot of distress, depression, so there must be an alternative.	The design has considered alternatives to reduce the number of displaced persons. Further possibilities will be explored to reduce the number of displaced persons. Where avoiding displacement is not possible, mitigation measures that involve compensation and other alternatives have been provided.

The proposed Isiolo Modogashe road will cause distress among many residents especially in Tulo Roba.	Alternatives to minimize displacements are also been considered in terms of where alignment can be made. Where avoiding displacement is not possible, mitigation measures that involve compensation and other alternatives have been provided.
Why were the residents of Tulo Roba not properly informed of the cutoff date? This cutoff date has been maintained yet the first consultant did not properly communicate it.	Cut off date was communicated to all the residents along the project who were present then. This was done through the barazas, local administration etc.
How will the disputed land at 78 Tank Battalion be handled? The land is disputed by two counties, Meru and Isiolo. He pointed out that allotment letters of the same land parcels have been issued by the two county governments.	Since land adjudication is ongoing in some areas and the chief agreed that survey of Kenya were in Isiolo month of April 2019, they will share data with respective counties on their findings. Our understanding is that this exercise is actually a collaboration between the national and county government. National Land Commission handles all land compensation in such cases. In such cases, they will first have to engage and resolve any conflicts before compensation.
Do the PAPs have the final say on the alternative route? Whether the meeting can reach a resolution that KenHA must adopt?	Such a decision can only be made by KeNHA. However, it is important to explore these alternatives for consideration by KenHA. The meeting cannot however reach a resolution on behalf of KeNHA.
The proposed project will tear apart the social fabric as families will have to relocate.	This impact of family and social integration is noted and consideration for mitigation measures noted. The RAP will try as much as possible to keep families together and maintain the social capital that exists currently.
Are you working with the county land registry? Data on land owners should come from survey of Kenya who were in Isiolo/Tulo Roba a month ago.	There has been a visit to the County Department of Survey. There have been discussions with surveyors e.g. the national government surveyor and it is clear which sections are under the adjudication and which are pending. Final assessment of those to be paid for which land is largely a function of those who own the land as per registry, and where conflicts exist as we understand that parts of the sections in Isiolo junction are contested, NLC will first engage on those.
Why does the project start and why is not waiting first for titles to be issued to the land owners?	Unfortunately, government projects cannot always wait for land processes to be complete. There are mechanisms present to deal with land acquisition at this point in the process.
Why were we asked in the socioeconomic survey if we prefer cash or land compensation when the very land is being taken by the government? Where will this land they are been asked about come from and why can't the government build the road there?	It is a norm to understand the preference of PAPs in terms of compensation. It doesn't always mean land is available and mostly not on the scale needed for the road. As earlier explained, particularly for World Bank projects, there is a need to ask this preference to inform NLC. PAPs also have a choice to decide either land or cash.
Does the GRC have representatives from trade?	We will validate the GRC and see if it has a representative from small scale business/trade and if not, PAPs will make amendments as long as there is agreement.
Has the consultant involved county government?	The county leadership is aware of the ongoing public participation meetings. Other departments e.g. survey have been consulted.
Is KenHA going to construct a bypass?	The public participation views will help KenHA make final decision.

Has KenHA carried ESIA which will have helped make decision on bypass?	Yes the ESIA has been undertaken. All positive and negative impacts have been identified, with mitigation measures proposed.
The main road within Isiolo town should be expanded to reduce accidents instead of constructing new road at Tulo Roba.	The view has been captured and noted.
When the consultant is going to submit the list?	The report will be submitted to KenHA in the coming month after all public meetings along the route are complete. Disclosure will be undertaken once the reports have been reviewed and approved.
The PAPs are getting fatigued by the huge number of meetings starting from the Howard Humprey time, several meetings with KeNHA, and now this process. It causes psychological torture and anxiety to the people affected. If KeNHA has beaconed from 78 Tank Battalion, then this road will not be moved.	Public participation is important for views to be considered. It is a right protected by law. Actually, as noted, the beacons have started from 78 (barracks) and not the junction. This is an indication that there is room for consideration of alternatives, although not guaranteed.

Table 0-2: Views, Concerns and Questions from PAP meeting at Gambella

Question/Issue	Response
What will happen to those with plots but have not built houses or other structures?	The land will be valued at replacement cost which includes the market rate as well as the transaction costs, based on the criteria as presented by the valuer. NLC will give an option for land to land compensation or land for money.
Will the consultant include members not captured in the previous RAP by Howard Humprey?	New structures/members are not captured since there was a cutoff date. Not unless it can be proven they existed before this date, thus the reason the consultant works with a local representative. All grievances are been recorded and resolved through grievance committees formed at every settlement.
Are we allowed to construct new structures?	Members are at liberty to construct new structures outside the 60m corridor. The beacons erected should guide on where to construct. However, within the right of way beaconed, they should not construct but observe the cutoff date.
What will happen to members with plot numbers but their numbers were not captured during validation exercise?	Members can provide the plot numbers and registration documents to ensure all details of affected persons are captured however the information provided is subject to verification by NLC. The consultant informed PAPs that they are aware a registration/adjudication process is ongoing in Meru areas but incomplete thus NLC will be best placed to deal with such.
What is the size of the corridor, so that we can construct new structures, without fear of them being demolished?	The corridor is 60m wide. Since the section has already been marked, the locals were advised not to build the houses within the areas marked. The beacons are clearly marked.
Will compensation be completed in time and not have affected persons wait for years to be compensated?	Based on the requirement of the Kenyan Law and the World Bank standards, the compensation comes first before impact, and in line with the constitution, should be prompt. Thus will be on time.
Since the GRC list of members read some members are not affected persons, are we allowed to add or change?	PAPs present will make amendments to ensure the GRC is well balanced and acceptable to them. The committee details will be discussed in the meeting.

