AFRICAN DEVELOPMENT BANK GROUP

MANAGEMENT RESPONSE ON THE COMPLAINT FILED WITH THE INDEPENDENT REVIEW MECHANISM WITH RESPECT TO THE MOMBASA-MARIAKANI ROAD PROJECT

JANUARY 2019

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SUMMARY

- Management started receiving complaints on the project since the incident that followed demolition of houses in 2015. The demolitions were halted and since then there has been no construction works in areas where compensation is still outstanding. All the Project Affected Persons (PAPs) that were affected by the demolitions in 2015 have been fully compensated through the approved Corrective Action Plan (CAP), although some PAPs still have outstanding complaints as can be manifested by the complaints submitted to the Bank’s Independent Review Mechanism (IRM). Despite the undertakings agreed through the CAP process, a mediation process to resolve these outstanding complaints between the implementing agency, the Kenya National Highways Authority (KeNHA) and the PAPs has been ongoing with anticipation for clearance of the process by March 2019.

- KeNHA has instituted actions that address the concerns of the PAPs, including stationing a full time Community Liaison Officer at the site for the last 3 years to improve communication between the project and stakeholders.

- With respect to overall RAP implementation, notwithstanding the delays that have been experienced in releasing all the financial resources for compensation, tremendous progress has been made in implementing the RAP, with 74% of the PAPs already compensated (376 out of 507 PAPs enumerated in the RAP). The remaining PAPs will be compensated as soon as the financial resources are received.

- KeNHA and Management, however, observe that out of the 126 PAPs listed in the submission to IRM/BCRM, 63 have been paid in accordance with the awards they signed, while the rest do not have their names appearing on the database for PAPs eligible for compensation nor in the list of PAPs contained in the RAP (Annex 2). In addition, considering the urban location of the project area, there is a likelihood that some of these PAPs listed in the request submitted to IRM could have settled in the right of way (RoW) after the cut-off date.

- In view of the challenges that have been experienced in RAP implementation on this project, Management has also emphasized the need for a grievance redress mechanism (GRM) at the project level. To improve access to the GRM, KeNHA has an operational toll free telephone number, plus a text messaging service specific to the project. The Resident Engineer is designated as the grievance officer of the project. Furthermore, the project has instituted a multi stakeholder grievance committee whose role is to offer mediation on complaints.
• KeNHA is engaging with different stakeholders on a continuous basis, including civil society organizations (CSOs) such as Amnesty International, Rapid Response and Haki Yetu as well as the Kenya National Commission on Human Rights through various forums as outlined in the stakeholder engagement plan. To further facilitate stakeholder engagement, a Stakeholder Engagement Plan (SEP) has been developed for the project.

• KeNHA has disclosed all project documents including the RAP and its non-technical annex the PAPs. KeNHA has also prepared and published a fact sheet on the project.

• Due to the need to strengthen management of environmental and social (E&S) safeguards on its projects, KeNHA has increased staffing of its Environmental and Social Safeguard Department that has designated staff responsible for environment and social matters. In addition, the supervision consultant and the Contractor has designated counterpart (E&S staff. Furthermore, there is an independent consultant responsible for external monitoring of resettlement activities and is undertaking ESMP monitoring as well as HIV/AIDS and gender dimensions.

• KeNHA together with the Lenders have conducted joint missions that resulted into a joint action plan which is being implemented.
1. INTRODUCTION

The Government of Kenya through the Kenya National Highways Authority (KeNHA) is implementing the dualing of Mombasa – Mariakani Road Project; and has divided the project into two sections/ lots:

- Lot 1: Mombasa – Kwa Jomvu (11.4km) financed by the African Development Bank (AfDB) and,
- Lot 2: Kwa Jomvu – Mariakani (30.3km) financed by the German Development Bank (KfW) and the European Investment Bank (EIB).

The dualing of the Project Road, which is part of the international trunk road, is intended to improve transport of import and export goods; as well as improve passenger traffic along the northern corridor by decongesting the traffic to and from the Port of Mombasa. It is envisaged that the Project will also improve the level of service and reduce travel times; improve road safety and increase accessibility to Mombasa, its port and international airport.

