

## Regional Mombasa Port Access Road

*Kenya*

### Complaints

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

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

# MEDIATION REPORT

16 November 2018

---

Prepared by

**Lurdes Serra**  
*Senior Mediation Officer*

---

**Sonja Derkum**  
*Head of Division*

External Distribution

Complainants  
Promoter

Internal Distribution

Management Committee  
Secretary General  
Inspector General

## **The EIB Complaints Mechanism**

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants who are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of receipt of that reply. In addition, Complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB with the European Ombudsman.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the European Ombudsman, are administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is intended not only to address non-compliance by the EIB with its policies and procedures but to endeavour to solve the problem(s) raised by Complainants such as those regarding the implementation of projects, notably through mediation.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/en/about/accountability/complaints/index.htm>

**Table of Contents**

<b>1.</b>	<b>COMPLAINT AND DETAILS OF ALLEGATIONS .....</b>	<b>6</b>
<b>2.</b>	<b>THE PROJECT AND EIB INVOLVEMENT.....</b>	<b>6</b>
<b>3.</b>	<b>THE INITIAL ASSESSMENT .....</b>	<b>7</b>
<b>4.</b>	<b>THE MEDIATION PROCESS .....</b>	<b>7</b>

## EXECUTIVE SUMMARY

Between January and July 2017, the EIB Complaints Mechanism (EIB-CM) received several e-mails from individuals (hereinafter the Complainants) complaining about the implementation of the compensatory measures related to forced evictions that had taken place in 2015 in the village of Jomvu, in an area that is designated for road construction as part of the Regional Mombasa Port Access Road project in Kenya.

The European Investment Bank (EIB) is providing a loan for the Mombasa Port Access Road project, which concerns the rehabilitation and widening of 41 km of the existing road between Mombasa and the town of Mariakani in South East Kenya.

After having performed an Initial Assessment Report (IAR) of the complaints, EIB-CM proposed a dialogue facilitation between the Complainants and the project promoter, which both parties accepted.

The preparatory and mediation work took place between December 2017 and August 2018 when a final Settlement Agreement was signed detailing the actions to be taken to solve the grievances presented by the approximately 350 Complainants.

EIB-CM is currently monitoring the implementation of the Settlement Agreement.

## MEDIATION REPORT

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

**Subject of complaint:** Inadequate compensation or lack of compensation after forced evictions

### 1. COMPLAINT AND DETAILS OF ALLEGATIONS

- 1.1. Between January and July 2017, the EIB Complaints Mechanism (EIB-CM) received several e-mails from individuals (hereinafter the Complainants) complaining about the implementation of the compensatory measures related to forced evictions that had taken place in 2015 in the village of Jomvu, 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, the lack of compensation for some of them as well as the impacts that the previous had on their lives and the lives of their families. During the EIB-CM's fact-finding mission, 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. THE PROJECT AND EIB INVOLVEMENT

- 2.1. The European Investment Bank (EIB) is providing a loan for the Mombasa Port Access Road project, which concerns the rehabilitation and widening of 41 km of the existing road between Mombasa and the town of Mariakani in South East Kenya. The borrower of the loan is the Republic of Kenya and the beneficiary and promoter is the Kenya National Highways Authority (KeNHA).
- 2.2. The project is co-financed by the EIB, African Development Bank (AfDB) and Kreditanstalt für Wiederaufbau (KfW) and is divided into two separate parts called Lot 1 (11.35 km in length), financed by AfDB, and Lot 2 (28.96 km in length). Lot 2 from West Kwa Jomvu interchange to Mariakani Weighbridge is co-financed by EIB and KfW.
- 2.3. The EIB's appraisal of the project recognised that the road reserve featured substantial encroachment along certain sections by income-generating activities (informal produce stands, hawkers, etc) and that the road project triggers resettlement of a number of economically vulnerable people. It further recognised that the Resettlement Action Plan (RAP) elaborated by the project promoter would need to be improved to be in line with EIB standards.
- 2.4. In the night of 17 May 2015, demolitions took place between 10+700 km and 11+450 km (up to 11+350 km financed by AfDB, from 11+350 km to 11+450 km financed by EIB) affecting 3 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 RAP.

### **3. THE INITIAL ASSESSMENT**

- 3.1. In August 2017, EIB-CM finalised an Initial Assessment Report (IAR) of the complaints received which included the proposal to proceed with a problem-solving approach, facilitated by EIB-CM, aimed at fostering the dialogue between the Complainants and the project promoter and other entities involved in the resettlement. The proposed way forward was accepted by the stakeholders (Complainants and project promoter).

