

Mombasa, Nairobi, Prague, Berlin, Warsaw, 23<sup>th</sup> of March 2017

**From:**

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**To:**

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**Concerns regarding DUALLING OF MOMBASA – MARIAKANI (A109) ROAD project,  
recognized also as Regional Mombasa Port Access Road Project  
operated by KeNHA and financed by EIB, KfW and AfDB.**

**As civil society organisations (CSOs) monitoring the Mombasa-Mariakani dualling project we would like to express our serious concern regarding the process of providing compensation following the forced eviction of residents from Jomvu Narcol, Jomvu Madafuni and Madukani settlements in May 2015, coordinated by KeNHA, together with the process of the Resettlement Action Plan (RAP) review conducted as a result of the financiers' intervention.**

**Although we recognize that the process has introduced some welcomed initiatives with respect to forced evictions in Kenya (e.g. the elaboration of a revised RAP by KeNHA with the support of the financiers), we remain concerned about the actual implementation process on the ground and the ongoing failure to provide appropriate redress for the victims. In expressing these concerns we do so in the spirit of seeking to ensure that the process you have continued to support is as robust as possible and delivers justice for the victims – a principle we collectively share.**

At the meeting with CSOs conducted on 17th of Sept 2015, together with representatives of all the lenders involved it was agreed that:

- compensation for all forcibly evicted people was to be paid by the end of 2016
- a revision of the RAP would be undertaken
- KeNHA would share with the respective CSOs a schedule of activities
- KeNHA would share the stakeholders engagement plan with all respective stakeholders.

Between the 6th and 8th December 2016, CEE Bankwatch Network together with Amnesty International Kenya visited communities in Jomvu Narcol, Jomvu Madafuni, Jomvu Madukani and Bangladesh. We conducted a series of focused group discussions with stakeholders (tenants, structure owners, village committees, women and traders) on international resettlement standards. We also collected a number of testimonies of victims of forced evictions and the consequential impact including loss of their livelihoods as well as hearing complaints about their lack of meaningful participation in

the Corrective Action Plan and RAP review. Amnesty International Kenya and local CSOs, including the Rapid Response Team from Mombasa, are still monitoring the situation.

### **An inaccessible Corrective Action Plan (CAP)**

We are concerned that CAP has only been presented in English to a community with language and literacy challenges. English is not the common language used by the affected community, instead, Kiswahili is the language preferred in the region. It is also noteworthy, that the document was proffered in soft copies. There were no hard copies of CAP distributed to the targeted people, a fact that hampered accessibility of the document because majority of the populace cannot afford to access it online. Their meaningful participation in the process was thus put into sharp focus.

### **A deficient and non-transparent compensation process**

On 27th of February 2017, KeNHA met with Jomvu victims of forced evictions. During the meeting some compensation payments were distributed in the form of cheques. However, evidence gathered from victims by Rapid Response Team representatives from Mombasa confirmed that prior to these disbursements no information had been given to them regarding the compensation process. For example, victims interviewed were not sure if they had been compensated solely for the losses incurred during the May 2015 evictions or whether it also covered potential future relocation as well. Some of the victims reported, that they had only received compensation of 1000 or 400 KES. This is significantly less than the level of compensation they should be receiving to redress the harms and losses they had incurred.

### **Lack of consultation and information on the revision of the Resettlement Action Plan (RAP)**

Given that the RAP was supposed to be under revision until January 2017, we and the communities were expecting the engagement plan on it to be published in advance. However, we haven't got the confirmation from the communities on any engagement in consulting the revised RAP, which would be facilitated by KeNHA. Consequently, the communities do not know who is included in the RAP and what the process will look like.

According to the the project affected persons in Jomvu Narcol, Jomvu Madafuni and Madukani they have been informed orally by KeNHA representatives that the contractor will take possession of the road reserve by the end of January 2017. However, this does not amount to either proper consultation on the revised RAP or proper information on the resettlement scheme itself including assistance to the project affected persons.