Some of us have properties under dispute, what will happen in such case, importantly who will receive the money. In the cases where there is land dispute, which person/name did the consultant capture?	In such cases a section for remarks which captures both names of persons in dispute. Once the right owner is determined, NLC will pay them. There exists a grievance redress mechanism that will be able to resolve all the ownership disputes and compensation will be guided by this process.
What is the fate of those who demolished their houses after valuation in 2017?	This has been verified against the initial RAP by Howard Humphrey. If it is found captured then, and can be verified as within the RoW, this is compensated. However, PAPs are advised not to demolish or replace structures before this process is complete.
What is the best option to remit compensation money?	This will depend on the agreement between the affected person and national lands commission. Mostly it is bank accounts for accountability purposes.
We want representatives of the Christians and Muslims on the GRC.	A pastor was nominated since already the list had a sheikh on the GRC.

*Table 0-3: Views, Concerns and Questions from PAP meeting at Ndumuru*

Question/Issue	Reply
Some of us have land outside the town but we have not built on it.	The land will be valued based on replacement cost as guided by the World Bank standards and money or land for land compensation paid to the affected person.
Why has the consultant not captured our plot numbers?	When the initial RAP exercise was done none of the residents had the parcel numbers and the cut off needs to be observed. Since adjudication is ongoing the validity of plot numbers cannot be ascertained. Once adjudication is complete the residents will be issued with title deeds a legal document they can use to claim ownership. NLC will be able to access the registry which is currently closed to verify the claims since all the PAPs have a small black book with a number on it and one which it is very easy to duplicate or produce similar, thus authenticity is a problem.
Will new members be included on the list?	The 18 December 2017 cutoff date applies thus structures is as per this date as earlier explained. However, we are updating if tenants have changed etc. as these are often temporal and if you have changed the business undertaken.
The size of this corridor is not clear as initially was said to be 30 but in some places 7.	The RoW is 60m and only those whose land is inside the beacons erected by KeNHA are considered. Existing RoW is 30 m(e.g. in Isiolo junction)
Who is going to handle compensation?	NLC will handle land compensation while KeNHA may choose an NGO or a firm or themselves undertake additional mitigation e.g. on livelihood restoration.
Since you have asked us to amend the GRC to reflect our position which guidelines should we use?	The GRC should be representative of gender, various groups affected, local dynamics e.g. if a council of elders exist, choose one representative.  A national government through local administration must be represented. These also need to be people who are well respected and not entangled in conflicts in the settlement. They can also consider impartial groups e.g. the religious etc. Important that it is someone who lives in the settlement for ease of access.
Some parcels are under conflict. What will happen?	Where land had disputes, the registers captures both names of persons in dispute. Once the rightful person is determined, only then will be the person paid. If an ongoing court case, the money is deposited in a special account

	to earn interest until the case ends. However, if the owners don't bring this to attention, it is difficult for one to know the land is disputed.
Can those who demolish their structures before this process is over be paid?	This can be verified against the initial RAP by Howard Humphrey. If it is found captured then, and can be verified as within the RoW, and possible to ascertain if built before the cut off, this can be captured. Compensation will be paid. However, PAPs are advised not to demolish or replace structures before this process is complete.
When will we be paid?	Payment will be after verification by NLC but before construction starts. Construction of the road will not begin until members are paid, however not all may be paid because of disputes but NLC will set aside money paid once the dispute is resolved.
The community wanted a representative of the church in the GRC	PAPs agreed to nominate a pastor.

Table 0-4: Views, Concerns and Questions from PAP meeting at Bullo 1 (Isiolo)

Question/Issue	Response
Will plots with no structures will be compensated?	Plots with no structures will be compensated. Adjudication is ongoing in Meru and already taken place in Bullo. PAPs should now follow up with their respective sub county land offices on the progress. NLC will verify on this process as the registry is currently closed until the process is complete.
What will happen to houses which were captured earlier but were destroyed by floods?	The consultant will indicate in the report that there was a structure captured in the initial RAP but could not be verified as destroyed by wind. NLC will evaluate the claims and determine compensation. The photos in the initial RAP will be key in this process.
What will happen to those who have land but were not there during RAP by Howard Humphrey?	The indication is that at the time of the Initial RAP, no adjudication was complete therefore even then it was difficult to ascertain ownership. That report could not verify if the land was owned by individuals and which individuals. NLC will consider all land within the 60m corridor, to establish if owned by an individual and compensate.
What will happen to houses or plots with disputes?	The payment will only be released once the case or dispute has been solved. In such cases, payment is paid into an account and will remain in that account for as long as the dispute remains unresolved.
What will happen to tenants or business when the houses are demolished?	Details of tenants and businesses were captured. For business, they will be compensated for lost business for a period of time. The estimated profits made in a month will determine the amount paid to the business owner. All tenants will get a notice of minimum 30 days to relocate.
What is the size of the corridor?	The corridor is 60m in line with the beacons that KeNHA has already put.
Can we change tenants who had been captured as house owners?	The work was undertaken together with the local leaders to ensure the right owner was indicated and such cases greatly reduced. After the meeting, the PAP can confirm in the draft register. If there is a dispute, it is indicated.
Plots outside town should be indicated.	The reasons plots outside town were not captured is that they are not on the proposed alignment. These plots lack title deeds and the land adjudication process is still ongoing. Having a title deed/allotment letter one can do search at land records office to determine the

	legitimate owner while an ongoing adjudication process means we still can't tell the final owner of the land. NLC will verify all land owners.
The GRC list should be amended since it does not include land owners?	The GRC in totality will be discussed in the meeting, and the composition changed if PAPs agree and as long as they meet the criteria set.
Will the roof of the house blown off by wind be compensated?	The consultant will indicate in the report that there was a structure captured in the initial RAP but could not be verified as partly destroyed by wind. NLC will determine who is to be paid if they were in the project area by the cut-off date. The photos in the initial RAP will be key in this process.
If you have land on both side of the road, will it be paid?	As long as the land is on by the wayleave, this will be verified by NLC.
The area needs water. Can the project help?	KeNHA has advertised for a social needs assessment for the road to identify social infrastructure and livelihood restoration initiative for community development. The community should present their needs then and prioritize water. Also independently, contractors have CSR projects so they can also approach the contractor who will come.  However, if the water was existing, and was affected by the project, KeNHA would have to reinstate it.

