

EVICTIONS AUDIT AND PREPARATION OF A CORRECTIVE ACTION PLAN FOR THE MOMBASA-MARIAKANI ROAD PROJECT

FINALCORRECTIVE ACTION PLAN

CONTENTS

Chapter	Description	Page
EXECUTIVE SUMMARY		v
1	INTRODUCTION	1-7
	1.1 Background	1-7
	1.1.1 Mombasa-Mariakani Road Project and the Evictions	1-7
	1.1.2 Location of the Affected Area	1-7
	1.1.3 Objectives of Corrective Action Plan	1-8
	1.2 Findings of the Eviction Audit	1-9
	1.2.1 Applicable National Guidelines and Laws on Evictions	1-9
	(a) International Covenant on Economic, Social and Cultural Rights;	1-9
	(b) Convention of the Rights of the Child;	1-9
	(c) Convention of the Rights of Persons with Disability.	1-9
	1.2.2 Categories of Evictees	1-10
	(a) Structure owners	1-10
	(b) Tenants	1-10
	(c) Employees	1-10
	(d) Household Membership	1-10
	(e) Total PAPs	1-11
	(f) Eligible PAPs for Entitlements	1-11
	1.2.3 Vulnerability Analysis	1-11
	1.2.4 Comparison of Existing Valuation Report and the Audit Findings	1-12
	1.2.5 Impact on Housing and Related Services	1-12
	1.2.6 Impact on Occupation and Incomes	1-13
	1.2.7 Impact on Children	1-13
	1.3 Evictees Expectations on Proposed Corrective Actions	1-14
	1.3.1 Compensation	1-14
	1.3.2 Additional Assistance to the Evictees	1-14
	1.3.3 Assistance in Securing a Resettlement Site	1-15
	1.3.4 Employment opportunities	1-15
2	ANALYSIS OF CORRECTIVE ACTIONS	2-1
	2.1 Background	2-1
	2.2 Promoting Livelihood Restoration	2-5
	2.2.1 Compensation and Site Retention	2-5
	2.3 Relevant Stakeholders for CAP Implementation	2-5
3	CORRECTIVE ACTION PLAN	3-1
	3.1 Introduction	3-1
	3.1.1 General Information	3-1

3.1.2	Review of Available RAP Report	3-1
3.1.3	Review and Update of the RAP and its Implications on the CAP	3-1
3.2	Corrective Actions	3-1
3.2.1	Informal Land Users	3-1
3.2.2	Loss of Structures	3-2
3.2.3	Loss of Equipment, Material, Assets, Merchandise	3-2
3.2.4	Loss of Income	3-3
3.2.5	Moral and psychological damage	3-3
3.2.6	Tenants on Loss of Rented Premises	3-3
3.2.7	Employees	3-4
3.3	Verification Process and way forward	3-5
3.4	Entitlement Matrix	3-6
3.5	Institutional Arrangements for CAP Implementation & Stakeholder Consultation	3-8
3.5.1	CAP Steering Committee (CSC)	3-8
3.5.2	CAP Implementation Committee (CIC)	3-8
3.5.3	Community Liaison Office (CLO)	3-9
3.5.4	General Recommendations on the Engagement Program	3-9
3.6	CAP Grievance Management Mechanism	3-9
3.6.1	General Information	3-9
3.6.2	Objectives of the CAP Grievance Mechanism	3-10
3.6.3	Expected Grievances	3-10
3.6.4	Proposed Grievance Management Committee	3-10
3.6.5	Procedure for Grievance Handling under the CAP	3-11
3.7	CAP Implementation Schedule	3-12
3.8	Estimated Costs for CAP Implementation	3-14
4	MONITORING AND EVALUATION OF CAP	4-1
4.1	Background	4-1
4.2	Monitoring the CAP Implementation Inputs	4-1
4.3	Monitoring the CAP Implementation Process	4-1
4.3.1	Responsibility	4-1
4.4	Methods of Monitoring the Efficiency and Effectiveness of the CAP Implementation Process	4-1
4.4.1	Monitoring the overall efficiency and effectiveness of the CAP's Implementation	4-1
4.4.2	Developing summary indicators	4-2
4.4.3	Indicators of the efficiency of individual CAP activities	4-2
4.5	Tools for Participatory Monitoring of CAP	4-2
4.5.1	Focus Group Discussions	4-2
4.6	Reporting	4-2
4.6.1	Reports	4-2
4.6.2	Final Reports	4-3