The main objective of the Lot 1 project is to remove capacity constraints with uninterrupted traffic flow by rehabilitation and upgrading of the existing 2 and 4 lane carriageway to 6 lane dual carriageway separated by a raised median. For enhancement of safety, interchanges and grade separators, underpasses and overpasses will also be provided for the safe movement of cross road traffic. To segregate high-speed traffic from slow moving traffic and local traffic, congested locations will be provided with service roads on both sides. For pedestrians, footpaths will be provided along the outer edge of the carriageway in addition to footbridges at critical road crossing locations.

2. HISTORY OF COMPLAINTS AND ACTIONS TO ADDRESS THESE ISSUES

Prior to start of the project in May 2015, an eviction took place within the Lot 1 section of the road, on a 700m stretch on both sides of the road. The eviction was as a result of implementation of another Government initiative, the Mombasa Community Port Charter, whose objective was to decongest the port. However, the affected people included those that had encroached the existing project road reserve, and even though notice for eviction was issued as per the laws of Kenya, the approach instituted during demolitions amounted to forced evictions, which is not in line with the Projects’ Financiers policies on involuntary relocation.

Since then, and following the initial complaints associated with the above mentioned forced evictions, KeNHA, as well as the Lenders (AfDB and EIB/KfW) have been receiving additional complaints from various sources, notably from PAPs and Civil Society Organizations (CSOs) regarding mostly issues connected with compensation. The CSOs which have written to the lenders either individually or collectively have included Polish Green Network, CEE Bankwatch Network, Amnesty International, Ujamaa Kenya, Transparency International, Pamoja Trust,
MUHURI, Haki Africa, Rapid Response Team and Coast Women in Development. KeNHA and the lenders have continuously provided feedback on progress in addressing the issues raised. This exchanges date back to 2015 immediately after the illegal demolitions of properties.

The latest of these complaints is one now registered with the Independent Review Mechanism (IRM) in late 2018 and which is the subject of this Management response.

3. **SPECIFIC ISSUES RAISED BY PAPS IN THEIR COMPLAINTS FILED WITH IRM/BCRM**

In their communication addressed to the Director BCRM, the requestors raise the following specific issues:

- Unfair compensation involving low compensation values, with some project affected people (PAPs) alleged to have received as low as 1,000.00 and/or 12,000.00 (one thousand and twelve thousand Kenya shillings respectively) as full compensation to a PAP;
- They allege that the project is ongoing despite the unsatisfactory compensation;
- They allege that original RAP has never been disclosed to any of the PAPs;
- Unclear criteria for valuation of affected properties;
- Some names of affected PAPs whose properties had been valued are not in the final list of eligible PAPs as compiled by the National Land Commission (NLC);
- That the map of the project area with the full dimensions of the project road has never been disclosed to the PAPs leading to uncertainty in terms of future of businesses (ie it is implied that as landlords can't even repair or renovate their structures as they do not know for certain if they fall within the project boundaries);
- The PAPs allege that according to the Corrective Action Plan (CAP) developed after demolitions, compensation for lost business was expected to be paid to cover six month (6 months) loss of business in lieu of the monthly income that the PAP used get, in addition to 15% disturbance allowances, but that their research from most PAPs indicates that the equivalent of only 1 months income was awarded to them;
- They allege they have addressed their concerns to KeNHA through the GRM but have not received any feedback but that instead KeNHA has intimidated some of them;
- They request the Bank to (i) halt the works subject to verification of their concerns and (ii) conduct verification of their concerns.

Below is a response to the various issues raised with details on actions KeNHA and Management have taken to address them.