Table 0-5: Views, Concerns and Questions from PAP meeting at Kachuru

Question/Issue	Response
Will plots with no structures be compensated?	Plots with no structures qualify for compensation at replacement cost. Often this is through the registry but also determines if one qualifies for payment in good faith as long as the land is not illegally acquired. Largely since land adjudication is ongoing land issue will be handled by NLC.
When will the road construction begin?	Once the process of compensation is completed, KeNHA will go ahead and commence construction, before that there are other activities including valuation by NLC. There will be public participation on the same and communities will be made aware of the exact time construction will be scheduled to start.
Can plot numbers be used for compensation?	Plot numbers are not legal documents proving ownership. Title deed is the legal document. Thus the reason why NLC will best be placed to handle the land issue.
Has the government already acquired the land since they have put beacons on our land already yet you tell us there is a process?	The beacons are only meant to help in planning for land acquisition and inspection by NLC. The land is not acquired yet but due process will be followed.
Why is someone not living in Kachuru included in the GRC?	It is best that the community chooses people who live within and are available to solve disputes whenever they arise. Someone leaving far may be hard to trace or reach compare to someone nearby whom people can access easily unless this is a representative of absentee landlords like we have seen in other cases. The GRC composition will be discussed in this meeting.
Those with allotment letters do not require title deeds to get compensated?	It is not a requirement to have a title deed to get compensated as the Constitution says that you can get paid in good faith. In the absence of such legal documents, it is difficult to verify the ownership of land thus

	indication that NLC will handle that.
Those who have constructed houses but are not land owners will be compensate for the houses?	Those who have constructed the houses and are not land owners will be compensated for the houses and structures while the land owner only for the plot.
What is the size of the corridor?	The proposed road corridor will be 60m.
Will a fence within the 60m corridor be compensated?	The fence will be compensated and captured in the report as long as it meets the cut of date.
In a case where someone bought the house and left the area who will receive the money?	The buyer of the house is supposed to receive the payment. They can be tracked by NLC using local administration or friends to come receive their compensation. However, where these are not found, the money goes into the account earlier mentioned until the person claims it.
What is the fate of tenants who were not captured earlier?	After the meeting, a verification can be undertaken. But first one needs to confirm truly in the draft asset register that these persons are truly not captured.
Why has the consultant not captured land outside town?	Since land adjudication is not complete, it is not easy to verify the owners of the land. NLC will therefore handle all land issues including such cases. However, consultant is indicating how much land needs to be acquired in these areas in totality.
Will the consultant submit their updated report or the old one by Howard Humprey?	The consultant will submit the updated report.
What will happen to a person who bought the house from a person who was captured earlier?	The chief and local leaders can verify such case and if it is true the legitimate owner will be captured and compensated. However, the original person has to appear to indicate there was a change of ownership.
Will manyattas also be compensated?	All structures as long as established before cutoff date will be compensated.

*Table 0-6: Views, Concerns and Questions from PAP meeting at Yaqbarsathi/Yaqbarsadi*

Question/Issue	Response
The people of Yaqbarsadi are all going to be displaced since the LAPSSSET also passes through the area. What is going to happen to them?	The key concern is to ensure proper compensation and mitigation measures which the report will take care of. Also, the 2 projects have positive benefits to the community.
Can one construct a new house in the same plot since it is only a small section affected?.	One can construct a new house in the same plot as long as not within the beaconed sections/wayleave. However, they should not demolish the old houses until they are compensated.
Will the land be compensated since the consultant has only focused on structures?	The consultant only focused on structure because no one in the area has title deeds or allotment letters and also because the land is still recognized as community land. The processes for acquisition for community land is different from private land and will be handled by NLC.
Will houses or plots with disputes take long before they receive compensation money?	The money will only be released once the case or dispute has been solved. Where disputes take long, the money will be put in an account and will remain in that account for as long as the dispute remains

	unresolved.
If one has land on both sides of the road will one be compensated for the land on both sides?	Yes, land on both sides will be compensated as long as they appear in the proposed corridor. However as noted earlier, this will require NLC to first determine if this is community land or not, which indications so far are it is community land. However, for Meru, adjudication has started to allocate to individuals.
What will happen to a plot that is more than half within 60m the corridor?	In cases where plots affected by more than half the size and the area remaining the one cannot build a house or is not economical, NLC often recommends full acquisition.
What will happen to tree which is within the 60m corridor and tree and provides shade in all community meetings (such as the one we are under)?	As part of the communal land acquisition process, this will be valued and funds treated the same as funds for land i.e. in an account held in trustee by the county government. If individual and the land on which it appears is individual, this is paid to the owner, who has the right to salvage/uproot after compensation.
Will the mosque be demolished since section of it is within the 60m wayleave?	The community members will discuss later if they are willing to relocate the mosque and if have land available to construct a new one. The chief who is the chairman of the mosque said there is land to construct a new mosque as long as they are compensated.
We are tired of many meetings by KeNHA.	The standard international practice by World bank requires that all these activities are done before the road is constructed. Public Participation is a right however, the concerns are noted and will be communicated in the report.
Can the GRC be reconstituted as it does not reflect proper representation.	The consultant asked the community members if they agree with the initial list, the community asked for amendments. They proposed the names which were agreed by all members.

