

Highway of Destruction

***An independent assessment of the implementation of the
Resettlement Action Plan for the Regional Mombasa Port
Access Road as per the recommendations from the European
Investment Bank Complaints Mechanism's Conclusions Report***

Assessment Report

Study Commissioned by Polish Green Network

Conducted by Naomi Barasa

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LIST OF ACRONYMS

ACC	Assistant County Commissioner
ACC1	Assistant County Commissioner One
CAP	corrective action plan
EIB-CM	European Investment Bank Complaints Mechanism
CSOs	civil society organisations
DCC	Deputy County Commissioner
DOCPD	Deputy Officer Commanding Police Division
EIB	European Investment Bank
EPZ	export processing zones
GRM	grievance redress mechanism (project-based)
IPOA	Independent Policing Oversight Authority
NEMA	National Environment Management Authority
NLC	National Land Commission
OCPD	Officer Commanding Police Division
OCS	Officer Commanding Station
KeNHA	Kenya National Highways Authority
KNCHR	Kenya National Commission on Human Rights
PAP	project affected person
RAP	Resettlement Action Plan
WARBA	Water Resources Board Authority

METHODOLOGY

This assessment was conducted in Mombasa, Kenya in July 2020. The research team, which was comprised of the lead consultant and two research assistants, visited and spoke to the affected populations in Changamwe, Bahati, Bangladesh, Mikindani, Jomvu Narcol, Jomvu Madafuni, Miritini and Mariakani who live and work along the road reserves. The team spoke to 137 stakeholders, including project affected persons (PAPs), community-based organisations' representatives and community leaders in Bangladesh, activists, the Kenya Police Service, government officials, representatives from civil society organisations (CSOs), the National Land Commission (NLC), religious leaders, community liaison committees, the Independent Policing Oversight Authority (IPOA), and the Kenya National Commission on Human Rights (KNCHR) and village elders. The Kenya National Highways Authority (KeNHA) did not agree to be interviewed for this study. The research team requested interviews with KeNHA's Community Liaison Officer and the Chief Sociologist, both of whom indicated that they could not meet or speak to the team. Polish Green Network wrote to the Director General of KeNHA on 13 August 2020 requesting an interview to discuss the study's preliminary findings. Four weeks later when the research was concluded, KeNHA had not responded. The team also met with a youth group (name withheld for security reasons) who admitted that they were hired to conduct a forced eviction of a PAP who has grievances that have not been addressed. Every individual spoken to in the context of the study was offered the opportunity to remain anonymous in the final report, and all names used in the study have been used with the permission of the individual.

Various methodologies were employed to ensure increased accuracy of the information acquired: literature review, key informant interviews (KIIs)¹, focus group discussions (FGDs)², public forums³ and observation. General information shared in large forums was verified and used to corroborate KIIs and FGDs. The larger forums were particularly essential in raising collective concerns and PAPs' collective responses.

BACKGROUND

Kenya's coastal region is comprised of five counties: Kwale, Kilifi, Lamu, Taita-Taveta and Mombasa. The region is characterised by landlessness and a lack of security of tenure due to historical injustices. People typically own the structures on the land, but not the land itself. This 'house without land' concept of ownership, and the resulting lack of security of tenure, has existed for over a century. In Mombasa, for example, a very small fraction of people possesses legal ownership of land, and the vast majority live and work without security of tenure⁴. Although residents lack documentation to prove legal ownership, there is historical and cultural

¹ This methodology involves one-on-one interviews with key sources of information. They may include the affected persons, state officials in any of the state agencies, key witnesses or the contractors. Sometimes, they are used as follow-up platforms for information acquired in large forums, for example FGDs and literature reviews. They are also used to obtain confidential accounts.

² The methodology involves an in-depth discussion with a group of people involved in or affected by the project. Issues raised are deliberated in detail, and clarification is also sought. It ideally involves between 8 and 12 participants. The discussion lasts between 45 minutes and one hour.

³ These are large community meetings (public or private) consisting of project stakeholders.

⁴ Truth, Justice and Reconciliation Commission, Kenya, [Report of the Truth, Justice and Reconciliation Commission, Volume IV](#), 2013; Karuti Kanyinga, [Re-distribution from above: the politics of land rights and squatting in coastal Kenya](#), Nordiska Afrikainstitutet: Uppsala, Sweden, 2000; Rasna Warah, ['Squatters on their own land: Why calls for secession are likely to intensify in the coast region'](#), *The Elephant*, 9 November 2017.

evidence of their occupation that goes many years back: accounts from some elderly PAPs who claim to either have been born or moved there when they were young, graves of relatives there (great grandparents), prayer sites/shrines, and the presence of some old trees that were planted by known elderly residents or deceased persons.

This is the reality for most who live on the western side of Mombasa, where the Government of Kenya, through KeNHA, planned the rehabilitation and expansion of a road that will run between Mombasa and Mariakani in Eastern Kenya (part of the Northern Road Corridor). Known as the Regional Mombasa Port Access Road, this 41.7 kilometre road is the initial section of an almost 2,000 kilometre-long corridor connecting the Port of Mombasa directly to the landlocked countries of Uganda, Rwanda and Burundi, and forming an essential connection to South Sudan, the Democratic Republic of the Congo and parts of northern Tanzania. The project is financed by the African Development Bank (AfDB) (EUR 123 million loan), German KfW (EUR 50 million loan), European Investment Bank (EIB) (EUR 50 million loan signed in 2017) and the EU-Africa Infrastructure Trust Fund⁵ (EUR 20 million grant).

In 2014, KeNHA prepared a Resettlement Action Plan (RAP) for the people that would be affected by the road's construction. The census survey and asset inventory of project-affected persons for the RAP was completed by the cut-off date of 30 July 2014. Although the project was submitted to financiers as one piece, for which an Environmental and Social Impact Assessment (ESIA) and a RAP⁶ were prepared, the financiers divided the project into Lot 1 and Lot 2. The AfDB claims responsibility for Lot 1, and the EIB and KfW for Lot 2.⁷ The cumulative 947 property holders mapped in the RAP have a combination of various categories of assets that were supposed to be affected by the project; e.g. one owner might have a structure, business and trees/crops, another a structure and business, or another a structure and trees that were supposed to be affected. KeNHA has asserted ownership of the land on which the road runs, claiming the road is on public land even though communities have lived along the highway for over a century. Connection to the port makes the highway very important economically. There are many companies as well as export processing zones (EPZs) located along the Regional Mombasa Port Access Road and at the port itself, which provide significant employment opportunities and are prime sites for businesses serving the residents of the communities living along the road. These communities along the highway are densely populated slums, which has created high demand for housing.

INTRODUCTION

This is the outcome report of an exercise commissioned by Polish Green Network to undertake an independent assessment of the implementation of the RAP for the Regional Mombasa Port Access Road as per the recommendations from the European Investment Bank Complaints Mechanism (EIB-CM) Conclusions Report⁸.

⁵ The EU-Africa Infrastructure Trust Fund's donor contributions stem from the European Development Fund budget and from several European Union Member States. The EIB is the manager of this blending instrument.

⁶ European Investment Bank, [Regional Mombasa Port Access Road](#), 11 May 2015.

⁷ By using the terms Lot 1 and Lot 2 here and elsewhere throughout the report, the authors of this report do not seek to legitimise the division of the project into lots, which they believe is an artificial solution intended to make the project's impacts appear smaller than they are. Rather, these terms are used to refer to the populations and their land in separate categories to distinguish how the banks' and companies' policies have affected them thus far in the process.

⁸ European Investment Bank Complaints Mechanism, [Conclusions Report: Regional Mombasa Port Access Road, Complaints SG/E/2017/27, SG/E/2017/41 and SG/E/2018/44](#), 25 November 2019.

The Conclusions Report responded to three complaint cases⁹ that covered around 250 individual complaints¹⁰ submitted between 2017 and 2019.

Polish Green Network, together with CEE Bankwatch Network, Rapid Response Team Mombasa and resettlement expert Naomi Barasa (previously with Amnesty International Kenya) have been monitoring the Regional Mombasa Port Access Road project since 2016. This monitoring, close cooperation with the affected communities and extensive dialogue with the lenders, has exposed forced evictions and human rights abuses.

In 2015, the Jomvu Narcol and Miritini communities were forcibly evicted as a result of the planned construction works for the Mombasa Port Access Road. The case of Jomvu Narcol was brought to light after Amnesty International documented ruthless demolitions that left over one hundred families homeless¹¹. CSOs and PAPs conducted robust advocacy on forced evictions and other human rights violations in the Jomvu area. In response to this, the lenders and KeNHA halted the road works to mitigate the harm caused. Various efforts have been put in place to mitigate the harm caused by demolition. Most importantly, KeNHA developed a Corrective Action Plan (CAP) in 2016 and revised the RAP in 2017 for the whole project. The CAP was intended to restore the lives of the victims of the forced evictions to their initial state.

The CAP implementation process was marred by many delays, a lack of transparency, reported intimidation and PAPs' subsequent dissatisfaction with the process. This led to 316 complaints, which were addressed in a mediation process¹² conducted by the EIB's Complaints Mechanism (EIB-CM). The mediation team included representatives from the aggrieved PAPs, KeNHA, EIB-CM and an independent mediator. According to the PAPs, the mediation process failed to achieve win-win results as they had anticipated. Human rights defenders from the area testified that in 2017 they had been intimidated/victimised by local authorities for contacting the lenders. Later, it turned out that the EIB disclosed the complainants' identities to the promoter (a state agency)¹³, which may have led to the intimidation and victimisation.