4. **DETAILED MANAGEMENT RESPONSE ON ISSUES RAISED**

Management would like to inform the Board that the above and previous concerns raised by PAPs and CSOs have been discussed extensively with KeNHA, the PAPs and CSOs over the last 3 years and relevant actions have been taken and clarifications provided on various issues that concern the PAPs and the CSOs. To-date out of the 507 PAPs listed in the RAP, 376 (74%) have
already been compensated and have signed the award acceptance forms as evidence of agreement to the values given. With respect to the current complaints filed with IRM, Management make the observes as follows:

4.1 Unfair compensation involving low compensation values

The approved project RAP clearly itemised the expected losses incurred by the individual PAPs and the corresponding values for compensation attributed to these losses. The compensation is carried in accordance with the guiding principles stipulated in the entitlement matrix, which was part of the RAP and is included here as Annex I. All PAPs affected properties were subjected to verification and validation with their involvement. Subsequently the issuance of final awards was made with a provision to accept or reject prior to compensation. It should be noted that most of the PAPs who have received their compensation and appended their signatures to the award sheets are still part of those who have complaints to the IRM on account of having received unfair compensation. The list of compensation values for the PAPs in the request is herein attached as Annex 2. It is also clear from this list that none of the complaints was compensated as low as 1,000.00 nor 12,000.00 (one thousand and twelve thousand Kenya shillings respectively) as claimed by the Requestors. Moreover, the project gave the PAPs the opportunity to salvage any reusable materials from their affected structures.

4.2 Continuation of project works despite unsatisfactory compensation

PAPs have persistently demanded that the ongoing works on the project should first be paused before all issues of compensation have been resolved. Management would like to clarify that the ongoing works are currently limited to areas where there is no outstanding compensation and the demand to pause works would only serve to further delay the project with attendant high financial losses to the client. Even the loan agreement for the project, like for any other similar road projects, permitted works to proceed in those sections not affected by compensation requirements.

4.3 Disclosure of Resettlement Action Plan

KeNHA has disclosed on its website the final RAP version approved by the EIB, KfW and AfDB. The Lenders have also disclosed summaries of the RAP on their disclosure websites. These disclosures, however, do not include the individual compensation values for each PAP due to the need to protect the privacy, integrity, and risks associated with disclosure of their financial details in the public domain.

In addition to website disclosure as required by Bank policy, the disclosure of the RAP has also been done by KeNHA through public fora that have included (i) disclosure of the original RAP on 13th August 2015, at Bangladesh Catholic Church, (ii) upon finalization of the Corrective Action Plan in 2016, KeNHA also disclosed this publicly as can be seen by the public invitation attached here as Annex 3.
To further allay fears about disclosure of individual compensation amounts, discussions between the Lenders and the Kenya National Land Commission (NLC) which is responsible for valuation following a process defined in Kenyan National law, indicated that disclosure of compensation entitlements to individual PAPs is part of the valuation process as inventory and valuation of effected assets requires presence of asset owners for verification.

4.4 **Unclear criteria for valuation of affected properties**

The NLC indicated that valuation amounts are disclosed directly to individual PAPs through the award forms and this is accompanied by explanations on how the valuation is done and how the values are arrive at. Moreover, during inquiry, all valued assets are disclosed to the affected PAPs with a breakdown of all items to be compensated as contained in the detailed evaluation report are discussed and agreed upon between NLC and the affected PAPs. The NLC further clarified that during reconnaissance of the affected project areas, the process is accompanied by public sensitization of affected PAPs, the gazetting process is accompanied by 30 day notices and within which period searches are conducted involving participation of PAPs in identification of their individual affected properties. The NLC also indicated that no inspection of affected assets is conducted without presence of the interested parties or their representatives. This is provided for in the law and stipulated in the RAP.

The valuation criteria adopted is as per the approved updated RAP and in accordance with the entitlement matrix which considered full replacement costs and an additional 15% of the total valuation cost as disturbance allowance to cater for relocation assistance. It should be noted that, upon issuance of individual awards, each PAP is given the option of not signing if he/she is not in agreement with the amount, or sign up if he/she agrees to the amount provided. It is only upon acceptance of the awards that compensation is issued. To date, 100% of the PAPs who have received compensation have signed up to the amounts given. However, some have only recused the amounts awarded only after receiving the money. To further sensitize PAPs on valuation procedures, KeNHA convened a valuation clinic in November 2018 in which NLC was invited to give a detailed explanation on how valuation was undertaken. Further to this, each individual complaint had a chance for review of their valuation. A total of 276 complainants participated.