Table 0-7: Views, Concerns and Questions from PAP meeting at Kulamawe

Question/Issue	Reply
Why was the road corridor been measured three times but the measurement often differs? The beacons are not in the previous place I was told. My house is now outside the beacons, which is the correct measurement?	The road corridor was measured (but not beacons) first by Howard Humprey, the second measurement for RAP update (which used the exact measurements used by Howard Humprey) was by the Independent consultant validating the work done by Howard Humprey (i.e. us) while the last one was by KeNHA where beacons were put. The 2 first measurements are the same, we will verify after the meeting if the KeNHA beacons use the exact same measurements after the meeting. <i>(on verification, these were found to be within the margin errors thus not different)</i>
How will the consultant/valuer know the amount to be compensated for houses not measured?	The houses not measured means they are not within the corridor. <i>After the meeting the valuer went and measured the house in question and confirmed it was not within the corridor, although person was insisting it was within the corridor).</i>
Are beacons on both sides of the road part of the road?	The beacons means the land between is part of the road wayleave which the government intends to acquire.
When is the construction set to begin and can we improve our structures?	The exact date is not known but within a year probably. PAPs are advised not to construct new structures or make improvements that will not be catered for during compensation. It is better they leave them as they are or can build new ones outside the 60m corridor.

Can someone with a one storey building can add an extra floor?	One can add but chances are they will not be compensated for the extra storey building since it was constructed after the cutoff date. Largely, the PAPs are advised to observe the cutoff date.
What will happen to those with plots but no title deeds, will NLC issue them with title deeds?	As explained, the indication is that this is communal land where individuals have the right of occupancy. In communal land, the compensation funds as a whole are held in trust by the county until when the community registers. Only then does the money come to the registered body of the community.
The earlier team of Howard Humphrey informed us that plots with no title deeds will be compensated.	The standard practice is that land usually is compensated when it can be indicated or proven by NLC that you do own the land. Our understanding is that this section is communal land where the process has been explained to include payment through the county government but not to individuals but to a community as a whole However, NLC will better determine who owns the land, and who gets compensated.
Why does the government want to push us further into the bush? By displacing us away from near the corridor the only alternative is to move into the bush.	It is not the intention of the government to push anyone into the bush but to make their lives better, they have an option to choose between cash for land or land for land compensation where individuals own the land. Furthermore, the road will open up and improve the whole area, thus no bush will exist. Those with plots which are minimally affected can move their structures behind and build new ones. Only where totally the structure is affected and there is no space does one need to move elsewhere and still that can be within the town.
We are are tired of many meetings, and this road should just start	This is well noted however it is a requirement in line with the constitution that every decision-making process goes through a series of consultations to ensure the public is updated and gives their views.
There exists fear among the people to construct new structures aimed at improving their lives for fear they will be demolished.	Since the beacons have been put in place, the community members are free to construct outside the 60m corridor. Those within the corridor should not construct since they will not be compensated. The cut off needs to be observed.
You tell us compensation will be before construction, yet KeNHA has put beacons on our land and that this impunity has to stop every time government is dealing with the northern part of the country.	KeNHA has only beaconed the road but is not constructing. They are obliged by law to ensure compensation through NLC first.
We don't have titles but it is our birth right to own the land which has been passed from generation to generation. We, our parents and our children are the title deeds.	Indeed it is your right, and ancestral lineage can be used to determine ownership of the land. The community is advised to work with NLC to ensure that these sentiments are well represented during the public inquiries. In addition, they can also work with the county to have the community/communal land registered
Will the locals be employed during the road construction?	The local communities will be prioritized for work however since employment in Kenya is competitive qualified locals should be on the lookout to ensure that once the adverts for certain jobs are issued they should apply or enter into negotiations with KeNHA and contractors to reserve some positions. There are various alternatives to consider.
Will the compensation be for land and structures or structures only?	It is for both. But compensation for land is through the county for communal land unless NLC determines otherwise as this is communal land and not registered. While structure owners will be paid directly to individuals.
I had started constructing a storey building but had to stop at ground floor when Howard Humphrey team advised me not to construct	It is advised not to construct further because one may not be compensated for the extra floors. She should observe the cut off.

after it was valued/cutoff. Two years have gone and nothing has happened can I complete the building?	
Can KenHA consider upgrading the road from Kulamawe to Kina and Makaraka which will benefit them more?	The suggestion has been noted. In some cases KenHA apart from the main highway also improves feeder roads as part of CSR activities and this can be presented as a proposal. In addition, KenHA is in the process of identifying a consultant to undertake needs assessment for additional investments in the community, and thus the community should be on the lookout for meetings to be held by that consultant and present their priorities.
Will there be a health cover during construction for the project affected?	Those within the corridor will be given ample time to relocate before the construction starts to avoid health issues. Those outside the corridor will not be exposed since the contractor is bound to uphold certain construction standards that ensure the environment and health is protected.
The valuers should ensure that even mud houses are well compensated. They may look cheap but they used a lot of money to construct them.	The value for a house are published by Institute of quantity surveyors quarterly. However, the valuers have discretion to adjust to reflect true value but also bound by ethical standards to present figures they can defend. The value will be determined at replacement cost, which is the market rate for the house plus the transactional costs.
What will happen in cases where tenants were captured by previous consultants?	The consultant worked with the chief to ensure the right name is captured as the structure owners. Tenants appear under a structure owner but for facilitation for businesses only and if they own the business for livelihood lost. However, the PAP was free to verify in the draft register.
The borehole which has served the community since 1965 will be demolished since it is within the corridor. In addition, water pipes run across the road.	All community assets affected will be compensated at replacement cost. This includes the borehole if affected. KeNHA has an obligation to ensure that community social services are not affected but maintained even during construction.
We are not proud Kenyans having been marginalised for years and now there is a possibility that we may be moved from our land to pave way for road construction.	The government is committed in ensuring that those who will be affected are well-taken care off through compensation. This includes the right of the marginalized as protected by the constitution.
Why were sections of Modogashe compensated without title deeds but in Kulamawe they are being told it is communal land?	NLC will verify the actual ownership of the land.
What is the work of GRC since the previous committee dint know their role thus why anybody was selected.	The GRC is very key in resolving conflicts related to the RAP including PAPs who may have been left out, wrong identification of the structure owner...etc. They will be activated by KeNHA and trained on how to record/resolve disputes.

