

MONITORING REPORT ON THE IMPLEMENTATION OF THE SETTLEMENT AGREEMENT

The objective of this monitoring report is to provide a summary of the implementation of the actions agreed in the Mediation Settlement Agreement dated 21 August 2018.

Regional Mombasa Port Access Road – Kenya

Complaint Nr.: SG/E/2017/03, SG/E/2017/08, SG/E/2017/09, SG/E/2017/11, SG/E/2017/12, SG/E/2017/13, SG/E/2017/14, SG/E/2017/16, SG/E/2017/18, SG/E/2017/19, SG/E/2017/20, SG/E/2017/28 and SG/E/2017/30

Complainants: 13 persons affected by the forced evictions of 17 May 2015 within the Regional Mombasa Port Access Road project

Date received: between January and July 2017

Confidentiality: due to an overriding public interest for transparency, the settlement agreement was not considered confidential by the parties

1. THE COMPLAINTS

- 1.1. Between January and July 2017, the EIB Complaints Mechanism (EIB-CM) received several emails from individuals (the complainants) complaining about the implementation of the compensatory measures related to the forced evictions that had taken place in 2015 in the village of Kwa Jomvu Madafuni, in an area that is designated for road construction as part of the Regional Mombasa Port Access Road project in Kenya.
- 1.2. The complainants questioned the adequacy of the compensation received and, for some, the lack of compensation. The complainants also alleged that they had not been properly considered, informed and consulted during the valuation and compensation process that followed the forced evictions.

2. BACKGROUND INFORMATION

- 2.1. The project concerns the rehabilitation and widening of 41 km of the existing road between Mombasa and the town of Mariakani in the south-east of Kenya. The EIB has provided a loan to the Government of Kenya of which the final beneficiary and promoter is Kenya National Highways Authority (KeNHA). The project was co-financed by the African Development Bank (AfDB) and the German development bank, Kreditanstalt für Wiederaufbau (KfW).
- 2.2. In the night of 17 May 2015, demolitions took place between 10+700 km and 11+450 km affecting three villages, namely Kwa Jomvu Madafuni, Narcol and Ngamani. It was estimated that about 180 businesses and dwellings were demolished. Following these forced evictions, the lenders and the project promoter agreed to develop a Corrective Action Plan (CAP) to

remedy the harm done by the evictions in anticipation of the finalisation of the full Resettlement Action Plan (RAP) for the entire project.

- 2.3. An Initial Assessment Report (IAR) was issued on 22 November 2017, which included a proposal to proceed with a problem-solving approach, facilitated by the EIB-CM, aimed at fostering a dialogue between the complainants and the project promoter and other stakeholders involved in the resettlement. The proposal was accepted by the complainants and the project promoter.

3. MEDIATION PROCESS AND REPORT

- 3.1. The EIB-CM put in place a mediation team, composed of two mediation officers from the EIB-CM and one local mediator and the preparation phase for the mediation started with the first formal mediation meeting taking place in March 2018.
- 3.2. After this first mediation meeting, some additional 40 complaints from the community impacted by the CAP had been received by the EIB-CM. This called for a re-engineering of the mediation process (in agreement with the parties) to extend it to all complaints received by the different grievance mechanisms (financiers' and project grievance mechanisms) with the final number of complaints being dealt with reaching around 350.
- 3.3. In June 2018, the parties signed a partial settlement agreement on the methodology to be used to analyse the individual complaints. The final settlement agreement was signed in August 2018.
- 3.4. The Settlement Agreement identified the following measures and actions to be undertaken by the parties:
 - Setting up of a clinic process to evaluate all the individual complaints, whereby KeNHA undertook to implement the results of the clinic process.
 - The mediation table issued recommendations on agreed best practices that should guide KeNHA and the community on future discussions about the reinforcement of the local grievance redress mechanism (GRM).
 - The mediation table summarised the CAP and RAP livelihood restoration measures and included some best practice that it recommended to KeNHA for use in the future if needed.
 - The parties agreed to have a one-day session facilitated by the mediators to lay the groundwork for future improvement of relationships between the different stakeholders of the project, including local authorities.
- 3.5. The Mediation Report dated 16 November 2018 provided more detail on the mediation process and initial implementation measures carried out between the signature of the Mediation Settlement Agreement¹ and the issuance of the report².

¹ <https://www.eib.org/attachments/complaints/settlement-agreement-mombasa-port-access-road-21-08-2018.pdf>

² <https://www.eib.org/attachments/complaints/2018-11-16-complaints-mombasa-port-access-road-mediation-report-final.pdf>.

4. IMPLEMENTATION

- 4.1. Implementation of the agreed measures started immediately after the signature of the partial settlement agreement. A clinic process was put in place and the hearing of all the individual complainants took place from 7 to 16 June 2018. The final report from the clinic evaluators was issued on 8 March 2019.
- 4.2. The clinic evaluators individually analysed 316 complaints, 243 of which were interviewed individually during the clinic process. Of the 316 complaints, 109 were considered eligible for compensation.
- 4.3. As of 31 March 2021, the EIB-CM had received proof of payment to 82 project-affected persons (PAPs) who were due to receive extra compensation. 26 PAPs had already been compensated under the RAP for the extra compensation due under the CAP. One PAP had passed away and KeNHA provided proof of its attempts to help the widow receive the compensation without success due to the lack of responsiveness of the widow. The EIB-CM thus considers the final compensation case as closed.
- 4.4. The agreed one-day session to lay the foundations for future improvement of relationships between the different stakeholders of the project, including local authorities, was held on 31 May 2019 and facilitated by the local mediator.
- 4.5. Regarding the recommendations issued by the mediation table on agreed best practices that should guide KeNHA and the community on future discussions about the reinforcement of the local GRM, KeNHA reported in June 2020 that as a result of the finalisation of the RAP³ for the entire project, the GRM was reviewed. Notably the GRM will be transformed into a four-tier mechanism for enhanced management and inclusion of locals in dispute resolution. The recommendations by the mediation table on the strengthening of the GRM are relevant for the entire project and thus go beyond the remit of the mediation. Further follow-up on this point will be carried out by the EIB-CM and the EIB operational services in the course of the standard monitoring of the project, as detailed in the conclusions report relating to complaints received under the RAP⁴.
- 4.6. In June 2020, KeNHA also reported on the implementation of the best practices on livelihood restoration. These were also reviewed during the finalisation of the RAP and are still ongoing. The EIB-CM notes that, among other things, the truck parking area expected to be built in Miritini is planned to incorporate spaces for small-scale traders that were evicted at Kwa Jomvu Madafuni in 2015. As with the previous point, the follow-up on the recommendations on livelihood restoration encompasses the entire project and thus goes beyond the remit of the mediation and will be monitored by the EIB services in the course of the standard monitoring of the project.

The EIB-CM considers that all action points agreed in the Mediation Settlement Agreement have been implemented.

³ <https://www.eib.org/en/registers/all/77473323>

⁴ <https://www.eib.org/attachments/complaints/regional-mombasa-port-access-road-conclusions-report-sg-e-2017-27-41-44-21-01-2020pdf.pdf>