4.5 **Omission of names from the eligibility list by National Land Commission (NLC)**

The census and asset inventory documented in the RAP captured all the PAPs that were to be affected. Following validation of these claims by KeNHA, it is evident that these complaints regarding missing names are cases of new entrants coming into the project area after the declared cutoff date.

From the list of complainants received through IRM/BCRM, KeNHA and Management, observe that out of the 126 PAPs listed in the submission to IRM/BCRM, 63 have been paid in accordance with the awards they signed, while the rest do not have their names appearing on the data base for PAPs eligible for compensation nor in the list of PAPs contained in the RAP (Annex 2). There
is a high likelihood that this being a densely populated urban area, some or most of the latter individuals could be those who came into the project area after the cut-off date for enumeration of PAPs which was 30th July 2014.

4.6 Disclosure of the Project design map and route

Initially the community had asked for the road design map in order to identify road boundaries. KeNHA addressed this concern through putting up of road boundary beacons and markers to show the extent of the boundary on both sides of the road in 2017. This was helpful to PAPs in determination of those within the ROW. KeNHA has explained this to the complainants several times and the preference of availing the road map still persisted. To solve this, the proponent prepared and circulated a brochure which has the map of the road and summary of key features of the project. This brochure, which is inclusive of the map is freely accessible to any interested member of the public and is available from KeNHA regional offices in Mombasa.

4.7 The allegation about compensation for only 1 month’s loss of income associated with CAP compensation

The CAP Entitlement matrix was developed to guide the compensation process of the evictees at Jomvu. Whereas the Requestors claim that “their research” unearthed information to the effect that under the CAP some of the PAPs got compensation equivalent to only one month’s lost income for lost business, the entitlement matrix for the CAP clearly shows that loss of business was compensated to 6 months equivalent while employees and tenants who experienced abrupt employment and tenancy disruption were compensated to a tune of one month and two months respectively. The Requestors clearly do not make a distinction between these different categories.

4.8 Engagement with KeNHA and AfDB Management

It is not true that the PAPs have raised complaints to KeNHA and/or AfDB and no feedback has been given to them. For instance, whereas Mr. Ali Mwanza, in his complaint of 2017, sites that only EIB and KfW have replied to him and have sent staff on site, the fact is that the AfDB team has for instance held meetings with Mr. Ali in Mombasa in March 2018 and Ali has also been involved in a number of stakeholder engagements with the client. In all these instances Ali has had the opportunity to receive explanations on various aspects of his complaint. During the supervision mission conducted in November 2018, specific effort was also made to meet one of the complainants Mr. Vitalis Otieno Wanga but unfortunately, he indicated he was not in Mombasa but rather in Kisumu on other business.

Management would like to put it on record that for a complaint submitted in 2017 and registered on 26 December 2018, there have already been many actions taken by KeNHA and Management to address most of the issues raised by the PAPs. Following the initial Joint Lenders mission conducted in September 2017 (Report attached as Annex 4), an Action Plan was agreed focusing
on most of these issues and since then this action plan is being monitored for progress in resolving the outstanding concerns (See also Annex 5). In addition, Management has undertaken the mandatory bi-annual supervision missions on this project and these have provided opportunity to interface with various issues of concern to the PAPs, including updates on RAP implementation and associated compensation.

As a way of improving communication at project level, KeNHA, unlike in other projects, has for nearly 3 years now, stationed a Sociologist as a Community Liaison Officer (CLO) at the project site on full time basis. During the meeting held between the Lenders, KeNHA and other stakeholders including CSOs on 20th September 2017 (report attached Annex 4), this initiative by KeNHA was acknowledged by all including the CSOs to go a long way to improving communication challenges associated with general management of grievances and project level information sharing with the PAPs and other interested parties. The actions agreed to enhance improved consultation were also included in an agreed lenders action plan that is monitored since as the updates in 2018 in Annex 5 demonstrate.