Table 0-8: Views, Concerns and Questions from PAP meeting at Boji

Question/Issue	Response
What is the criteria for valuation?	When valuing there are three components valued. Land, Structures and Trees. The land valuer looks at the replacement cost of the land. Structure, the valuer looks at size, material used to construct, rooms, type of business and tenants living in the house. On trees, the valuer

	<p>considers the age and type of the tree.</p> <p>In addition, loss of livelihood is captured</p>
What will happen to a person who was captured by Howard Humprey but missed on the current list?	The verification exercise will show if there is a variance. If one was in the initial RAP, then the only reason for removal is if not in the proposed corridor. This can be verified later after meeting.
Why is the consultant using the term land instead of plot yet Boji is a town?	The term land includes plots. And also because Boji extends beyond the town.
What will happen to the plots in town that do not have title deeds?	The land issue will be handled by NLC. Generally, the indication was that the affected was communal land which requires NLC to give compensation to the county in trust, until the community registers. However, they will verify this. If NLC so decides that the land is individually owned, then the owner is compensated in good faith in the absence of legal documents.
Will houses constructed after the cutoff be compensated?	The houses as per the RAP will not be considered for compensation under this RAP due to cut off date. However, they will get a chance to make submissions to NLC for consideration.
Can the valuer clarify payments for land and structure again?	In cases where one owns the land (not communal land), compensation covers the land only if no structure on it. If one has land with structures on it, then both are captured. However, if communal land, only structures paid to individual and communal land compensation goes to the county as a trustee until community registers.
Can we improve our houses, since the date for construction is not known? The house is leaking.	It is advised to leave the house at it is to observe the cutoff. However, minor improvements in the houses are allowed for instance repairing houses to ensure there are no leaks is ok. However, extensions of structures and major modifications may not be compensated.
Will plots outside town be compensated?	Plots outside the town will be compensated as long as they are within the 60m corridor. The difference is the land ownership and who gets compensated as earlier explained on private and communal land.
What will happen to graves belonging to one family, falling within the 60m corridor? Howard Humprey did not discuss the issue of graves with us thus we did not inform them.	<p>During the verification, the graves were not within the corridor. This can, however, be verified after the meeting (<i>after meeting, the valuer went with the affected family and confirmed the earlier measurements</i>).</p> <p>It was also noted that these could be picked where it was possible to show a sign of a grave.</p>
Can the road be diverted or adjusted to the right to avoid the mosque since we have no other place to construct new one and it is also strategically located?	The consultant will forward their recommendations to KenHA for consideration as alternatives.
Will the consultant come with NLC to solve the land issue...especially the conflicts between families?	NLC will come after we have submitted our report to KeNHA. They will get a chance to advice on how to solve land issues. They also act independent of the consultant.

Table 0-9: Views, Concerns and Questions from PAP meeting at Camp/Kambi Samaki

Question/Issue	Reply
Will plot owners with no title deeds and have not constructed any structures on them will be compensated? Those with plots but	Land in the area is indicated as communal land. However, it is noted that individuals have the right for occupancy. NLC will be best placed to determine the status of land and best compensation method.

have not built houses or other structures qualify for compensation?	However, if as indications show the land is communal, the compensation as explained is held in trust by the county until the community registers.
What is the fate of those who have constructed after the cutoff date?	The consultant will not capture new structures as it is after the cutoff date. However they will an opportunity to make their case before NLC.
Has the consultant confirmed ownership of the plots?	Since the land belongs to the community and no one has allotment or title deeds it is difficult to establish ownership. However NLC will have the final say on land ownership.
Will plots without structures but have only trees been considered during valuation?	Trees, where owned by individuals, have been captured as explained in the criteria for valuing trees they will be factored in the compensation.
We do not want the County Government of Isiolo to receive compensation fee. The money will never reach them and the county will continue to marginalize us	The law demands that land that is community property, the county will hold trusteeship. They will receive the money on behalf of the community and put it in an account until the community registers. If NLC so decides and verifies it is communally classified, the best option is for the community to registers so the funds can be transferred to them as the registered group.
Can the community protest in case we are not compensated?	The constitution allows the right to picket and present petitions but it must be peaceful and unarmed. Violence is not allowed and neither can one stop other people from doing their work. However, we don't foresee this as a possible solution but rather engagement and seeking audience with KeNHA and NLC is a better approach.
What will happen in the case of different structure owner and land owner?	In that case, land is paid to owner of land (if land is not communal), and structure to owner of structure.
What will happen to a property under dispute?	It's advisable to use local means like chiefs and Imam ( as part of the project grievance mechanism) to settle the case but if one cannot find a solution they are free to move the case to the courts. NLC will also try to establish the actual ownership of land/property, and where disputes persist, they can request a court to make a decision while the compensation funds are kept in an account till the dispute is resolved.
Can the consultant include new members who have built new structures within the 60m corridor since cutoff date was not communicated?	New members will not be captured since there was a cutoff date. Only persons proven to have constructed before cut off can be included. Those who constructed later will get an opportunity with NLC and explain to the team valuing. Members are asked not to construct new structures.
What is the size of the corridor so that I can construct house near the road?	The corridor is 60m. Since the road is being marked/beacon put in place., avoid constructing within the corridor.
What will happen to me since the house belongs to me while the land belongs to my father and we are in dispute?	The son will be compensated for the house. Only NLC will establish the ownership of the land to pay the right owner. If the dispute persists, they can request a court to make a decision while the compensation funds are kept in an account until the dispute is resolved. This is if the land is not communally owned. If communally owned, the process of the county applies.
My name was taken during the first time by Howard Humphreys but now it is missing on the list.	All structures found in the right of way and captured by the initial RAP are maintained so. However, where we establish the structure is not in the corridor, we removed it. There is a possibility for the team to verify again after the meeting with you.