It was expected that lessons would be drawn from the CAP process to improve the resettlement process and RAP. Unfortunately, the RAP still lacks crucial components, such as a Livelihood Restoration Framework and alternative resettlement for residential purposes. It does not provide satisfactory measures to safeguard vulnerable groups such as women, children, people living with disabilities or elderly people. It also fails to guarantee confidence in the project-based grievance redress mechanism (GRM) led by the Deputy County Commissioner's (DCC) office (the local authority). According to the EIB's Environmental and Social Standards, however, KeNHA should ensure an independent, free and accessible grievance mechanism that will allow prompt addressing of specific concerns about compensation and relocation from the affected people and host communities and other directly involved entities¹⁴. Although KeNHA does have a GRM in place, locals do not trust it: the local community has not made their complaints to the established GRM, and has instead increasingly made their complaints directly with the EIB-CM. Between 2017 and 2019, around 250 new complaints were

⁹ European Investment Bank, [Complaint: Regional Mombasa Port Access Road \(SG/E/2018/44\)](#), received 2 March 2018; European Investment Bank, [Complaint: Regional Mombasa Port Access Road \(SG/E/2017/41\)](#), received 9 November 2017; European Investment Bank, [Complaint: Regional Mombasa Port Access Road \(SG/E/2017/27\)](#), received 30 June 2017.

¹⁰ The actual number of complaints has not been published by the EIB-CM. After several interventions, the number of complaints was disclosed to CEE Bankwatch Network in a written communication from the EIB-CM on 29 October 2019.

¹¹ Amnesty International, [Driven out for development: forced evictions in Mombasa, Kenya](#), 2015.

¹² European Investment Bank Complaints Mechanism, [Mediation Report: Regional Mombasa Port Access Road, Kenya \(Complaints SG/E/2017/03, SG/E/2017/08, SG/E/2017/09, SG/E/2017/11, SG/E/2017/12, SG/E/2017/13, SG/E/2017/14, SG/E/2017/16, SG/E/2017/18, SG/E/2017/19, SG/E/2017/20, SG/E/2017/28 and SG/E/2017/30\)](#), 16 November 2018.

¹³ Email communication from the EIB to CEE Bankwatch Network, 15 May 2017.

¹⁴ European Investment Bank, [European Investment Bank Environmental and Social Standards](#), 51, 29 October 2018.

submitted to the EIB-CM. These were investigated jointly, and in December 2019 a brief Conclusions Report and a one-page-long Action Plan were published¹⁵.

In the Conclusions Report, the EIB-CM classified the allegations by their occurrence in the two project lots. As often underlined by the EIB, the African Development Bank is financing Lot 1, from Mombasa to Kwa Jomvu, while the EIB and KfW will co-finance Lot 2, from Kwa Jomvu to Mariakani. This type of artificial division is often used by lenders. However, both lots were covered by a single ESIA, RAP and other related documentation and submitted to the EIB as a single project. The complaints submitted by affected individuals living in Lot 1 have been registered and taken into account by the grievance mechanism of the EIB. This indicates that the EIB has already acknowledged responsibility for ensuring EIB policies are upheld along the entire length of the route.

SUMMARY OF ALLEGATIONS AS DESCRIBED IN THE EIB-CM CONCLUSIONS REPORT¹⁶

MAIN ALLEGATIONS IN LOT 1

- PAPs were not compensated according to the real value of their respective assets. They expressed their wish to receive fair compensation;
- Impacts of the lack of compensation or inadequate compensation on the lives of the complainants –living next to the project uncompensated, businesses not functioning, no income from rentals, deteriorating health conditions of residents living and working along the stretch of road, reduced income for schooling and medication;
- PAPs are pressured to move away for road works to continue while compensation has not yet been paid;
- Lack of information as to when exactly demolition or removal of structures will take place;
- Disturbance from the road-building site flooding due to a broken pipe. During the EIB-CM site visit, PAPs also complained about measures to mitigate dust and noise.

MAIN ALLEGATION IN BOTH LOT 1 AND LOT 2

PAPs have not received their compensation awards and there is a delay in delivering compensation, although valuations were completed a long time ago;

The breakdown of individual awards has not been disclosed to the individual PAPs and there is no explanation of how the award figure was arrived at;

- Certain PAPs are missing from the compensation lists and fear that they will remain uncompensated;
- Fear of forced evictions;
- Lack of information concerning the resettlement process and that people had not been properly considered, informed and consulted;
- Delay in handling grievances lodged locally with the Kenya National Highways Authority (KeNHA), the National Lands Commission (NLC) and the project-based grievance redress mechanism (GRM).

The EIB-CM's Conclusion Report stated that *'it could be concluded that all parties agreed that there are shortcomings in the implementation of the resettlement process. The EIB-CM notes that the promoter, supported by the EIB operational services and the other lenders, is putting in place considerable efforts to address these*

¹⁵ European Investment Bank Complaints Mechanism, [Conclusions Report: Regional Mombasa Port Access Road, Complaints SG/E/2017/27, SG/E/2017/41 and SG/E/2018/44](#).

¹⁶ European Investment Bank Complaints Mechanism, [Conclusions Report: Regional Mombasa Port Access Road, Complaints SG/E/2017/27, SG/E/2017/41 and SG/E/2018/44](#), 6 and 7.

challenges'.¹⁷ The report shows examples indicating that the implementation of the RAP had human rights violations in Lot 1, which ran a major risk of carrying over to Lot 2. The EIB-CM made specific recommendations and identified and proposed very clear measures for both KeNHA and NLC to take mitigate the harm already caused in Lot 1 and prevent such possible harm in Lot 2. Below are the EIB-CM's recommended actions.

Action Plan¹⁸:

1. NLC should prepare a guidance note on valuation methodology to be shared with PAPs in English and Kiswahili.
2. NLC should implement a compensation process for the remaining sections and update KeNHA and lenders with a revised schedule on a quarterly basis.
3. NLC will engage PAPs and present each PAP with a breakdown of individual assets that will be compensated for Lot 2 (in English and Kiswahili, if the case).
4. KeNHA should share the status of compensation progress and an updated database with lenders on a regular basis, including with respect to missing PAPs.
5. KeNHA should ensure that funds for compensation of Lot 2 are available before the works.
6. KeNHA should prepare a database of eligible PAPs that were previously missed in the process. KeNHA will ensure that PAPs will be assessed, awarded and compensated.
7. KeNHA should update lenders regularly on engagement and communication activities in the area of the project.
8. The promoter will ensure that cadastral maps of the projects are available for consultation in KeNHA's offices.
9. KeNHA will share engagement material (in English and Kiswahili) with lenders for approval.

LEGAL FRAMEWORK PROTECTING RESIDENTS FROM FORCED EVICTIONS

One of the most serious impacts of the project has been forced evictions. International human rights standards outlaw forced evictions. The Commission on Human Rights has said that forced evictions constitute a gross violation of human rights, in particular the right to adequate housing¹⁹.

What is a forced eviction? In the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁰, the experts from the United Nations Committee on Economic, Social and Cultural Rights (CESCR) define forced eviction as the temporary or permanent removal of people against their will from the homes or land they occupy without legal protections and other safeguards. Under international human rights law, eviction may only be carried out as a last resort; all other feasible alternatives must have been explored. These safeguards include:

- Genuine consultation with the affected must be ensured.
- Adequate and reasonable notice must be given to PAPs prior to the evictions in the language and form they understand.
- Information about the project should be availed in reasonable time to all the PAPs.

¹⁷ European Investment Bank Complaints Mechanism, [Conclusions Report: Regional Mombasa Port Access Road, Complaints SG/E/2017/27, SG/E/2017/41 and SG/E/2018/44](#), 20.

¹⁸ Ibid., Annex I.

¹⁹ Commission on Human Rights resolution 1993/77, para. 1.

²⁰ Office of the United Nations High Commissioner for Human Rights, [Forced evictions](#), 2014. See general comment No 7.

- Positive identification should be provided by the people carrying out the evictions.
- Eviction should not take place in bad weather or at night unless the affected consent.
- The affected should have access to legal remedies where possible.
- No one should be rendered homeless or vulnerable to the violation of other human rights as a consequence of evictions.
- Government officials or representatives should be present during the evictions.

INTERNATIONAL FRAMEWORK

The Government of Kenya has ratified a range of regional and international human rights treaties²¹ and has committed itself to respect, protect and fulfil the right to adequate housing. The ICESCR is one of the key treaties which guarantees the right to health, education, water, sanitation and housing. The right to adequate housing includes freedom from forced evictions.

The right to adequate housing as guaranteed in Article 11(1) of the ICESCR obligates the government and its state agencies to respect, protect and fulfil these and other human rights.

The CESCR is a body of experts that interprets this obligation and provides guidance on how states should implement the ICESCR. In its interpretation, the Committee has clarified the obligations of states parties vis-à-vis the right to adequate housing. The obligations to respect, protect and fulfil the right to adequate housing include refraining from forced evictions; protecting people from interference of their rights by non-state actors; and adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures to enable full realisation of the right to adequate housing²². The government is expected to ensure bare minimums for everyone to enjoy their rights whilst prioritising the most disadvantaged groups in all programmes when allocating resources. The Committee also calls upon states parties to guarantee the right of people to participate in and be consulted on decisions that will affect them, and to provide an effective remedy if any of these rights are violated.

The CESCR, in General Comment 7 to the ICESCR, has underscored that where evictions are justified, they should be carried out in strict compliance with the principles of international law and due process requirements.²³

NATIONAL FRAMEWORKS

Kenya has domesticated these international human rights standards in various national legal instruments. The right to adequate housing is enshrined in Chapter 4: Art: 43, 1b²⁴ of the Constitution of Kenya 2010 (COK 2010). The spirit and letter of the Constitution is expounded in other statutes and High Court judgements that have unequivocally upheld the right to adequate housing and declared forced evictions illegal. The Land Laws Amendment Act 2016 outlines the due process to be followed before, during and after evictions. The High Court of Kenya has, in at least three different cases, interpreted this right in Article 43 to include a prohibition on forced evictions. In some instances, the Court has also recommended that national guidelines be developed to

²¹ Article 11 (1) of the ICESCR, which Kenya acceded to on 1 May 1972; Article 27(3) of the Convention on the Rights of the Child ratified by Kenya on 30 July 1990; Article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, which Kenya acceded to on 13 September 2001; and Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which Kenya acceded to on 1 May 1972.

²² UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General comments [No. 4](#) and [7](#), accessed 12 May 2021.

²³ Committee on Economic, Social and Cultural Rights, [General comment No. 7](#), paragraph 14.