5. OTHER ACTIONS TAKEN BY KENHA ON RAP IMPLEMENTATION

Through follow up with the Executing agency, it is evident that KeNHA has put in a lot of effort to address the outstanding compensation and RAP implementation issues and some of the activities undertaken include the following:

It is evident that despite the numerous challenges in RAP implementation, KeNHA has continued to put a lot of effort on a number of activities related to RAP implementation, including:

- For the last two years, Government has released up-to 593,337,769.84 (Five hundred nine hundred and ninety three million, three hundred thirty seven thousand seven hundred sixty nine Kenya shillings) that has been paid out to 376 PAPs as at 28th January 2019.
- Strengthening of the team on the ground: In addition to the Sociologist that KeNHA has stationed at the project site, additional support to address social challenges includes staff of the Supervising consultants that includes a social expert, the Contractors team that includes an environmental specialist, Health and Safety Specialist, a Public Relations Specialist. The Consultant is in the process of recruiting a Social specialist as well.
- Strengthening communication: The Final Stakeholders Engagement Plan was presented to the local CSOs on 6 August for their comments. After the CSOs comments, the Plan will be finalized and its implementation will start. KeNHA also has a toll free number available to facilitate reporting of complaints and/or incidents directly to the project team and a whistleblowing policy was started for lot 1 employees.
- English copies of the RAP were provided to the communities, and a non-technical summary of the RAP was shared with the PAPs, while the Kiswahili translation is in progress. These copies were provided in the context of enhancing transparency in RAP implementation as well as enhancing communication with affected communities. KeNHA
has also conducted meetings with the community where the entitlement Matrix (clarifying who is entitled to compensation) and the Grievance Redress Mechanism were disclosed and discussed with not only the community representatives, but also over 100 PAPs and relevant local CSOs (namely, Rapid Response, Amnesty International and Haki Yetu). In addition, during the valuation process, the National Lands Commission (NLC) held individual meetings where each household’s entitlements were discussed.

- Complaints Log improvement: The project team now records complaints in the complaints logs, with complaints now received by the office of the Resident Engineer whose Sociologist logs in the complaints for processing and coordination with relevant offices suited to handle the various complaints. The project also has an incident reporting mechanism to enable capture of all incidents related to the project.
- Support to PAPs: A deliberate effort to support some evictees in depositing their cheques to their bank accounts. Co-operative Bank of Kenya was invited to the compensation payment site, where they opened new bank accounts for the evictees who did not have accounts.
- As part of the efforts linked to development of a Livelihoods Restoration Plan, KeNHA provided the evictees with financial training services through M/s Lifeline Concern Ltd. from 20th to 25th February 2017. The training was aimed at enhancing capacity for the evictees to improve their business management skills and effectively utilize their compensation package. A total of 222 evictees participated in the training and certificates of participation were issued to all participants.
- KeNHA has also offered the evictees with counselling services through Amani Counselling Centre and Kenya Association of Professional Counsellors. The counselling services were undertaken in 2016, 2017 and part of 2018
- Grievance Redress Mechanism (GRM): KeNHA established a Grievance Redress Mechanism for the evictees to receive and address their complaints related to the project. The 15-member grievance redress committee, with representation of evictees, is chaired by the Deputy County Commissioner. The Lenders expect that if any PAP received a lower compensation, they should contact the project grievance mechanism as the first point of contact for review of the award values.
- Ensuring no forced eviction - It was evident that KeNHA has exercised restraint on further demolitions even in instances where awards and evacuation notices (and in some cases payment) have already been issued but with the PAPs still on site.

6. OTHER ACTIONS TAKEN THROUGH THE JOINT LENDERS INITIATIVE

- The Lenders, in conjunction with KeNHA have organized face-to-face meetings with the CSOs to deliberate on issues of concern to them. Such meetings have taken place on 19th of Sept 2017 and 9th August 2018 (both as part of joint Lenders missions).
- In early 2018, EIB commissioned a consultant to support KeNHA in developing a Stakeholder Engagement Plan (SEP). The SEP has since been operationalized and is
supporting KeNHA in enhancing engagement with PAPs and other stakeholders such as the Mombasa local government authorities. It is further important to note that in the process of developing the SEP and now during its implementation, KeNHA has been engaging with different stakeholders at different levels, including systematic meetings at community level and with local CSOs present on the ground, (mainly Rapid Response and Haki Yetu) and Management believes that this engagement will improve even more with the rollout of the SEP.