LIST OF APPENDICES

- Appendix 1** Vulnerability Assessment Framework
- Appendix 2** Entitlement Matrix Provided by Lenders for Discussion with Stakeholders in Development of the CAP
- Appendix 3** Terms of Reference for the Proposed Grievance Resolution Management Committee
- Appendix 4** Full compensation matrix
- Appendix 5** Minutes of Meeting with Stakeholders on the Proposed Corrective Actions
- Appendix 6** Minutes of Independent Meeting by Evictees as submitted to the Lenders by the Chairman of the Committee of Evictees
- Appendix 7** Minutes of video conference between Lenders, KeNHA and GIBB Africa
- Appendix 8** Photolog

LIST OF ACRONYMS

AfDB	Africa Development Bank
CAP	Corrective Action Plan
CIC	CAP Implementation Committee
DCC	Deputy County Commissioner
EIB	European Investment Bank
GRM	Grievance Resolution Mechanism
ISUDP	Integrated Spatial Urban Development Plan
KeNHA	Kenya National Highway Authority
KfW	Kreditanstalt für Wiederaufbau
PAPs	Project Affected Persons
RAP	Resettlement Action Plan

EXECUTIVE SUMMARY

The measures in this CAP are proposed after thorough review of the Kenyan policies, guideline and Laws as well as lender's standards on involuntary resettlement. In developing the mitigations measures and appropriate action plans, considerations were made to the Lenders standards in comparison to the Kenyan standards, and those found to be more stringent were espoused.

A total of 117 structures were identified during the audit exercise. Evictees were categorised into the following four broad groups: Structure owners (129 - One structure was co-owned by 12 people), tenants (105), employees (93) and dependants (55). In total, three hundred and eighty two (382) persons were identified as having been affected by the demolitions.

A Draft Valuation Report for the demolished structures on the Mombasa-Mariakani Report (October 2015) conducted by KeNHA, covered ninety four (94 No) structures, while Audit Report findings identified a total of 117 structures. However, eighty three (83 No) structure owners were found to be consistent in both lists. The pending 33 structures have undergone valuation based on the methodology earlier used.

Consultations with the evictees have confirmed that they are very keen to receive cash compensation for damages experienced during the demolitions. This compensation is expected to include compensation for demolished structures to enable re-establishment of the same; compensation for tenants on loss of rental expenditure incurred (lost rent paid) on the affected structure and compensation for lost income and 'loose' assets, including furniture, electronics and other household items. Apart from cash compensation, the evictees will receive additional assistance in the form of psychological guidance and training on financial management during the CAP's implementation period.

KeNHA has embarked upon updating the existing RAP document to include effective and sustainable livelihood restoration measures for PAPs. Evictees in this CAP will also fall under PAPs identified in the Project RAP. Timing of the two undertakings is distinct, in that production and implementation of this CAP precedes that of the RAP. Nevertheless, KeNHA has committed to pursue continuity between the two documents and the Terms of Reference of the respective assignments (CAP elaboration and RAP revision) reflect as much. Moreover, the livelihood restoration measures proposed under this CAP allow the evictees to remain on site until the compensation and livelihood restoration measures under the Project RAP kick-in.

KeNHA will be responsible for implementing this CAP in conjunction with other stakeholders such as the Deputy County Commissioner (DCC) Jomvu Sub-County. Grievance redress mechanism has also been established with KeNHA and supported through the formation of the Grievance Management Committee (GMC); KeNHA will work proactively to address and resolve grievances linked to the CAP through developing a channel where all queries are responded to within the earliest possible timeframe.

The GMC will have at their disposal a Community Liaison Officer (CLO), facilitated by KeNHA. The CLO will be stationed at the Coast Mombasa Regional office to keep records and coordinate all activities of the GMC in close collaboration with the DCC and Local Chief.

A total of **Kshs. 32,956,995** has already been paid by KeNHA to 83 structure owners. Further to this, an additional payment of **31,947,347** is proposed for 33 additional structure owners, 105 tenants, 93 employees, 3 PAPs with cheques not paid due to inconsistencies and an additional amount to the 83 structure owners initially paid. For the full implementation of the CAP, costs inclusive of counselling and training, facilitation of GRM committees and the CAP exit Audit will project the total costs to **Ksh. 33,847,346**. This CAP is scheduled to take three months for the full implementation. Monitoring and Evaluation has been designed to provide timely and operationally useful information on how efficiently each phase will be operating. A closedown audit will be undertaken at the end of the CAP implementation program to confirm implementation of the proposed interventions as well as to check the outcomes and impacts of the CAP.

This CAP report recommends that, for the successful implementation; information disclosure to all stakeholders is paramount to enable them make an informed decision. Complementing this, KeNHA remains committed to engaging in consultations with evictees at all times and lastly, GMC should be effectively exercised for an effective operation.