²⁴ Kenya Law Reform Commission, [Constitution of Kenya](#), accessed 12 May 2021.

ensure that any evictions from settlements do not violate the constitutional rights of the residents. In a recent ruling concerning a case of forced evictions in Nairobi, the High Court of Kenya directed the government to develop an appropriate 'legal framework for evictions based on internationally acceptable guidelines'. The court also called on the Parliament of Kenya to enact legislation following consultation and public participation that would address the issue of forced evictions and security of tenure²⁵. To this effect, Parliament has revived efforts to draft and pass a bill on eviction and resettlement procedures.

On 11 January 2021, the Supreme Court of Kenya made very important judgement on the case of forced evictions of residents in a city slum called Mitumba²⁶. The Supreme Court upheld the right to adequate housing for slum residents regardless of their ownership status. The Airport Authority (the defendant in the case) was faulted for gross violation of human rights.

FINDINGS

The general situation

This section of the report will use evidence collected by the research team to evaluate how the EIB-CM's Conclusions Report and associated Action Plan have been implemented. It will first consider developments in the report's most important general themes, such as forced eviction, neighbourhood impacts, dust and noise, and access to water and sanitation. Second, it will provide an assessment of how specific recommendations from the Action Plan have been implemented. The EIB-CM's report relied heavily on KeNHA's declarations, without sufficient information provided by a functional and effective independent monitoring mechanism.

Forced evictions

All the PAPs interviewed said that they are likely to be forcibly evicted, yet they did not clearly understand to what extent their property would be removed or whether they would be consulted. Each PAP interviewed said they were all familiar with the trend of recent evictions and knew that either bulldozers or goons could be hired to remove them. Forced evictions have continued in the cases of singled-out houses and business premises through direct use of excessive force, including the use of armed officers and hired goons.

The Deputy Officer Commanding Police Division (DOCPD) admitted to having enforced various evictions along the Regional Mombasa Port Access Road in 2020 sanctioned by KeNHA, among them demolitions at Jomvu Narcol on 12 June 2020 and in Miritini on 14 August 2020. According to responses obtained during interviews (corroborated by information from the DOCPD) crudely armed youths protected by the police conducted both evictions using excessive force and looting. In Jomvu, there was no court order issued and in Miritini the court order was not served to the affected. In Jomvu, the people were rendered homeless, and in Miritini livelihoods were destroyed, in addition to the destruction and looting of property.

²⁵ Republic of Kenya, High Court of Kenya at Nairobi, Constitutional and Human Rights Division, [Petition n. 65 of 2010 between Satrose Ayuma, et al. and the Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme, et al.](#), 30 August 2013.

²⁶ Republic of Kenya, Supreme Court of Kenya, [Petition no. 3 of 2018 between Mitu-Bell Welfare Society and the Kenya Airports Authority, the Honourable Attorney General, the Commissioner of Lands, and the Initiative for Strategic Litigation in Africa](#), 11 January 2021.

We collected testimonies of at least two individuals who were forcibly evicted from their homes this year (after the EIB-CM concluded its investigation and published the report).

Forced eviction of the family of Norah Kwamboka and Mark Ogato

On 12 June 2020, Norah Kwamboka's family was ambushed by approximately 20 crudely armed youths, accompanied by the Officer Commanding Station (OCS) of the Mikindani Police Station Mr Mwangi, Assistant County Commissioner One (ACC1) of Mikindani, the area Chief of Mikindani and seven police officers allegedly attached to Mikindani Police Station. The youths ascended on Norah's home and brought it down, vandalised all her water tanks and destroyed everything she owned while at the same time looting. There was no court order issued for this eviction nor did the actors identify themselves. The youths conducted the demolition under the protection of over seven armed police officers and the aforementioned senior state officers.

Norah and her family's attempts to seek an explanation as to why her home was demolished yet no compensation was available, despite the complaint she had launched at the DCC's office, were met with extreme brutality. The efforts of Miriam, Kwamboka's daughter, to get information about the legality of the evictions were in vain. She was instead assaulted by the very police who had come to offer security. The OCS Mr Mwangi had initially warned her against documenting the operation and threatened to slap her if she did not stop. When she went on taking photos and video, he reportedly pounced on her and broke her arm for documenting the forced evictions against his wishes. KeNHA was aware of this eviction but they did not stop it. When the family informed KeNHA, they told them that they were not aware of the eviction, but they did not come to assess the impact or stop the contractor from continuing work on the land where the home once stood. The family stayed in the cold for six days until their elder daughter Winnifer Mark moved out of her house to allow her parents and siblings to move in. To date, KeNHA has not met with Norah to find out what happened.

'In our culture, it is not appropriate for parents to move in to the house of a grown daughter. It is an abomination, but circumstances have forced us to do so', Mark Ogato, Norah's husband and Winnifer's father, said.

On 22 July 2020, the researchers spoke to the group of youths who forcibly evicted Norah Kwamboka and her family. The youths confirmed rumours that KeNHA and the police had hired goons to demolish homes, stating that they had each received KES 500 (Kenyan shillings) to conduct the evictions. They were reportedly approached by the contractor's project lead in the presence of the OCS Mr Mwangi on the day prior to the eviction. The OCS is reported to have assured the group of total security during the mission. According to accounts of all interviewed about this demolition, the youths were protected.

Some members of the group did not agree with the assignment. They did not agree with the group's decision to accept the offer to evict a family they knew. Many of them were also PAPs on the same road and feared that a similar tragedy was likely to befall them. However, the youths interviewed said that they had been led to believe that this family had been compensated but refused to leave the home. Some of them were not apologetic, as they were still convinced that Norah's family had been compensated and refused to vacate from the road reserve. Some of those who were involved said that lack of employment led them to carry out such assignments. Some of them also indicated that this was not the first time they had been hired to conduct such an assignment.

The youths confirmed that they had witnessed the OCS assault Mariam, but were not bothered as they were only concerned with the assignment they had at hand. They also attested to the looting of Norah's belongings.

Testimony of Mariam, the daughter of Norah Kwamboka, living in Jomvu Narcol

Early morning on 12 June 2020, a Kenya Power and Lighting Company officer came to disconnect the power from our home. He told us that he had been instructed by KeNHA to disconnect the power as they had planned to

demolish the house. My mum told him that she was not yet compensated and had presented her grievances to the DCC [project grievance mechanism] pending mitigation. The officer left and said that he would give feedback to the person who had issued the instructions. Later that morning, at 11 a.m., we saw approximately 20 young people armed with crude weapons (machetes, crowbars, hammers, slashers and batons), the Officer Commanding Station (OCS) Mr Mwangi and his six junior police officers from the Mikindani Police Station and the Assistant County Commissioner (ACC) of Mikindani Sub-County. The youths demolished our house while the police and ACC were watching. I asked who they were and why they were demolishing our home and why they did not have service numbers displayed. My mum was screaming helplessly and pleading with them to stop destroying our house and water tanks. All this fell on deaf ears. I was so frustrated, the only thing I could do was to capture the eviction using my phone. It bothered me that all of these officers had no tags displaying their service numbers and therefore I was not sure of the legality of the eviction. The OCS ordered me to stop recording. I responded that I was not stopping them from doing their work. If they knew the eviction was legal then there was no need to worry about me documenting. He threatened to slap me and [said] that I would face the consequences if I did not stop capturing. I told him to just do what he wished. I was determined. I wanted to provide a true version of the evictions. He grabbed my hand so hard and twisted it. It hurt, I screamed, I told him he was hurting me. He continued and I continued to scream. My sister rushed and dragged me away. Meanwhile, the demolitions and looting were going on. The whole ordeal ended at around 4 p.m. We had no home, no household belongings. The home I had known my whole life was no more. I am 19 years old and I was born here. All our documents were missing. We tried scavenging in the rubble with no luck. We had lost everything, including our educational certificates. By night my hand had swollen, it was very painful. The following morning my parents called the doctor who came and examined me, offered first aid and referred me to Portriz Hospital for an X-Ray. It was a challenge to get it done for various reasons. Due to corona[virus] restrictions/lockdown, movements were restricted if you were not an essential service provider. Secondly, my parents did not have cash at that point. Later in the day I managed to go for the X-Ray. It confirmed that my hand had a fracture. The same doctor who had examined me came and treated me.

In the evening my mum and I went to the Jomvu Madafuni Police post to report the matter. All along I thought that the officer was an inspector. We reported the matter and the officer at the station demanded the evidence for our accusation. We showed her the photos. She informed us that he was actually the OCS. She declined to book in our statement. She called her seniors to inform them. She also informed them that we had evidence. Her seniors advised that we go to the main police station the following day and asked us to carry along the phones. That night at around 2 a.m. a police officer came where our house previously stood. He was in civilian clothes (jacket and jeans), with a cape and a mask all covering his face. He was carrying a huge gun, either a G3 or AK-47. My mother and I were outside and awake guarding the few items that we had managed to rescue. He ordered us to surrender our phones. Before we could hand them over, he confiscated my mum's phone. I was too scared, I was afraid he would hurt us like the OCS, I did not want any more commotion. I just surrendered mine without any resistance. We immediately informed my dad who had fallen asleep. He tried pursuing the officer but it was too late. The following day we decided not to go to the Mikindani Police Station, given the circumstances. We reported the matter to the County Commander of Police. We explained everything. The County Commander called the OCPD Mikindani and instructed him to ensure our matter was booked in and a P3 [request for medical examination] issued. We went to Mikindani, recorded the statement and got an OB [occurrence book] number. The police station frustrated us with issuance of a P3 form. They burdened us with back-and-forth trips to the Mikindani Police Station for four consecutive days with no success. At one point, the officer at the OB had said they would not issue me a P3 form until I was done with the treatment and my hand was completely well. Meanwhile, Mr Mwangi the OCS got transferred two weeks later. Almost a month later the police called my sister and asked us to go for the P3 form, whether or not my hand was well. They claimed there [was] pressure from 'above'. Upon collection they ordered me to send the P3 form to Portriz Hospital immediately, specified the medical officer to fill it and told me to inform the officer that I had been referred by

the Director of Criminal Investigations who had called the medical officer prior. We opted not to go that same day. I have returned the filled P3 forms and I am waiting to hear what's next. Our phones that were confiscated have never been given back to us. We recently tracked mine and someone in Bombolulu²⁷ is using it. I wonder how they got it.