- The Lenders have urged KeNHA to document some of the positive outcomes of RAP/CAP implementation to avoid the risk of the negative challenges becoming the only message available to stakeholders. For instance during the last lenders mission in August 2018, the Lenders visited some PAPs who had already vacated their premises and for whom the compensation allowed to secure a formal piece of land, in addition to building a house in better conditions than before. Such positive outcomes from the RAP implementation process need to be documented.

7. CHALLENGES WITH RESPECT TO THE CURRENT COMPLAINT

Whereas KENHA has made tremendous progress in implementing the RAP, a number of challenges inherent in RAP implementation have hampered the completion of the compensation process. Among the key challenges are the following:

It is very clear that there are some issues of disagreement between the PAPs and KeNHA and these include:

- Whereas Management acknowledges the effort that KeNHA has put to make sure all PAPs are compensated, payment of PAPs has been delayed by slow release of compensation resources from the national Treasury. The release of financial resources for compensation of PAPs is apparently beyond control of KeNHA. This has forced KeNHA to adopt innovative ways to ensure that the construction works proceed in areas where there are no PAPs as well as prioritize areas for payment where there are more vulnerable PAPs.
- Notwithstanding the availability of communication channels provided at project level and to which all parties have agreed to follow (and indeed these do exist on this project as highlighted above), often we do get situations of repeated complaints which simply take advantage of the lenders’ recourse mechanisms to file cases that are in fact already being handled through the normal project implementation processes. In the case of the Mombasa-Mariakani Road Project for example, the meeting between CSOs, the Lenders and KeNHA on 27th September 2017 agreed on a framework for project level engagement with an action plan agreed on key issues and whose implementation is already ongoing (Annex 4). Management has reported on progress on implanting this action plan following the last Joint Lenders missions conducted from 6th to 15th August 2018 (Annex 5) and the progress demonstrates that there is already action being taken on the very issues the requestors are writing about.
Management would like to inform the Board that the validity and authenticity of some of the complaints needs to be closely examined. For instance, whereas on the 1st of July 2018 Management received a complaint from Bahati community with a list of PAPs affected by the project (Annex 6), exactly the same list of PAPs has been presented through the IRM (Annex 7) by a one Muruti Wangari with signatures whose authenticity cannot be readily verified. These two separate complaints are attached to this response as Annex 5 and 6 respectively. For instance the signatures of Kenneth Gitonga Nteere are completely different in the two documents (Number 23 in Annex 5 submitted to IRM and Secretary of Committee who signed Annex 6.

It is therefore a concern to KeNHA and Management that the same complaints that have been directed to KeNHA for resolution, are being re-submitted from one financier to the other in a bid to see if it will achieve a different outcome. The same issues have also been submitted to EIB complaints mechanism.

8. CONCLUSION

In view of the above, it is the opinion of Management that a lot of work has already gone into resolving most of the issues the Requestors have pointed out. Management is committed to continuing to engage with KeNHA, the PAPs and CSOs within the framework of the already existing communication channels at project level. Already most of the issues raised by the requestors have been resolved and more is still being done to sensitize the PAPs on issues that concern them, including clarification on method of valuation that derived the compensation amounts awarded to the individual PAPs in question. It should, however, be noted that a majority of the PAPs have already received their compensation and have already vacated the project site. The cases of those who have appealed to IRM will equally be resolved using the already established channels.

Whereas Management is still pursing implementation by KeNHA of the action items agreed in the Lenders Action Plan, and will continue to work closely with KeNHA to ensure amicable resolution of the issues affecting PAPs full compensation, it is Management’s believe that any additional efforts through the IRM problem solving process could speed up resolution of the outstanding issues.