Table 0-10: Views, Concerns and Questions from PAP meeting at Eldera

Question/Issue	Response
I have a plot which I am yet to put up a house. Will i be compensated?	Land in the area is indicated as communal land. However, it is noted that individuals have the right for occupancy. NLC will be best placed to determine the status of land and best compensation method. However, if as indications show he land is communal, the compensation as explained is held in trust by the county until the community registers.
Is the valuation complete?	The verification was undertaken on the ground (and the development of the report is ongoing). Addressing of gaps in the details of PAPs is ongoing. However, public participation is needed to include the views of the PAPs to help minimize the impact.
Why has the consultant not confirmed ownership of land in the area?	Since the land belongs to the community and no one has allotment or title deeds it is difficult to allocate ownership to individuals. However, NLC will have the final say on land ownership.
Why does the report only include structures and trees?	Since most people have no legal documents to prove land ownership, and the general indication was that land was communally owned, the consultant could not write ownership based on word of mouth, but NLC will verify the final status of land in the area.
Will we be paid before construction commences?	The property will be fully compensated at full replacement cost and the law requires that affected persons must be paid before construction begins. However, those with disputes may have to wait until their cases are resolved. Money meant for the disputed property will be in an account till its resolution.
Can the consultant consider those who were not captured earlier?	New members are not captured since there was a cutoff date. However, if the chief confirms they were left out and their structures are not new they may be considered. Those who build after may not qualify but will get a chance to discuss with NLC if they can be included.
What is the size of the corridor is and why is it been expanded? Retain the old one	The proposed road will have a 60m corridor/wayleave. There is a need for the additional space to enable upgrading, and future expansion as well as placing of other utilities.
In Eldera because of disputes with the Somali, land is disputed, what will happen in such cases?	NLC will first determine the status of land in the area. In individual, they will also seek to establish the individual owners. If that is not possible, Money meant for the disputed property will be in an account till its resolution.  If communal, the compensation funds are held in trust by the county until the community register, then funds are transferred to them.
Some of the owners have demolished their houses, some moved due to clashes? Will those who demolished the houses or those demolished during clashes be considered?	Houses demolished by conditions beyond their control like clashes and floods will be noted but no values attached as the structure could not be verified. These cases will be determined by NLC.

Table 0-11: Views, Concerns and Questions from PAP meeting at Eldere

Question/Issue	Response
Will we be compensated considering the boundary dispute between Somali (Garissa)	All legitimate and illegitimate structure owners will be compensated for their structures and improvements on land. Boundary dispute will

and Borana (Isiolo) over the county boundary issue?	be not affect those who have constructed houses in another county.  However, for land compensation, NLC will first have to engage on the boundary dispute and may choose to refer it to court for determination. The funds meant for land compensation will in the meantime be put in an account until it is determined.
What will happen to those who were not around during validation exercise?	Those who were not around will be given an opportunity to have their missing details captured as long as they are on the original list and their structures verified as within the 60m corridor.
What exactly did the valuers value the last time?	All improvements on land were valued at full replacement cost. Houses valued depending on the size, material used and facilities or rooms inside the house, while trees were valued based on age and type. Land is usually valued but in Eldere land is communal thus was not valued with the aim of individual compensation. We will however generally indicate in the report how much communal land needs to be acquired in total and the value attached to it.
Is it possible to divert the road as the affected cemetery has over 150 graves?	This will be the best alternative. However, should the alignment be maintained, the community will be facilitated in relocating the graves. <i>(Some members agreed to relocate while others said it is against Islamic sharia. The consultant informed them that their recommendations will be forwarded to KeNHA)</i>
Can the road be diverted to avoid the mosque?	The proposals by the community to relocate the road will be noted in the report. However, only KeNHA can make that final decision.
Corporate Social Responsibility (CSR) CSR from past experience is a pipe dream. Will KeNHA do CSR?	KeNHA has advertised for a social needs assessment for the road to identify CSR projects. The community should present their needs then and prioritize them. Also independently, contractors have CSR projects so they can also approach the contractor who will come.
Since the community has no title deed or allotment letters how can they be assisted?	Since land is communal and under the Kenyan constitution the County Government holds all unregistered land in trust for the community, the best option is to approach the county for registration.
Will plots with no titles be compensated?	Land in the area is indicated as communal land. However, it is noted that individuals have the right for occupancy. NLC will be best placed to determine the status of land and best compensation method. However, if as indications show the land is communal, the compensation as explained is held in trust by the county until the community registers.
Will the whole plot be compensated or only the front part with structures?	Only sections within the 60m corridor will be compensated. However, if more than half the plot is within the corridor and the PAP cannot build there anymore, full compensation will be recommended if the land is private.