I have lodged a complaint with the Independent Police Oversight Authority (IPOA). I know the risks involved, since this is a matter against a senior police officer. I am quite scared [for] my security. I know that every move I make is a risk I am taking. I pray that I remain safe. I cannot seek the same police I am accusing for protection. This is the first time I am experiencing this. I do not know what to do. I need assistance in accessing justice. I wish to see the OCS held accountable for what he did to me. I also wish to see justice for forcibly evicting my family. I believe no one is above the law. This has emboldened my decision to defend rights. I will not shut up if a similar thing happened again even to others. I completed my O levels [exams taken at the end of four years of secondary school] last year and I am hoping that KeNHA will restore my family's initial status so that my parents can send me to college.

The researchers spoke to two senior officers at the Independent Police Oversight Authority over the alleged assault on Mariam. The officers confirmed that a complaint against the OCS Mikindani on the grounds that they had assaulted Miriam, had been lodged and acknowledged, and that investigations were ongoing. The officers indicated that the OCS will be investigated regardless of their station. This, together with information obtained from the other sources we spoke to during the research, corroborated the story of Mariam and Norah.

The research team talked to the DOCPD about this case. The officer confirmed that his office had been approached by IPOA and their 'bosses' to give an account of Mariam's assault, which they did. He also confirmed that the official procedures had not been followed in enforcing the evictions.

The forced eviction of traders in Miritini

The research team spoke to traders, religious leaders, residents and employees in Miritini and the DOCPD regarding the forced evictions in Miritini. They informed the team that PAPs in Miritini were forcibly evicted on the night of 14 August 2020 at 10 p.m. They lost property of unknown value, cash worth KES 126 000 and six welding gas cylinders. Over 70 traders and employees, who have operated there for 23 to 30 years, were left with no source of income. Although according to PAPs and the DOCPD there was allegedly a court order for the evictions dated 28 January 2020, it was not served to the affected individuals. These evictions contravened due process as required by international human rights standards. Based on the information provided by the DOCPD, they were conducted between 10 p.m. and 2 a.m., the court order was not served to the affected, there was looting and destruction of property and there was no positive identification of the evictors.

Abdul Karim Salee, a private investor who is reportedly linked to the family of the former president, Arap Moi, has claimed ownership of same land where the Miritini traders were operating. He allegedly sought a court order for the removal of the traders. The DOCPD, however, insists that the businesses are located on public land which has been earmarked for the road expansion. The divisional police officer narrated how he engaged KeNHA in the upcoming eviction in Miritini to possibly avert it:

'We received a court order to evict these traders early this year. Just around the same time corona[virus] struck and a directive to halt all evictions was issued. That is why we did not evict them then. When the directive was lifted, I asked Abdul to raise a challenge in court since KeNHA was also claiming the same land. Abdul said it is upon the road agency to challenge and not him and so the evictions should proceed as planned. I called Engineer Ken and told him about the eviction order and the need for KeNHA to challenge it.'

²⁷ Bombolulu is a 40-minute drive from Jomvu. It is in North Coast on the Mombasa Malindi road.

He said we could proceed with the evictions and remove the traders so that KeNHA is left to deal with the private investor.'

The DOCPD informed us that they had conducted roughly five evictions. He cited one in Jomvu Narcol and one in Miritini. Both the ACC1 and Deputy OCPD confirmed that not all the evictions they had overseen had court orders. According to the DOCPD, all evictions have taken place after discussions with KeNHA. Even when it was not KeNHA that commissioned the removal of people (i.e. in the Miritini evictions there was an alleged court order from the Environment and Lands Court (ELC) Mombasa), KeNHA was consulted and was therefore aware that the evictions would be carried out and allowed them to happen.

Critical situation of Mkupe in Bangladesh slum

As the project proceeds, new PAPs are emerging and suffering from its adverse impacts, yet they are not part of the initially recognised group of PAPs. Mkupe, one of the villages in the slum of Bangladesh, is a case in point. Mkupe is one of the most vulnerable and impoverished villages along the road. Many people there live in deplorable conditions, yet they enjoy very strong community cohesion.

They are fairly aware of their rights and have demanded accountability from all the state agencies involved in the project: KeNHA, NLC, the National Environmental Management Authority (NEMA), the Water Resources Board Authority (WARBA) and the DCC's office. When the residents visited KeNHA's field office at Kibarani to present how they had been impacted by the road construction, the contractor's employees told them that the road's initial plan did not anticipate that Mkupe would be impacted, but during the project's development the contractor discovered that the land was too shaky to construct that part of the road. Thus, they decided to extend the project area outwards to build gabions that would strengthen the ground. This newly acquired space includes land that is currently part of Mkupe. This has created animosity between the local administration and KeNHA on one side and the community on the other. As a result, PAPs have reportedly been singled out for retaliation. During the research for this study, interviewed PAPs cited discrimination in the compensation process. Many of the PAPs interviewed revealed that they were discriminated against during COVID-19 relief food distribution. The interviewees informed the assessment team that the Chief²⁸, who was charged with the responsibility of identifying the vulnerable families to receive this relief food, deliberately left them out.

The residents of Mkupe are suffering from a double tragedy; they await being evicted anytime and also bear the impact of an unclean and unsafe environment. The contractor of the road has built culverts directing storm water into the community, towards people's houses. The contractor is at the same time operating heavy machinery in the community space, posing serious danger to the residents and damage to peoples' houses. Many houses have developed huge cracks and others have collapsed, forcing some residents to move out. Tenants have vacated the houses, leaving the houses' owners with no income. For most of them, this is their only source of livelihood. Residents that have not been able to leave due to lack of alternative accommodation have remained in houses that have deep and wide cracks, caused by the vibration of the construction machinery, that have split the houses into two or more parts. The cracks and splits have left the families with very small living areas in the houses. Residents are in danger of physical harm and fatalities from accidents related to the sinking or collapsing of houses. Four families in Mkupe have taken refuge in a church, Jesus Fire Anointing Ministry, and stayed there for months after their houses were destroyed by vibration from the construction.

²⁸ A chief is an administrator in and representative of the Office of the President at the local level. They report to the Assistant County Commissioners (ACC) who are in charge of divisions. The ACC reports to the Deputy County Commissioner (DCC), who is in charge of the sub-county, and the County Commissioner, who is in charge of the county, reports directly to the Office of the President. They sit in the Grievance Redress Mechanism (GRM) and represent the state. Government programmes for the public are implemented through this office.

Two members of this community have reportedly experienced physical injuries. One lives with a spine injury sustained after the wall of her house collapsed on her. The other was a casual labourer who died after he allegedly slid, fell and was fatally spiked by the metal on a wall the road construction workers erected in Mkupe. During rainy seasons, the construction has increased the risk of residents being drowned by storm water, and the risk of houses collapsing. In a group discussion held in Mkupe, the community narrated how a child was rescued from drowning when they were washed away by the storm water. The National Environmental Management Authority claims that this is riparian land and has issued the residents with eviction notices instead of holding the contractor accountable for endangering people's lives.

If evicted, some of Mkupe's residents will suffer double displacement. In 2015, KeNHA also requested that some of the traders who operated along the road reserve vacate their property. These traders were tenants, meaning that they paid rent to a property owner. They were not included in the compensation list in 2015 because KeNHA refused to compensate tenants. KeNHA's rationale was that KeNHA was only required to provide tenants with two-months' notice to vacate, not to compensate them for losses. NEMA issued them eviction notices after the road construction weakened the structures they were living or working in. This has criminalised the victims instead of protecting them, and has further helped to drive the affected poor community even deeper into poverty.

'I was a tenant in a family house next to the road. I was enumerated on behalf of the family. We were evicted [in 2018] before the compensation. We were told as tenants we had no rights to claim for compensation. I lost my grocery, which enabled me to pay rent and other bills. It was enumerated but was never compensated. I moved to this house which I had bought in 2012 and built the six rooms in 2016. Now again, I have to move out according to the ACC1 and NEMA. If we are evicted, I will have nowhere else to go. Instead of NEMA helping us to demand that KeNHA withdraws its machinery in the community, they have joined hands with the DCC's office to evict us.' Lucy Jepkemboi, Mkupe Resident.

Dust and noise

Along the entire road, people have raised concerns over the dust and noise from the ongoing road works. They have had to endure the effects of these hazardous activities due to the delays in the resettlement process. Most PAPs have no alternative and have to stay in the midst of stressful, polluting construction. In Bangladesh and Jomvu, a few people have allegedly suffered or are currently suffering from tuberculosis, for which dust inhalation is considered a risk factor.

Deteriorated access to water and sanitation

Difficulties accessing water and increasingly poor sanitation also featured in every conversation the research team had with the PAPs. The majority of the people interviewed complained that some homes had been disconnected from the drinking water system or that water pipes had burst. In Jomvu Madafuni, the affected community talked of stagnant water on the streets that has resulted from the contractor blocking the culverts that collect and drain water during the rains. This has allegedly led to the breeding of mosquitos. Other communities mentioned an awful stench due to stagnant water and decomposing matter in the pools.

Gender-based discrimination of affected women

'I was self-reliant, I comfortably provided for my family and educated my children from my businesses. Today I have been reduced to a beggar. We now depend on well-wishers from the church for a meal', says Norah Kwamboka.

Norah Kwamboka is a mother of eight children and a grandmother of two. Since 2001, she and her entire family have lived and worked at Jomvu Narcol. She owned a three-room, semi-permanent house with plaster on the

inside and outside walls. She ran a large fresh water vending project and had supplied all the nearby factories as well as the residents of Jomvu Narcol with water since 2004. She had also sold charcoal and firewood since 2008. She owned four large water storage tanks (two with 10,000-, one with 5,000- and one with 1,000-litre capacities). The house and her businesses were all enumerated under her name in 2015. Her businesses combined earned her an average of KES 10 860 per day. Her husband owned a carpentry workshop, which was enumerated under his name. Upon compensation, only the husband was compensated as a trader for his carpentry workshop. Norah did not get compensation for the house or her businesses.