Instead, residents have been witnessing the preparation of the construction sites and marking the houses without any proper explanation, together with the PAPs inquiries being conducted without proper notice. Consequently, people do not know if the inquiry is a part of the RAP, or something else. For example, on 8<sup>th</sup> of March 2017 KeNHA and the National Land Commission started the PAPs inquiry from the area of Changamwe to Mariakani. Tenants report that they are not included in the process and are told to deal directly with the structure owners. If this is really the approach of the project promoter, it is violation of the EIB Standards on Involuntary Resettlement included in the Environmental and Social Handbook, page 55, which states: *"23. (...) This applies to affected persons, groups and communities subjected to involuntary resettlement as well as host communities at relocation sites. It applies to all such persons, whether or not they hold a legal title to their home or property under domestic law."*

All the described situation brings uncertainty, fear and tensions among the communities.

### **Requested actions to address the situation**

Following the visits to the impacted area in February 2017, both Amnesty International and CEE Bankwatch Network met with the European Investment Bank to seek clarification on the findings from

their mission. We were informed that the translation of the CAP is ongoing and the revision of the RAP has been delayed.

In these circumstances we would respectfully urge you to ensure that KeNHA provides for an inclusive and transparent process of genuine consultation on the proposed CAP and revised RAP in line with the Standards 10 and 7 of the EIB's Environmental and Social Standards and corresponding policies and standards of other financiers. This would include the distribution of the Corrective Action Plan in the Kiswahili language before its implementation, disclosure of the revised RAP in the Kiswahili language, its effective distribution in advance of undertaking any actions and proper consultation process in compliance with international standards. Consultation provisions should be contained in the Stakeholder Engagement Plan for both the CAP and RAP review throughout the implementation period.

We call on the financiers to ensure that opportunities for dialogue and consultation are extended effectively to the full spectrum of affected persons, paying particular attention to the full participation of women, single headed households and child led families. It must be ensured that all the relevant stakeholders including PAPs, community authorities, community-based organizations and non-governmental organizations, have the opportunity to comment on the documents and their comments are properly addressed. The communities reported to us that they have never received any response to their letters addressed to KeNHA regarding the process. We would also like to underline the need for capacity building of the small, local CSOs, who want to monitor the process but do not have the possibility because of the lack of information and logistical capacity.

Finally, we wish to emphasize that the situation on the ground is changing fast and that consequently, it requires the immediate attention of the financiers to ensure that every measure is taken to consult with, listen to and address the needs of all PAPs.

We also ask you to help us to inform other financiers (in particular the governmental agency UK Aid) with respect to the section of the road where forced evictions took place on 16 May 2015, a day before evictions at the section financed by EIB, AfDB and KfW and to encourage KeNHA to extend its Corrective Action Plan to those affected persons.

### **Specific Recommendations and Questions**

Based on the above we respectfully make the following recommendations and ask the following questions:

1. Ensure that KeNHA provides for an inclusive and transparent process of genuine consultation on the proposed CAP and revised RAP in line with the Standards 10 and 7 of the EIB's Environmental and Social Standards and corresponding policies and standards of other financiers, paying special attention to:
  - effective distribution of the translated Corrective Action Plan in Kiswahili language before its implementation;
  - disclosure of the revised RAP in Kiswahili language, its distribution and proper consultation process;
  - opportunities for dialogue and consultation extended effectively to the full spectrum of affected persons, paying special attention to the full participation of women and single headed households;
2. Ensure, that KeNHA's performance is more effectively monitored, including where possible more site visits given the fast changing situation,
3. What has been done so far with respect to compensation in line with the CAP, what kind of information regarding CAP implementation are the banks in possession of, how many meetings/payments of compensation have taken place according to KeNHA, how Community

Liaison Officer can be contacted and how the equal treatment of all the interested is ensured, who is in charge of the Monitoring and Evaluation (M&E) of CAP implementation, how many people were compensated and on the basis of what? Can the lists of payments done and monthly M&E reports indicated in the CAP be disclosed ?

4. When will the revised RAP be disclosed to the communities in question in Kiswahili and English? How will the process of consultations look like?
5. Undertake efforts to inform the financiers (in particular the governmental agency UK Aid) of the road section, where forced evictions took place on 16 May 2015 and encourage KeNHA to extend the Corrective Action Plan to affected persons.

We respectfully ask the banks to respond to the above concerns and requests raised and inform us of the relevant steps taken by KeNHA.

Yours faithfully,

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