Table 0-12: Views, Concerns and Questions from PAP meeting at Bullo 2 (Garissa)

Question/Issue	Response
Those with plots not within the settlement but just after but have not put up any structures. Will they compensated?	The land within the settlement is communal land. The county is the custodian of those lands. This means once the money is released the county will receive the money on their behalf, in trusteeship and this can be transferred once the community registers.
Many PAPS are worried that they will not be	The possibility of what happened in Marsabit is unlikely to happen in

compensated before construction commences. The locals fear the same way community living in Marsabit were treated. They had to stage protest in order to be paid.	Bullo. The World Bank and government is committed to ensure that those affected are well compensated. The government has also become stringent on compensation to avoid malpractices. Property and land valued will be fully compensated and the law requires that affected persons must be paid before construction begins.
What rates will the consult use to determine the value of houses, noting that some of us had many challenges constructing our houses?	The rates used are published quarterly by institute of quantity surveyors for each region or county. However, the valuer has freedom to adjust the figures. This is the market rate and is calculated to include the transaction cost to come up with the replacement cost. On top of the property value, 15% disturbance allowances will be added on to cater for the inconvenience and disturbance.
Will the consultant consider graves outside town but along the road?	Where these are owned by individual families, these can be shown to the consultant who will put a value for their relocation if they can be verified. The Community cemetery will be given a special fund to perform all rituals to transfer the graves. (The community agreed that if given money they are willing to relocate the graves. They have alternative land to relocate them).
We cannot and will not relocate graves. It is against Sharia.	The elders (in the meeting) indicated that it is possible and their traditional practices allow them to relocate them to a place they will choose.
Where will the community hold meetings because the tree which offers shade for meetings will be uprooted?	The tree will be compensated but depends if it is owned by individual, the person receives the funds. The locals will also get a chance to identify projects during needs assessment (which KeNHA is in the process of hiring a consultant to facilitate) and they can suggest a project like hall which they can hold meetings.
What will happen to a person who bought a plot but is yet to receive title deed. There was no written agreement only verbal.	All affected persons have been captured in the census. If NLC decides that the land will be paid in good faith to individuals, the chief and other elders will help in identifying the owner of the plot. The GRC will also play key role in settling such cases.  However, if the land is treated as community land, the compensation payment will be held by the county in trust in a special account until the community registers, then the county transfers the funds.
Let the consultant to include new names in the register. Some of them were not around when validation exercise was taking place.	Those who were not around during validation workshop but were captured by Howard Humphrey, will get a chance to confirm their details once the plenary session ends. However, all structures were validated, even in the absence of the owners with the assistance of the chief's office. New structures cannot be added after cut off.
Can you mark the areas where the 60m wayleave ends?	The corridor is 60m wide. The road is being marked/beaconed by KeNHA, it started from Isiolo Junction, the demarcation has reached Kulamawe, but it is expected to all the way to Modogashe.
Where there are two people or families fighting over land and structures what will happen once the money is released?	Funds will be set aside until the dispute is resolved then legitimate owners will receive the money.
Those who had structures captured by Howard Humphrey but were destroyed by rain, will they be compensated?	In conditions beyond human control like floods or clashes which lead to destruction of structures, those houses destroyed will be noted but no value attached as compensation will be determined by NLC.

Table 0-13: Views, Concerns and Questions from PAP meeting at Barkuke

Question/Issue	Reply
Why was the valuer was concentrating on structures, does it mean those with land will not be compensated?	The focus was on structures because land in Barkuke is communal land. No one has a title deed which is the legal document required as proof of ownership.
What will happen if one chooses land for land compensation, will the PAP be relocated far from their ancestral lands?	The PAP will be given options by NLC on where they can be relocated. If land will be available within their area/settlement they will be resettled there.
We acknowledge the benefits of the bitumen road but ask the consultant to inform KeNHA that the community should not be abandoned after compensation.	Before or during construction, there will be other social infrastructure projects aimed at further improving the wellbeing of the community. They will be given chance to discuss and choose the projects they would like to be improved or developed based on the available budget.
We want assurance from the consultant that we will be compensated.	Genuine PAPs will be compensated. The existing Kenyan laws and World Bank standards dictate that before construction commence the PAPs must be compensated except those properties with disputes.
The county government should not receive the compensation money for land, as they will not release the funds.	There is little a consultant can do to influence the process of payment since the Kenyan law only recognizes county government in such cases until the community registers.
The government will not compensate because the government has not been interested in developing the region for decades.	The government is committed to ensure the region road infrastructure is improved, this road is part of NETIP project. Since world bank is the one funding the road, they are strict with compensation and often ensure PAPs receive their compensation. Besides, legal redress remains as an option.
Why didn't the consultant during the validation not ask for those with plots with no structure within the 60m wayleave?	The valuer did not ask for plot owners within the wayleave because land within the settlement is communal land. No one within the settlement has title deed that we know of, nor has there been land adjudication.
What will happen to those who bought land but have not received title deeds? The agreement in most cases was verbal, because of the community strong ties verbal agreements are considered binding.	NLC will handle the land acquisition process where community land is involved. If it is indicated that the land is private, then the individual may be paid in good faith in the absence of legal documents.
Can you add new structure owners on the list?	The cutoff date is maintained. The structure must have existed before 12 November 2017.
Will hawkers within Barkuke will be compensated?	Livelihood restoration measures will be provided for the hawkers. Alternative trading areas will be provided for them.
Why can't the proposed road maintain the current RoW instead of increasing the RoW which will have a lot of impacts?	The reason why the corridor has been maintained as 60m wayleave because this road is a major connecting road for towns such as Mandera and Isiolo. Furthermore, the aim is to open up the area for development while the available wayleave can be used for more services and future expansion. The expansion corridor is informed by the standard/class of the road.
Who will receive the compensation funds where structures are disputed?	In cases where there is a dispute, the money will be put in an account until the dispute is resolved. We will capture both names in dispute if this is brought to our attention.