Norah followed up with the DCC's office. She was reportedly not given an award document, but was shown the amount at the DCC's office. She disputed the KES 120 000 award shown as her compensation for her businesses and home. Every time she pursued the matter, officials attempted to persuade her to accept the KES 120 000, but she always declined. Norah was reportedly told that since she rejected the offer, she would be ejected from the road reserve. Other people in her neighbourhood with disputes or missing names got letters from their respective highway committees as proof that they were genuine PAPs and that their claims were valid. According to the ACC 1, Norah was seeking double compensation, which she was not eligible for. The ACC 1 was not able to confirm payment documentation for her.

Her house has been destroyed and she was forcibly evicted on 12 June 2020 as described above.

Some of the female PAPs interviewed said they experienced gender-based discrimination during the resettlement scheme. For example, a handful of widows spoke to the research team and said they felt they were treated with contempt because they were widows.

Norah Kwamboka told the researchers: 'I feel discriminated against based on my gender. Everyone I speak to says my husband was compensated yet I still want to be paid again. I have told people repeatedly that my husband was compensated for his carpentry workshop which was enumerated under his name.'

Interview with the Assistant County Commissioner for Mikindani Division

The research team spoke to the ACC1 for Mikindani Division. The Assistant Commissioner confirmed that NEMA had issued eviction notices to the Mkupe residents. He said that the land that the village was built on was riparian land and that no one should be living there. He confirmed that their office will enforce the evictions. He noted that cracks had emerged on the walls and floors of the houses, but did not provide any information about KeNHA's mitigation plan for this damage. The ACC also admitted his office's involvement in the forced eviction of the Kwamboka family. He told the research team that he had instructions from his boss (the DCC) to provide security for KeNHA. When asked if his instructions included security for the PAPs and their property, he responded that his instructions were to provide security for KeNHA. The ACC1 refused to answer whether his office was bothered by the crudely armed youths demolishing Kwamboka's house and vandalising the property, or whether this amounted to a crime. When asked whether he saw these youths, the ACC1 insisted that it was not his mandate to speak on behalf of the police.

The ACC1 narrated the process of lodging a complaint: disgruntled people can make a complaint to the DCC's office, which will then forward it to KeNHA; they can share it with the Community Liaison Officer, who will forward it to DCC's office; or the Community Committee receives it and forwards it to the DCC's office.

'They have notices expiring at the end of August. If they do not get out on their own, we will evict them. If they do not want to take the compensation, let them go to court. They cannot stop the government from doing its work. They have two options: take the compensation or leave. Otherwise [they can] seek a court injunction. If the court issues an injunction then we will honour it', said the ACC1 Mikindani.

If people received the valuations of their properties (done in line with publicly available methodology), were given time to accept them, were paid in advance and only then given the notices, then the eviction process outlined by the ACC1 above could be considered just. Many interviewed PAPs, however, underlined this was not the case.

Assessment of the implementation of the Action Plan recommendations

This assessment exercise was conducted more than six months after the EIB-CM's Conclusions Report was published. As the Report recommended, both KeNHA and the NLC agreed on the Action Plan and participated in its preparation. However, the attitude subsequently exhibited by KeNHA, the NLC and the DCC's office towards EIB-CM and specifically its Conclusions Report raises concerns about the effectiveness of the Action Plan. During public forums in Mikindani on 17 and 19 February 2020 and in Changamwe on 18 February 2020, the ACC1 publicly announced that they did not recognize the 'EU' and its Conclusions Report when PAPs demanded an update on the implementation of the Action Plan. Asked about the report in the same meeting, KeNHA's Community Liaison Person said she had not seen it, nor did she have it. In interviews with the ACC1, DOCPD and the Regional NLC's Valuer, representatives from these institutions told the researchers that they had not seen the report and were not aware of the Action Plan. KeNHA's Chief Sociologist has reportedly claimed ignorance about the existence of the report to the PAPs.

Nevertheless, these institutions and bodies are all required to implement the Action Plan in their dealings with the community. This section assesses each of the specific recommendations made in the EIB-CM's Action Plan, intended to remedy the harm already done and to ensure further action on the project did not violate human rights in the communities on the road reserve. It ultimately finds that no serious action has been undertaken to implement the Plan, and that the community has continued to face human rights abuses as a result.

Compensation: Valuation methodology: NLC should prepare a guidance note on valuation methodology to be shared with PAPs in English and Kiswahili.

All the respondents interviewed in Changamwe, Bahati, Mikindani, Bangladesh, Jomvu Narcol and Jomvu Madafuni in July 2020 stated that they had not received valuation reports for their property. They had also not received any information, written or verbal, pertaining to the valuation methodology. CEE Bankwatch Network asked the EIB if the NLC provided them with a copy of a compensation methodology leaflet, which was supposed to be disclosed by the end of March 2020, according to the Action Plan. On 23 October 2020, the EIB responded that *'The EIB does not hold the compensation methodology leaflet. We have been informed that its production has been delayed.'*²⁹

The NLC's Valuer, who was responsible for the process throughout, confirmed to us in an interview on 19 August 2020 that neither the valuation report nor the methodology have been shared with the PAPs. At the time of the interview, the NLC's Valuer was not aware of the Action Plan and claimed he had not seen the EIB-CM's Conclusions Report. He commented lightly that this could be done if the PAPs require it, but he was noncommittal on when they are likely to do so considering that most PAPs want it.

The ACC1 indicated that dismal awards/compensations and unclear criteria and methodology dominated PAPs' concerns. Independent private valuations commissioned by the PAPs revealed glaring disparities. The valuation process was said to have been marred with irregularities. Below are examples.

²⁹ Email communication from the EIB to CEE Bankwatch Network, 23 October 2020.

Some traders at the Changamwe roundabout were compensated at a flat rate without documentation. Mathew (name changed) told the research team that he was given KES 30 000 without any documentation. When he sought to confirm his award at the project site office at Kibarani, his details were not in the system. Peter (name changed) told the research team that he had initially been paid KES 5 000 in compensation. He bargained and ended up getting KES 300 000 in cash on the same day.

The team interviewed three PAPs who admitted that they were paid compensation in cash at the DCC's office without any documentation. When they went back to demand the valuation methodology, it turned out their names were not in the system.

Paul Maina, a businessman in Jomvu Madafuni, owned various properties along the Mombasa Mariakani road reserve. He has lived and operated businesses, including shops and guesthouses, there since 1975. In 2018, he received awards and compensation for these properties. He was compensated with KES 3 561 450 for his guesthouse without prior information. According to his private valuer, however, the actual value of the premise at the time of valuation was KES 7 217 400. He engaged a lawyer to seek clarification about his compensation and the undervaluation. Maina's lawyer wrote to KeNHA four times, most recently on 13 March 2020. He also shared a copy of his private valuation report. In the letter, the PAP indicated that he would proceed to court if there was no response. He got a response that KeNHA had received his email and was unable to follow up due to the disruption caused by COVID-19.

The ACC also visited Maina's property and agreed that it had been seriously undervalued. They asked KeNHA's Community Liaison Officer to look into the issue. Later, NLC officers said Maina's guesthouse had been valued partially (only half of it). No explanation was offered as to why they valued half of the property.

'When the ACC visited my property, he understood what I was saying. Later some NLC officers came and told me that my property had been assessed and valued partially. I do not understand why they did that. Towards the end of July [2020], the Chief Surveyor and another officer from KeNHA visited my guesthouse and revealed that they [had] never assessed my guesthouse during the valuation process.' Paul Maina, Jomvu Madafuni, July 2020.

Neither KeNHA nor the NLC have offered an explanation for how the property was awarded and compensated if it was never valued. At the time of this research, Maina, like many other PAPs, was yet to receive a valuation report or the valuation methodology. Unfortunately, Maina died in December 2020 and we were not able to verify if he received methodology report. According to the ACC1 Mikindani, the NLC is dragging the process out and may need to be pushed to complete it.

Similar issues were echoed in conversations with Highway Community Committees in Jomvu, Bangladesh and Changamwe. A PAP who spoke to the research team said he had disputed the award letter he received, yet despite his case being ongoing, his premise was nevertheless destroyed. Without a valuation report and the physical house as evidence, he is afraid his claim might be dismissed.

Compensation: Delays in compensation: NLC should implement compensation process for the remaining sections and update KeNHA and lenders with a revised schedule on a quarterly basis.

The forced evictions have been described in details above in the text. They go contrary not only to the Action Plan but also to the EIB standards.

Over 50 per cent of the PAPs interviewed have still not received their compensation. They are either in possession of their compensation award letters or are among those whose names were missing. Of the first, a significant number of PAPs had received an initial compensation pending the final disbursement. Two

interviewees are listed as having been compensated and issued with eviction notices though they received compensation under the CAP (not the RAP), which was only enough to repair their houses damaged in 2015³⁰. Those whose names were missing included those who had been enumerated but not listed for compensation and those who were left out during the enumeration yet were eligible PAPs. These PAPs narrated their frustration in trying to get clarity on when they would receive their compensation. All of these have raised complaints, most of them through the local GRM. Many said they have been dismissed by all the concerned offices and did not know what to do next. They narrated that every time they presented their grievances to KeNHA's Community Liaison Officer, she very informally referred them to the DCC, who in turn sent them back to KeNHA. Many of them have talked to the Community Led Committee, or visited the project site office at Kibarani and the KeNHA regional office at Shimanzi seeking solutions. The responses they received are not likely to yield any tangible results. Today, these PAPs do not know when they will be re-enumerated or compensated. Many of them said that they have been taken in circles on issues that severely affect their lives and those of their families. PAPs whose houses are still standing talked of living in very dilapidated and uninhabitable houses which they can no longer renovate for fear that they will soon be demolished. Some PAPs also said that they have been instructed not to renovate the houses by the local administration. Such PAPs are living in houses that are not fit for human habitation. Further delays in compensating and re-enumerating the PAPs whose names are missing only worsens their situation, making them increasingly vulnerable to other human rights abuses.

