



Mombasa-Mariakani Road Project



Kenya



Road



AfDB, EIB, KfW, EU-AITF

Intimidation of community complainants

On April 5, 2017, three members of the Jomvu community, a settlement on the outskirts of Mombasa, Kenya, were summoned to appear before the Deputy County Commissioner (DCC).¹ The community members had previously filed complaints with the Complaints Mechanism of the European Investment Bank (EIB-CM), one of the investors in the Mombasa-Mariakani Road Project, over the inadequate compensation they received for property lost in a May 2015 forced eviction to make way for the road expansion.² The DCC was serving both as a government functionary and as the chairman of the grievance redress mechanism committee for the project. The community members testified that when they arrived at his office, the commissioner told them that he had learned of their complaints and that if they ever again communicated with the project lenders he would denounce them as liars and might leave them out of any future compensation.³

The evictions in question were carried out as part of preparations for the rehabilitation and expansion of 41.7 km of highway between Mombasa and Mariakani in Eastern Kenya. Around midnight on May 17, 2015, sleeping Jomvu residents awoke to the sound of a bulldozer. Under the watch of police forces, 30 houses were demolished in four hours, leaving more than 100 inhabitants homeless. The Kenyan National Highways Authority (KeNHA) had sent 30-day eviction notices to the residents of Jomvu without consulting them about the eviction process, or their resettlement or compensation.⁴ The project, worth approximately US\$344 million, is currently funded by the European Investment Bank (EIB), the African Development Bank (AfDB), the European Union through its Euro-Africa Infrastructure Trust Fund (EU-AITF), and the German Development Bank (KfW).⁵

After Amnesty International brought the evictions to the attention of KeNHA and the lenders, KeNHA admitted wrongdoing and promised full redress to all those affected.⁶ The lenders supported KeNHA in

the elaboration and implementation of a Corrective Action Plan (CAP), as well as in the development of an updated Resettlement Action Plan which adheres to their policies and standards. However, many of the evicted residents felt that the compensation they received under the CAP did not reflect the fair market value of their losses, and was inadequate to restore their livelihoods.⁷ Various complaints were filed with the EIB-CM and the local grievance mechanism, requesting fair compensation.⁸

One of the key aspects of the EIB-CM and other independent accountability mechanisms is that, as opposed to project level grievance mechanisms operated by companies or governments implementing development projects, they are, in theory, independent. Furthermore, under the EIB-CM's procedures, complaints were to be dealt with confidentially.⁹ In this instance, however, the identity of the first three project complainants to use the EIB-CM was revealed by EIB staff to KeNHA. Soon after, the three complainants were summoned to the Deputy County Commissioner's Office (DCCO).



Tomas Obongo in his workshop destroyed in 2015.

Krzysztof-Miękus

Koneja Aziza Juma from Jomvu Narcol hoping to be properly compensated.



The NGO CEE Bankwatch Network, which works closely with the affected community, informed EIB, AfDB, and KfW about this incident.¹⁰ In May 2017, EIB responded to Bankwatch expressing regret that during exchanges with the project promoter correspondence to the EIB-CM “was inadvertently disclosed to KeNHA by the EIB, without the knowledge of the EIB-Complaints Mechanism or prior notification to the project affected persons concerned.”¹¹ The EIB indicated that it formally informed the project promoter and Kenyan authorities that the referenced information is “strictly confidential and should not be used in any way that might be prejudicial to the complainants” and “made clear to KeNHA that complainants to the EIB-CM must not be subject to any form of retaliation or intimidation as a consequence of their exercising of their legitimate right to complain”, and that the same applies to “any other interested parties exercising their legitimate right to complain or express their concerns about the project.”¹²

Advocates additionally met with AfDB several times in 2017 and 2018, seeking for AfDB to address the intimidation of project affected communities, but did not find them responsive.¹³

The EIB-CM initiated a mediation process between the complainants and KeNHA in February 2018, which will establish a process to review the more than 200 complaints that have been filed.¹⁴ While the person carrying out that function has changed, the DCCO

continues to serve as the head of the project-level grievance redress committee.¹⁵ Meanwhile, the threats against the local communities continue. In June of 2018, a community leader who has been supporting other displaced residents in their claims was subjected to harassment and received a death threat warning him to desist.¹⁶ According to testimony, he believes the source of the threat to be connected to the project.¹⁷ In a September 2018 response to a letter of concern from advocates, EIB, also on behalf of KfW, stated that they have reached out to a defender protection organization and will initiate a “full risk assessment” of the project.¹⁸

Part of the Mombasa-Mariakani existing road in Jomvu Varcol.