Table 0-14: Views, Concerns and Questions from PAP meeting at Janju

Question/Issue	Response
Will those with land parcels be compensated despite not having structures?	Standard compensation demands that landowners even without structures are also compensated, compensation is based on the size of the plot affected. But in the case of Janju since land is considered communal, the county government will receive the money since they are the custodians. The funds will be transferred once the community registers.
There is a big risk of the government not compensating as they consider these areas as not part of Kenya.	<p>The government does not intend to neglect anyone, and the reason for the upgrading of the road is to improve the wellbeing of the people in the area, for better access to roads and to spur economic development. For instance, the proposed bitumen road will improve transport connectivity within the region and access to social amenities. Resettlement does not seek to leave people worse off but improve their current living conditions.</p> <p>The law requires compensation for compulsory acquisition. The World Banks standards apply and RAP is been developed.</p>
Do land owners have a choice to choose between land for land compensation or land for money compensation as they were being asked in the survey?	NLC can also offer land in replacement for land instead of cash. PAPs can also request for the same.
What assurance can be given that people will be compensated, given this is the government of Kenya and has a history of taking things in force.	Genuine PAPS will be compensated as it is required by the law. This being a world bank funded project, it seeks to improve the living conditions of the people. The world bank closely follows the compensation process to ensure all genuine PAPS are compensated.
Advice World Bank not to give the money to counties in cases where people don't have title deeds. The county will not remit the money as required.	Compensation funds are not World Bank Funds but from the government. It is the tax payer's money used for compensation. Furthermore, the law dictates that community land if not registered, the county government acts as a trustee and will transfer the funds once the community registers. The main issue is how the community can register to ensure they receive the funds in line with the law.
Will compensation money will be paid before construction of the road begins?	It is the standard practice for PAPs to be paid before the construction begins. PAPS can only fail to receive the money if there is a dispute but that will not delay construction of the road.
What compensation criteria is considered and does it consider the pain and suffering we went through during construction?	The amount which will be compensated at full replacement cost ensures the PAP is able to build a new structure at the current market prices. They will also receive 15% of the total amount as disturbance allowance to cater for the relocation pain.
Will the widows get compensation money and how the consultant will ensure money reaches them?	Widows will receive the compensation funds, as this process does not discriminate. They are also considered vulnerable; the RAP therefore proposes additional measures for consideration where they are concerned. Compensation will be paid directly to them.
If written agreements can be used as legal documents in cases where there are no title deeds?	Where the purchase of land does not involve the exchange of processing of legal documents, NLC may in good faith considers such documents in the identification of the owner. However, such applies in private land not communal as this requires payment to the community as a whole through the county as a trustee if the land/community is not registered as is the cases here.
If land and structure owners were not captured earlier by Howard Humphrey can	The cutoff date needs to be maintained so they cannot be added not unless, there is a way to prove that the structures existed before the

be captured?	cutoff date. For land, legal documents can be provided which can be verified in the case of private land.
Can the way leave be marked so we know and to avoid confusion?	KeNHA has started the process and has reached Kulamawe.
In cases of conflict between people, who is captured as the owner?	The consultant captured the name on the original list, however there is a section for remarks which will capture the other party.

Table 0-15: Views, Concerns and Questions from PAP meeting at Modogashe

Question/Issue	Response
Since title deeds are required documents for verification of ownership for compensation, what will happen since its even difficult to even get allotment letters leave alone title deeds?	NLC in consultation with the respective counties will handle land issues since in some parts of Modogashe, some form of land ownership can be verified.
Will there be a diversion during road construction to enable free movement of people within the town?	During, any road construction, the contractor is required to provide access road or diversion which must be kept in good standards.
Why were the rates for Nuno Modogashe road very different from Isiolo Modogashe?	The figures are not yet finalized. The report is even yet to be handed over to KeNHA.
Why does the valuer say land will be compensated if they have titles yet in Nuno they were paid without titles only required a witness?	To our knowledge, no one without title has been compensated for land in Nuno They were only compensated, structure owners. The land still belongs to the community.  However, there is something called payment in good faith for those who don't have the titles, and such can only be determined by NLC.
It is impossible and against Islamic sharia to move graves.	The elders together with church leaders need to seat down and discuss if it is possible to move. Upon discussions the leaders said the cemetery on the right as you approach Modogashe from Isiolo should be the one relocated since it's the oldest and it is never used, besides it will also lead to few were structures being demolished unlike the one on the left. The road should be diverted to the right side which has fewer structures.
Beacons were put long time ago why again are you putting new ones?	The old ones are for a 30m road corridor, the new ones are for 60m road.
The road should be diverted to avoid the graves and cemetery.	The location of the cemeteries on both sides of the road makes avoidance problematic, not unless it's a bypass and thus avoiding the whole town which also has negative implications for the life of the town. This alternative suggested is noted and will be considered.
The road from Isiolo to Modogashe should be diverted to the right to avoid new graves.	The recommendations is noted by KeNHA.
When will the gazette be done?	It is NLC who have the mandate to gazette and this will be done once they acknowledge KeNHA can acquire the land for the road.
What will happen to owners whose houses were burnt during clashes?	Where possible, these can be retained in the initial report but no value will be put as they cannot be verified. Whether to compensate will be an administrative decision and not a professional one as we cannot vouch to have seen the structures.

Will businessmen and traders be compensated if they are not structure owners?	They will be compensated for lost business income. During the validation exercise we captured their business and types and how much they make monthly as profits will be factored in.
Do not compare the compensation rates with other regions since this is an area characterized by drought and conflicts. Thus a higher rate should be used.	Compensation will be calculated at full replacement cost. There is a standard guide which every valuer must follow. Figures for structures and published by Institute of Quantity Survey while trees by Kenya forestry services. The valuer can only make adjustments.
Will the indigenous trees which produces fruits which are nutritious to goats and increases milk production be paid the same as other trees?	The forestry service has all lists of tree and their prices which the consultant will use depending on the type and age of the tree.
If the road is diverted, will the new structures be captured and compensated?	It is only KeNHA who will decide if the road is diverted. At that time, they will then capture the new impacted structures and owners.
Will those with plots but have not built houses or other structures qualify for compensation?	Where land is private, this will be compensated by paying the individual. However, where it is unregistered communal, the land compensation funds will be held in trust by the county.