When asked about the delayed compensation, the NLC's Valuer Mr Dennis O. Onyango insisted that the only missing names in the compensation list were hawkers and vendors. He said the temporary nature of their occupation did not enable enumeration, as they were mobile. According to the Valuer, the hawkers and vendors could not provide evidence of occupation such as business permits and licences. He said it was a difficult group to manage, as the GPS³¹ could not capture them. According to him, this group of PAPs did not have a valid claim to compensation. He said no structure owners were left out.

Delays in compensation cause further economic losses for the PAPs. Scores of people, who were previously self-reliant, have been left with no source of income and have become destitute due to the lack of proper and timely compensation and sufficient restoration of their living and working conditions. Many of them can no longer afford to feed their families, pay rent, or afford education and health, and they have not been compensated for this loss. Others who received compensation said the money was too little and, in most cases, the payments took too long to arrive. Many of the interviewed PAPs who had received compensation said that KeNHA needs to review their compensation schedules, because besides the amounts being inadequate, they are unlikely to do anything constructive due to delays in between the payments³². The intervals between the disbursements are too long.

An affected person in Bahati said he received compensation for his house. It was too little to even be able to buy land and build a similar house. He decided to settle for purchasing alternative land in a similarly prime area, but the money he was paid was not enough to do this. He was hoping to be compensated soon for his other property to be able to fully pay for the identified land. It is worth mentioning that no 'land for land' option has been offered under the resettlement scheme. In the meantime, however, the affected person said the prices for land in the same area have escalated and he will no longer be able to afford it. In addition to the escalated prices, he has spent a sizeable amount of the initial compensation on family upkeep and his children's education, as he lost all his sources of income due to the construction. This is against the Involuntary Resettlement Standard of the EIB, which states: 'Resettlement is a process to assist those displaced to replace

³⁰ Interview conducted with a PAP in Jomvu and an FGD in Jomvu Narcol.

³¹ Global Positioning System

³² The compensation is done in phases. For some PAPs, it is completed in two phases and for others, three.

their housing, assets, livelihoods, land, access to resources and services and to improve or at least restore their socioeconomic and cultural conditions to those levels existing prior to the project.’³³

Liverson and Maina, both business PAPs, told the research team that the computation of their compensation two years ago no longer reflects their losses of income since it has increased in the two years of the delay. These two PAPs’ properties are still standing, yet they lost their income, as all of their tenants, clients and networks have moved out. This is the story of many other PAPs. There are also those who, unlike Liverson and Maina, had their properties removed and are still waiting for compensation.

Efforts to get information from the ACC1 on when the missing PAPs’ would be re-enumerated, valued and compensated were fruitless.

The ACC1’s advice was that the NLC should be pushed to expedite the process. He confirmed that there has been a huge delay on the side of the NLC in the valuation of PAPs losses in the project. He admitted that the NLC takes too long to visit the property sites and needs to be pushed to conclude their work. He said the last time the NLC worked on this was in November 2019. He told the researchers, however, that the road works will not be halted. His office will assist the contractor with repossessing the space by force, because the government cannot stop its work due to grievances.

Compensation: Project compensation and entitlements: NLC will engage PAPs and present each PAP with a breakdown of individual assets that will be compensated for in Lot 2 (in English and Kiswahili, if the case).

None of the PAPs we interviewed in Lot 2 had received any information, general or specific, regarding compensation. They told the research team that they did not know whether or not they would be compensated. The PAPs interviewed in the villages stretching from Miritini to Mariakani said they are unaware of what will happen. They attributed this to KeNHA’s lack of engagement with the affected population.

Most of the interviewed PAPs could only point to KeNHA’s marks on the road as evidence that they would be affected by the highway expansion. They feared that they would be ambushed with forced evictions. The only information that the PAPs in Miritini had at the time of the research was that some people marked the road reserve and enumerated them. The interviewees did not have information about the compensation matrix, nor had they seen anyone explaining plans for compensation to villagers. As for the time of the research, there had been neither a public forum nor written documentation to assure them that they would be compensated according to a standardised breakdown or methodology. The NLC did not respond to questions about this topic when asked.

Riziki Said Hamisi, an ailing 50-year-old PAP, settled at the Miritini Dhome in 1978. He lives there with his wife and children. He has a five-room house, two shops and a poultry shack. Riziki’s wife operates a small-scale business and his children go to school in the neighbourhood. His house is dilapidated and he said he cannot repair it because the local administration has instructed the community not repair their houses. He says:

‘Since 2016, no one has told us what our fate is. We are asking for transparency. We have heard that we will be compensated, but not officially. I am afraid that most of us are not sure that this will come to happen. If evicted, my family and I will lose our home and livelihood. I depend on these businesses for my medicine, as well.’

³³ The European Investment Bank, [European Investment Bank Environmental and Social Standards](#), 44.

Compensation: Missing information on project entitlement: KeNHA should share compensation progress status and updated database with lenders on a regular basis, including with respect to missing PAPs.

The efforts of Polish Green Network and the research team to secure an appointment with the project promoter were unsuccessful, despite the various attempts made. It was difficult for the research team to ascertain whether KeNHA and the NLC had implemented the Action Plan, which required them to share progress updates with the lenders. Furthermore, the concerned individuals claimed ignorance about the existence of the Conclusions Report and Action Plan.

Some PAPs who were aware of the Action Plan feared that KeNHA could be sharing information with the lenders that is not factual. They often referred to the Jomvu Narcol experience of forced evictions.

CEE Bankwatch asked the EIB about the number of eligible PAPs found missing in the compensation scheme by KeNHA and the number that has been compensated so far. According to the information received from the EIB:

The EIB does not hold this information. As indicated above as well as in previous exchanges, the project is divided into two lots: Lot 1 and Lot 2. Lot 1 is being financed by the African Development Bank (AfDB) and the Government of Kenya (GoK). We therefore invite you to contact the promoter or relevant financiers should you have any further questions on Lot 1 implementation. Lot 2 construction has not yet started and, as a result, neither have possible relevant compensation schemes.³⁴

This is a striking response, given that it was the EIB-CM that issued this very recommendation to be implemented by the Bank's services.

Compensation: Compensation amount: KeNHA should ensure that funds for compensation of Lot 2 are available before the works.

The people interviewed expressed fear and anxiety about their safety and security. All the people interviewed wished they could get adequate information early enough to be able to reorganise their lives.

Mwanaisha Said Menza is a resident and a structure owner with rental houses in Miritini Dhome. Mwanaisha is 61 years old, a widow, a mother of three children and a grandmother of seven children. She has lived there since 1990. Mwanaisha recalls that KeNHA staff visited them in 2016 together with the enumeration team. She does not know whether the visitors were all from KeNHA or the NLC, but during this visit, she was enumerated. Since then, she has not heard from KeNHA. She is uncertain about whether compensation will be given, and if so when it will be given, but she hopes that this is done soon. She claimed she did not know about any meeting between KeNHA and the affected persons. She expressed the desire for a feedback mechanism that would ensure that the affected persons could access information shared with the lenders to ensure checks and balances.

'If we are forcibly evicted, I will lose everything. My entire land and house are affected. This is my sole source of livelihood. When I lost my husband, my in-laws chased my children and me away and took all the property my late husband and I owned', said Mwanaisha Said Menza

³⁴ Email communication from the EIB to CEE Bankwatch Network, 23 October 2020.

Missing PAPs: PAPs missing on the Enumeration List: KeNHA should prepare a database of eligible PAPs that were previously missed in the process. KeNHA will ensure that PAPs will be assessed, awarded and compensated.

The research team was unable to establish whether KeNHA had prepared a database of eligible PAPs that were not previously counted. However, the team met scores of PAPs from Changamwe to Jomvu Madafuni whose fate was still unknown. Tens of PAPs complained that their names were missing and none of the concerned institutions were helping to get them back on the list. There are tens of cases of genuine PAPs whose names are still missing in the compensation scheme and nothing is being done to remedy this. In the interview with the ACC Jomvu, he confirmed that there were people who complained of being left out of the compensation list and that the NLC should sort out the matter. The Highway Committees also corroborated this.

The research team did not encounter any eligible PAPs that had not been counted previously and that had subsequently been assessed, awarded and compensated. A handful of PAPs who spoke to the research team presented letters of proof from the Highway Committee and village elders that they knew the PAPs and that they were genuine residents and had been there before and during the enumerations.

PAPs perceive the exemption of certain PAPs' names from the compensation list as a deliberate way of victimising individuals who challenged the KeNHA relocation process and demanded greater accountability. A few frontline activists believed they were suffering from this kind of retaliation. In some cases, such exclusion is very visible: certain structure owners have tenants who received compensation, whereas the owners were not considered genuine PAPs and were disqualified from receiving compensation.

Clement Welly Mbogo – a missing PAP story

Clement Welly Mbogo, together with four other individuals, are eligible PAPs in Jomvu Narcol whose names are missing in the compensation list. They have made many attempts to ensure they are included on the lists, but they have not been successful thus far. They have talked to KeNHA, the NLC, the DCC, the Area Chief, the Contractor China City, the village elders and the Highway Committee. Clement and the four other individuals were asked to provide proof that they were indeed eligible PAPs, and so the Highway Committee wrote for them short notes to confirm their eligibility. Although the Community Liaison Officer viewed the notes and recorded their names, indicating she had confirmed receipt of the notes, they have resulted in no concrete results. Clement and the others have held on to these notes with no guarantee for compensation. This same experience has also been reported in Changamwe and Bahati.

Clement is over 60 years old and lives with a disability. He built his house in 1972 and has lived there with his family since then. In 2015, he started to rebuild his house, a dilapidated structure. While building, unidentified people, the 'roads team' stopped him from building without offering him details of who they were and why they did not want him to build. In 2017, he saw people laying beacons on his property. When he inquired who they were and what they were doing, they referred him to KeNHA offices, who told him that he was an illegal squatter.