### **4. THE MEDIATION PROCESS**

#### **4.1. The Preparation**

- 4.1.1 Following acceptance of the problem solving approach by the Complainants and the project promoter (hereinafter “the Parties”), EIB-CM put in place a mediation team composed of two mediation officers of EIB-CM and one local mediator.
- 4.1.2 The preparation for the mediation process started with a first site visit by the EIB-CM teams from 2 to 7 December 2017. During this visit, separate meetings were held with the Complainants and the representatives of KeNHA. A second site visit by the mediation team took place from 19 February to 23 February 2018.
- 4.1.3 The main aim of these meetings was to explain the mediation process to those involved, notably sensitise them to the importance of selecting appropriate representatives for participation in the mediation process. The mediation process was also detailed, and the participants in the meetings were given the opportunity to express themselves and ask any questions concerning the organisation of the process. This phase was also used to build the capacity of the participants in order to prepare them for the official mediation meetings.
- 4.1.4 This preparatory phase was also used to help the Complainants get organised to select their representatives. Furthermore, the mediation team also used the opportunity to start validating or identifying the issues that all concerned would like to discuss during the mediation meetings. At this point in time, given the individual nature of the complaints, a discussion took place as to whether the mediation should concentrate only on the complaints raised by the actual Complainants or if it should encompass the community impacted by the CAP. The Parties agreed that the mediation should concentrate only on the complaints sent to EIB-CM.
- 4.1.5 During the meetings, the mediation team also started working on a draft agenda for the mediation meetings, as well as on a draft agreement to mediate. These documents were sent to the participants in advance of the mediation meetings.

## 4.2 The Mediation

- 4.2.1 The first official mediation meeting took place at the end of the second site visit on 1 March 2018 and it dealt with the signature of the agreement to mediate and the finalisation of the agenda for the mediation meetings.
- 4.2.2 Upon return of the mediation team to headquarters, some 40 extra complaints from the community impacted by CAP had been received by EIB-CM.
- 4.2.3 The mediation team started contacts with both Parties to take a decision on how to deal with the complaints received after the start of the mediation process. The Parties then agreed to extend the mediation process to all complaints received by the different grievance mechanisms, project and financiers grievance mechanisms (ultimately the number of individual complaints to be dealt with reach around 350).
- 4.2.4 The decision to deal with all the complaints had an impact on the mediation process and therefore it had to be readjusted. The mediation team went back to the site from 16 to 20 April 2018 and called a meeting of the impacted community to explain the mediation process and to let them decide on their representatives. Upon designation of the new representatives, the mediation team started a new preparation phase with them and managed to resume the mediation on 20 April 2018 with the signature of the new agreement to mediate and the approval of a new agenda for the mediation. During this meeting the Parties also discussed the communication strategy to be put in place during the mediation. The Parties agreed that after each mediation session, the mediators would prepare, in consultation with the Parties, a communication about the discussions during the mediation session to be disseminated to the community.
- 4.2.5 The mediation continued during the week 12 to 16 May during which the main point discussed was the methodology to analyse the individual complaints. The session terminated with a stand still given that the representatives at the mediation table could not agree on a methodology. The mediators suspended the mediation process and decided to go back to the respective constituencies to ensure understanding of the difficulties and different possibilities available.
- 4.2.6 Hence, during the session from 7 to 16 June meetings were organised separately with KeNHA management and the community impacted by the CAP. After this, the mediation sessions resumed and the Parties reached a partial settlement agreement on the methodology to analyse the individual complaints (see Attachment 1, Annex 1).
- 4.2.7 The mediators then started preparing the work for the analysis of the individual complaints and the hearings of all the Complainants were held between 13 and 18 July 2018. Desk analysis of the individual complaints is still ongoing and the results are expected to be released at the latest by end of January 2019.
- 4.2.8 From 18 to 26 August 2018 the mediation team was on site again to hear a number of witnesses and on 20 and 21 August 2018 organised a final mediation session during which the remaining points on the agenda were discussed and agreed. The final settlement agreement was signed on 21 August 2018 (see Attachment 1).
- 4.2.9 In accordance with what was agreed by the Parties, the mediators issued, in consultation with the Parties, a communication after each mediation session detailing the status of the discussions. These communications were issued in English and Kiswahili and were printed and disseminated to the community.



4.2.10 After finalisation of the analysis of the individual complaints, the mediation team will monitor the implementation of the recommendations resulting from the analysis. The Parties have accepted that once the recommendations are implemented, the results are final and all complaints on the implementation of the CAP will be dropped.

S. Derkum  
Head of Division  
Complaints Mechanism  
16.11.2018

L. Serra  
Senior Mediation Officer  
16.11.2018