Endnotes

- 1 Summons to [name withheld] from Patrick Meso, Deputy County Commissioner's Office, Jomvu Sub-County, April 5, 2017, on file with CEE Bankwatch.
- 2 See List of Cases registered by the EIB, "Complaints mechanism cases," European Investment Bank, <http://www.eib.org/about/accountability/complaints/cases/index.htm>.
- 3 Email communication from affected person [name withheld] to Mark Fodor, CEE Bankwatch, April 12, 2017, on file with CEE Bankwatch.
- 4 "Mombasa-Mariakani road project, Kenya," CEE Bankwatch Network, 2017, <https://bankwatch.org/project/mombasa-mariakani-road-project-kenya>; "Driven Out for Development: Forced Evictions in Mombasa," Amnesty International USA, May 2015, <https://www.amnestyusa.org/reports/driven-out-for-development-forced-evictions-in-mombasa/>.
- 5 Converted from \$250 million Euro in January 2014. Kenya Regional Mombasa Road, Project No. ITF-80, African Development Bank and European Investment Bank, Approved: January 2014, https://ec.europa.eu/europeaid/blending/kenya-regional-mombasa-road_en.
- 6 "Driven Out for Development: Forced Evictions in Mombasa," Amnesty International USA, May 2015, <https://www.amnestyusa.org/reports/driven-out-for-development-forced-evictions-in-mombasa/>.
- 7 Amnesty International documented steep hikes in land values after the evictions, resulting partly from the loss of land in a high-density area. Ibid.
- 8 List of Cases registered by the EIB, "Complaints mechanism Cases," European Investment Bank, <http://www.eib.org/en/about/accountability/complaints/cases/index.htm>.
- 9 The EIB Complaints Mechanism: Principles, Terms of Reference and Rules of Procedure, European Investment Bank, October 31, 2012, para 13.1 "[i]n order to safeguard the interest of the complainants, complaints lodged under the EIB's internal complaints mechanism are normally dealt with confidentially unless otherwise requested by the complainant." The procedures were updated in 2018 to provide that complaints are to be considered non-confidential unless otherwise requested, but that "Complainants will be requested at the time of acknowledgement of receipt to indicate whether they consent to the EIB-CM communicating their names to external stakeholders." section 4.6., Complaints Mechanism Policy, European Investment Bank, November 2018, http://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf.
- 10 Letter from CEE Bankwatch to European Investment Bank et al., "Intimidation of local communities affected by Dualling of Mombasa - Mariakani (A109) Road Project in Kenya," April 14, 2017, on file with authors.
- 11 Letter from European Investment Bank to CEE Bankwatch Network, May 15, 2017, on file with CEE Bankwatch.
- 12 Ibid.
- 13 Communication from Amnesty International Kenya to authors, June 2018, on file with authors. AfDB did not respond to a request for comment on this case study.
- 14 Communication from EIB CM mediation team at a public meeting in Mombasa, June 9.
- 15 Dennis Mwikya, "KeNHA launches grievances redress committee on Mombasa Road dual carriage project," Hivisasa, October 2017, <https://hivisasa.com/posts/kenha-launches-grievances-redress-committee-on-mombasa-road-dual-carriage-project>.
- 16 Communication from Amnesty International Kenya to authors, June 2018, on file with authors.
- 17 Communication from Ola Antonowicz-Cyglicka, CEE Bankwatch, August 2018, on file with authors.
- 18 Letter from European Investment Bank to CEE Bankwatch, September 7, 2018, on file with CEE Bankwatch.