Clement narrated how he has been following KeNHA and the NLC to ensure that he is enumerated like other PAPs. KeNHA insisted that he was encroaching on a government road reserve. Later on, Clement's neighbours were evicted. In the process, he lost his hardware and yard. He tried in vain to appeal to KeNHA. When they came to evict him, he pleaded with the police officer enforcing the eviction, who referred him to the DCC's office. After a long battle, the Community Liaison Officer came to assess his property's value. Unfortunately, only three of his house's four rooms were valued. However, Clement was finally enumerated.

'I had... hardware and a yard for building materials. I lost it. I pleaded with the police officer enforcing the eviction. My house was spared. Even though it was not demolished, four rooms and a toilet collapsed. I could

not repair it after I had been warned against renovating it. I possess a higher diploma in engineering from Makerere University. I was involved in an accident; I fell off a building and injured my spine after which I had a spine surgery. The accident [made me an invalid]. I was forced to quit my job. Things are tough for me and my family after losing my livelihood. I live with disability and now I can no longer do manual work and that is why I established the business; it is what my family and I depended on. I have started a food business in this makeshift restaurant. The County Council has denied me a licence. They consider me illegal because they say I am on the road reserve', says Clement Mbogo.

Clement was given an award letter, which he disputed. He told the research team that KeNHA's Community Liaison Officer in the company of a large team have attempted to coerce him to accept the award. He has refused to do so, and has insisted that his property was undervalued. He said that he called the Chief Valuer at the NLC to find out the status of his compensation and was told there were still plans to compensate him.

'My neighbour whose house is behind mine was compensated a lot of money for a wall which was demolished and a space of half a metre from the wall. This compared to mine where I am losing a wall and four rooms is intriguing. I feel discriminated [against]. I feel my rights have been violated. My neighbour told me that I failed to incentivise them, that I should still pursue them. Recently I visited KeNHA['s] offices where I was advised to get village elders to prove that I am a genuine PAP, that I was there when enumerations happened and confirm the size of my house. I have done so, the Chairperson and secretary for the highway committee wrote to prove, still nothing', testified Clement Mbogo.

Interviewees described the Community Liaison Committees³⁵ as being pro-KeNHA, ineffective and disconnected from the affected communities. Many PAPs believe that the committees are compromised and no longer represent the interests of the people. Some of the PAPs interviewed cited incidents where the Committees acted as a kangaroo court³⁶ with powers to dismiss a PAP's claim even when the claim is genuine. In an interview with the Jomvu Committee, the research team was informed that the Committee assisted with the identification of PAPs, listened to grievances and made recommendations on who ought to be included as a PAP.

They confirmed Clement, Mulei and three other PAPs were eligible for compensation. To date, Clement and the other individuals do not know whether or not they have been included in the compensation scheme. In the meantime, the construction is less than 2 metres from some of their houses. On various occasions, they have been threatened by the contractors with forced eviction if they do not vacate the properties. Clement told the research team about the double loss the construction has caused him: loss of income as well as a loss of social interactions within the community. This has led to stigma and loss of self-esteem due to his inability to fend for his family.

In the case of Norah Kwamboka, the Committee admitted that she was a genuine and eligible PAP but they failed to prove it because her husband had an altercation with the Committee Chairperson. In the research team's interview with the Committee, its representatives narrated the dispute with Mark Ogato, Kwamboka's husband. In response to the dispute, the Committee swore to 'teach' him a lesson. According to the Committee, even the DCC endorsed this decision. In a one-on-one interview with a Committee member (whose identity is concealed for fear of reprisals), the member admitted that Committee has on some occasions made decisions influenced by existing personal differences between members and PAPs. The member said that Norah's husband has a personal difference with the chairperson.

³⁵ There are four Community Liaison Committees: one in Bahati/Changamwe, one in Bangladesh, one in Jomvu and one in Miritini.

³⁶ A kangaroo court is a setting where people are interrogated and verdicts are made on serious cases based on non-judicial processes and proof.

The Jomvu Committee acknowledged challenges related to handling their role. They identified lack of capacity as their major challenge. They told the research team that they did not get terms of reference and training regarding the roles of a Community Liaison Committee.

Of all the PAPs that the research team interviewed who had not been enumerated, only two said that they were eventually enumerated. This occurred in February 2020, and the individuals are waiting for awards as of the time of writing. Even for this small number of PAPs, the process has been delayed and they fear that the contractor will come with bulldozers.

RAP process: Stakeholder engagement: KeNHA should update lenders regularly on engagement and communication activities in the area of the project.

The information gathered by the research team indicates that KeNHA is keen to provide evidence of stakeholders' engagement. Two stakeholder meetings happened early in 2020; however, the quality of the meetings and their accessibility for PAPs is questionable.

Most of the people interviewed stated that the project promoter held meetings on three consecutive days at Mikindani Social Hall (17 and 19 February 2020) and at Changamwe Catholic Church (18 February 2020) where KeNHA was the convener and PAPs, the ACC 1 Mikindani, the OCS Mikindani, the NLC and the area Chief attended. The meetings fell short of the bare minimums for genuine consultation. Many PAPs present at the meetings informed the research team that the atmosphere was tense and did not facilitate transparent and inclusive engagement. Many PAPs said the OCS was armed in the meeting and the tone of the meeting was hostile. The meeting agendas were not shared in advance, and contrary to many PAPs' expectations did not have anything to do with the implementation of the Action Plan's recommendations. Some members of the affected communities, especially Bangladesh residents, had read and discussed the EIB-CM's Conclusions Report. Participants expected that this meeting would address the issues raised by this Report, such as PAPs' basic concerns. They were informed that the meetings were not for questions, but the PAPs insisted on asking questions. The NLC's Chief Valuer is said to have been hostile throughout the meeting and informed people that the NLC had finished its work and would not repeat the exercise. ACC 1 reportedly conducted the meetings in a strict manner. PAPs insisted on talking and demanded a progress update on the EIB-CM Conclusions Report's Action Plan. The ACC allegedly dismissed this demand, proclaiming that they did not recognise the EU and their report. When PAPs were finally allowed to speak they repeatedly asked the ACC to explain why people had no valuation reports and did not understand the methodology used. The PAPs also asked questions of KeNHA's Community Liaison Person, who publicly admitted that she had not seen the EIB-CM's report and was not aware of the Action Plan.

The Highway Committees, the ACC, representative of CSOs, village elders and some of the PAPs interviewed claimed that due to COVID-19 restrictions, it was challenging for KeNHA and the NLC to hold public meetings with the PAPs between March and the time the research was conducted in July 2020. Many other interviewees felt that this was an excuse. Meetings can be and have been held in compliance with the World Health Organization's protocols. Moreover, the demolitions that have been carried out happened with the deployment of large numbers of people and sometimes at night, which compromises people's ability to comply with the set rules and regulations for COVID-19. In Jomvu, approximately 20 youths and about a dozen others including the police, the contractor, the ACC team and family were present at the Kwamboka house during the eviction. While the COVID-19 crisis is legitimate, there is a need to adopt and embrace innovative ways of ensuring that stakeholder engagement is not jeopardised.

The two meetings in Mikindani and Changamwe were the only stakeholder meetings held as at the end of the research. Most of the PAPs in Lot 2 do not know what needs to be done, what a RAP is or what the EIB-CM's Action Plan is. In Miritini and Mariakani (Lot 2), no meeting has been held within the timelines for Action Plan. According to community leaders interviewed in Miritini, no meeting has ever been held between KeNHA or the

NLC and the community. There has been no effort on the side of KeNHA to share the RAP and the entitlement matrix with PAPs. It is of grave concern that four and half years after it was revised, the majority of the PAPs living in this section of the road reserve remain unaware of the changes the road will cause and the impact they will have on their lives.

The research team spoke to the KNCHR. The team was informed that the Commission was aware of the recent incidents along the highway. The KNCHR Regional Coordinator agreed to convene a meeting of the Land Non-State Actors Group (a coalition of human rights organisations working on the issues of land and adequate housing rights in the coastal region) to discuss how to meaningfully participate in the monitoring of the project, especially in Lot 2. The Commission along with the members of the Land Non-State Actors Group, such as Defenders Coalition, Kituo Cha Sheria and Haki Africa, have taken an interest in following the case of police brutality against Mariam Kwamboka.

In an interview with Haki Yetu³⁷, a non-governmental organisation that has been monitoring the project for years, the team was informed that even though the organisation works closely with KeNHA, they did not know much about the progress of RAP implementation. Specific to the progress on implementing the EIB-CM Conclusions Report's Action Plan, Haki Yetu said they were not aware of the existence of the report or the Action Plan. All the other organisations interviewed reported that neither KeNHA nor the NLC has involved them in stakeholder engagement.

While the EIB-CM's Conclusions Report identified inadequate stakeholder engagement as a core problem, very little is being done to mitigate it. Lack of transparency remains persistent. PAPs and civil society stakeholders remain uninformed about progress on the project. PAPs and activists who have insisted on transparency have borne the brunt of state power. This has destroyed the collective negotiation strategy of communities.

RAP process: Request for Cadastral Maps: Promoter will ensure that cadastral maps of the projects are available for consultation in KeNHA's offices.

Annex 19 of the RAP includes maps. Unfortunately, they have not been disclosed on KeNHA's website, nor on the EIB's website. It is assumed that some of the complaints submitted to the EIB raise the issue of the inability to see the exact road plan on the map. CEE Bankwatch Network has also requested access to cadastral maps for the project. In October 2019, the EIB stated that:

*It is important to highlight that the maps are not needed in order for the "PAPs to understand their possessions" as beacons have been laid down on the ground defining the area of impact, and this was clearly explained to each PAP. We would also like to highlight that, in order to avoid the disclosure of personal data and to avoid market speculation, such detailed maps are generally not published.*³⁸

It was two months before the Complaints Mechanism recommended that cadastral maps of the projects should be available for consultation in KeNHA's offices. In a communication to CEE Bankwatch Network from 23 October 2020, the EIB mentioned:

... the maps are indeed available at KeNHA Nairobi office. Requesters interested in having access to such maps can send a letter to the address below, clearly stating the reason for the request:

Att. Director HPD Survey Planning and Design

³⁷ Haki Yetu is a human rights organisation based in Mombasa that works with the poor and vulnerable. They have been involved in the monitoring of the implementation of the Mombasa-Mariakani project.

³⁸ Email communication from the EIB to Polish Green Network, 10 October 2019.

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In spite of the EIB-CM's recommendation that KeNHA provide cadastral maps for consultation in KeNHA's offices and that these maps should be a part of the publicly available project RAP, they continue to be inaccessible to PAPs. In order to be truly accessible to PAPs, they need to be available not only at KeNHA's Nairobi office, but also at the field offices located on or near the project site. However, PAPs are still not able to access the maps even after consistently demanding them. PAPs visiting the field office declare that they are there to see the maps, the security guard at the gate in turn informs them to go and wait for the maps to be brought to them in the community. Lack of access to the cadastral maps by the PAPs demonstrates lack of transparency in the project, and it also denies the affected the opportunity to engage with the project and to make plans to mitigate possible harms. This has accelerated hopelessness among the PAPs, especially regarding livelihoods and children's education. It has led to the accumulation of grievances related to the potential loss of both moveable and immoveable assets.

Inability to access these maps disempowers the PAPs, because it creates a lack of clarity on who is affected by the project. It also represents a form of land acquisition without due process. This is particularly the case because new sets of PAPs are emerging and suffering from adverse impacts, yet they are not part of the initially recognised PAPs. This was the case in Mkupe, where PAPs were told that the contractor had decided to expand construction into a certain area to strengthen the ground after discovering that the land was too shaky on the nearby part of the road to support construction (mentioned above). This was also the reason given to Jomvu Narcol PAPs and activists on 21 August 2020 in a case where the house of Winnifer Mark (Norah Kwamboka's daughter) was being damaged by the construction site.

Winnifer is a victim of lack of access to the cadastral maps. She has never been identified as a PAP, but she is now confronted with the reality of a looming forced eviction. In mid-August 2020, the contractor blocked her house with the gabion, redirected dirty water to her house and blocked her access way. When she sought to know why they were doing this, the contractor said that the land was shaky on that section of the road and they needed to strengthen it. She was asked to write to KeNHA seeking to be included in the list as a PAP. The contractor continued with the activities that jeopardised her right to adequate housing.

'I was not on the road reserve initially. My house has never been marked as affected. I took a loan from my SACCO³⁹ for home development and built this house. I just completed building it recently. Now they want to demolish it. They have not contacted me with this information. I just saw the contractor building right in front of my house without allowing me even access way. They also redirected dirty water into my house. When we approached the contractors at Kibarani, they advised me to write to KeNHA and inform them that I am now a PAP. I feel invaded. My rights have been violated', said Winnifer Mark.

³⁹ A 'savings and credit co-operative' (SACCO) is a savings and credit facility that is part of the Cooperatives movement in Kenya.

CONCLUSION

Thanks to community activists, a significant number of PAPs interviewed, especially in Bangladesh, had read the EIB-CM's Conclusions Report by the time we visited their communities. In the three-day public fora in Mikindani and Changamwe, the PAPs publicly demanded an update report on the implementation of the Action Plan. This was allegedly met with hostility and intimidation by the office of the ACC1. KeNHA and NLC officials – as cited above – have claimed they are not aware of the recommendations of the report and the report itself.

Human rights continue to be violated as a result of the road construction. The assessment revealed at least two cases of forced eviction (in Miritini and Jomvu Narcol). The project is still marred by a lack of transparency and accountability. The delays in compensation, omission of eligible PAPs in the compensation list, ineffective stakeholders' engagement, lack of transparency especially on valuation methodology, use of excessive force and state brutality, forced evictions and lack of accountability by project implementers described by the PAPs are a clear contradiction of the standards declared by the promoter and those required by the lenders. Since 2015, the PAPs' rights have been continuously violated, and they have been stigmatised and discriminated against, causing insecurity, loss of livelihood, hampered access to basic and essential services, and loss of dignity.

The EIB-CM's Action Plan includes specific recommendations to KeNHA and the NLC to mitigate the harm caused and update the lenders on progress as outlined in points four and seven of the Action Plan (as stated above). Yet there is no evidence of the improvement in the actual situation on the ground.

The Action Plan on its own does not provide the PAPs with adequate safeguards against continued harm. Meanwhile, the RAP itself is far from meeting national and international standards for resettlement and should never been accepted by lenders. It is crucial for the EIB to ensure access to remedy to the affected individuals and establish a robust monitoring mechanism that will boost the confidence of the PAPs.

KeNHA and the NLC have failed to meet the expected threshold for genuine and meaningful consultation. Coercion, intimidation and victimisation have been cited by many PAPs who have challenged the process. Corruption and insensitive officers have featured in numerous occasions. Vigilance on corruption is needed, given that the project implementation commenced during the era of the previous chair of the NLC and his commissioners, which was disbanded on corruption grounds. While the COVID-19 pandemic might have posed challenges for public meetings, it has also been used as an excuse for state failure in compliance with human rights. The pandemic has made monitoring of the implementation of the action plan by the PAPs, activists and human rights CSOs difficult. Much of this has happened unchecked and unchallenged. Meanwhile, the construction works are continued.

RECOMMENDATIONS

RECOMMENDATIONS TO KeNHA

- KeNHA should consider alternative resettlement land for Lot 2 and avoid cash compensation where PAPs will be displaced unless the affected person chooses money instead of land. International human rights standards discourage cash compensation where PAPs are likely to be displaced. They require that the state ensures the affected persons are offered alternative resettlement land that guarantees continuity of people's economic, social and cultural activities.
- KeNHA should undertake proper and robust prior financial planning and management training for all PAPs in Lot 2 before giving compensations and ensure prompt compensation where compensation is necessary. This will safeguard people from financial mismanagement that might plunge them into destitution.

- KeNHA should establish a RAP implementation monitoring team comprised of the PAPs, KeNHA, the lenders, CSOs, NEMA, the NLC and Constitutional Commissions, specifically the Kenya National Commission of Human Rights, that will convene regularly to monitor the resettlement of individuals living in Lot 2.
- KeNHA should undertake a further revision of the RAP. The implementation of both the RAP and the CAP brought out many challenges, gaps and areas for improvement. The lessons learned are vital to ensure implementation of the RAP in Lot 2. Among the most critical lessons is that the designs, maps and measurements set forth at the beginning of the project are likely to change; hence, KeNHA needs to plan for the incorporation of the newly acquired areas and the respective affected persons. Women and children should be treated as vulnerable groups who need adjusted protection measures included in the RAP.
- Lenders and KeNHA should examine and revise the terms of reference for KeNHA's Community Liaison Officer to embed in the role a more effective means to communicate information to and from the affected persons and create very clear deliverables with regards to feedback and feedforward on matters related to the project's implementation.
- KeNHA should publicly apologise to all the aggrieved persons and remedy the harm caused.

RECOMMENDATIONS TO THE LENDERS

- The EIB should engage in on-the-ground monitoring and evaluation so that it is able to verify the information itself. With KeNHA's history of human rights violations, false statements and forced evictions in particular, the lenders need to have an monitoring and evaluation officer on the ground for swift and continuous monitoring of the project implementation.
- Lenders should establish an independent multi stakeholder grievance redress mechanism that will be chaired by the KNCHR and tasked to undertake an independent review of the missing names, delayed compensation and grievances for Lot 1 and to conduct continuous monitoring throughout the process in Lot 2.
- Lenders and KeNHA should examine and review the role and terms of reference for KeNHA's Community Liaison Officer to embed in the role a more effective means to communicate information to and from the affected persons and create very clear deliverables with regards to feedback and feedforward on matters related to the project's implementation.
- Lenders should condition the disbursement of the loan on meeting internationally and nationally recognised human rights standards, especially those concerning the right to housing.
- Lenders should ensure that KeNHA's project teams (engineers, surveyors and sociologist) and any other state agencies involved in the project undergo human rights trainings periodically during the project.
- Future projects should ensure proper human rights due diligence based on international standards and comprising of risk and impact assessment in the field of human rights.

ANNEX: PHOTOS



Figure 1: Gabion built blocking entry at Winnifer's house



Figure 2: Mariam - daughter of Eunice Kwamboka - victim of police brutality

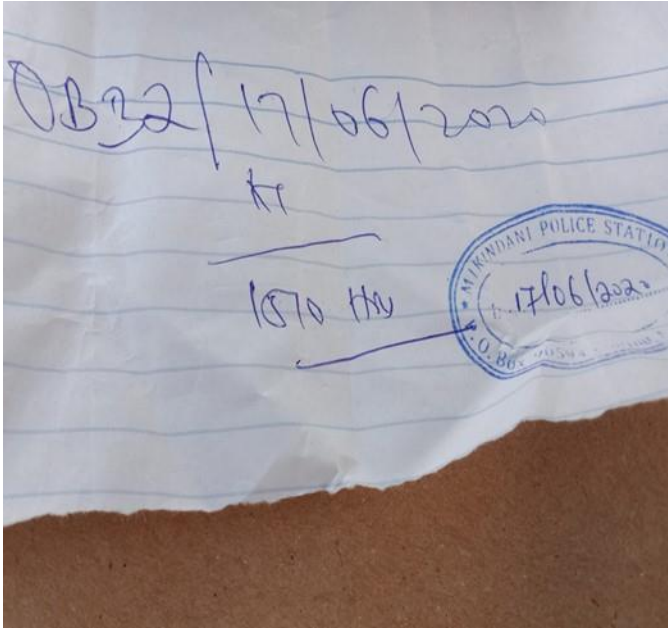


Figure 3: Mariam's OB number from the police



Figure 4: Impact of heavy machinery in Mkupe



Figure 5: Focus group discussion in Changamwe



Figure 6: Impact of KeNHA's heavy machinery on Mkupe slum in Bangladesh



Figure 7: Impact of heavy machinery in Mkupe



Figure 8: Focus group discussion in Jomvu