1 INTRODUCTION

1.1 Background

1.1.1 Mombasa-Mariakani Road Project and the Evictions

The Government of Kenya, through the Kenya National Highways Authority (KeNHA) is undertaking the rehabilitation and expansion of the Mombasa-Mariakani section of the Northern Corridor Road in south-eastern part of Kenya.

Funding for the Mombasa-KwaJomvu (Lot 1) section has already been secured from the African Development Bank (AfDB) while funding for the KwaJomvu-Mariakani(Lot 2) Section is under consideration by Kreditanstalt für Wiederaufbau (KfW) and the European Investment Bank (EIB).

Part of the impacts of the road expansion includes land take and relocation of persons within the corridor earmarked for expansion. Prior to the implementation of the project's Resettlement Action Plan (RAP), demolitions were conducted between Km 10+700 to Km 11+450 (Lot 1) of the project road, primarily on the current road reserve of the project road. This reserve had been earmarked as part of the construction corridor for the proposed road expansion.

Following the demolitions, all Lenders (EIB, KfW and AfDB) notified KeNHA that the demolitions amounted to forced evictions of the Project Affected Persons (PAP's); and equally a contradiction of their rules and procedures for compensation and relocation of PAP's.

The need for an incident audit arose from the concerted decision of all lenders and KeNHA to facilitate a speedy and high-quality *ex-poste* assessment of the impact provoked by the evictions, as well as to enable the award of due remedy and compensation regarding harm done. To this end, an independent Forced Evictions Audit Report was developed and complemented by a Corrective Action Plan to remedy the impacts arising from the evictions.

This report provides a Corrective Action Plan for the community that was affected during eviction.

1.1.2 Location of the Affected Area

The eviction area comprises of 3 villages, namely; KwaJomvuMadafuni, Narcol and NgamaniVoi of Miritini Location, Jomvu Sub County. Part of the eviction area also falls within Changamwe Sub County of Mombasa County as presented in Figure 1-1 below.

Figure 1.1: The Eviction Area



Source: Google Map and consultations with evictees

1.1.3 Objectives of Corrective Action Plan

The main objective of the CAP is to design suitable and relevant corrective actions remedying all harm caused by the forced evictions incident of May 2015 in compliance to Kenyan Law and Lenders' standards. Critical therein is the restoration of livelihoods to ex ante levels until the project's RAP implementation kicks in. This is inclusive of carrying out an associated time-bound implementation schedule and a clear attribution of roles and responsibilities for the beneficiaries and other agencies involved.

The CAP contains the following:

- A clear Entitlements Matrix corresponding to the impacts caused by the incident;
- Top-up entitlements where there are gaps identified between the national relevant provisions and those of EIB and AfDB standards, so as to capture all affected persons and meet the level of entitlements, as per the latter. The provisional entitlements matrix, as originally developed by the Lenders, ought to guide delivery on this action by the Consultant;
- Action required to effectively ensuring that livelihood levels return to ex ante levels until the project's RAP implementation kicks in, including indicating an associated timeframe and other assistance at the earliest possible time. Key objective under this action point is for any remedial measure proposed by the consultant to:
 - ✓ Arrest any further aggravation of harm suffered on account of the May 2015 evictions;
 - ✓ Compensate for all harm suffered to the date of the award of the compensation on account of the forced evictions;
 - ✓ To align, to the maximum extent possible, any long-term resettlement solution with the provisions of the project's RAP and to be delivered in one go, both for Forcibly Evicted Persons and the remainder of the affected population under the project's RAP. Therein, reviewing the original provisions made by the currently available draft RAP and associated feedback offered to date by Lenders, especially on the point of sustainable livelihoods restoration for informal traders, will be necessary;
- Suitable arrangements for any outstanding urgent cases where lives may be at risk by recommending appropriate alternative income restoration arrangements in line with EIB & AfDB principles and standards;

- Actions required for implementing a follow up monitoring including indicators, which are suitable and possible to monitor and respective responsibilities.
-

1.2 Findings of the Eviction Audit

This is an abridged version of the audit findings as presented in the Audit Report., which may be found in the Appendices of the present document.

1.2.1 Applicable National Guidelines and Laws on Evictions

The measures in this CAP are proposed after thorough review of the Kenyan policies, guidelines and Laws as well as on the three lender's standards on involuntary resettlement. Below are some of the policy guidelines and legal framework that can shape the dialogue on the design and implementation of this CAP.

- The National Lands Policy outlines the government's intentions to providing some level of security of tenure for existing informal settlements in the country. Among other recommendations, the policy recommends that an appropriate legal framework should be put in place for eviction based on internationally acceptable guidelines. There is however, a need to provide legal instruments for implementation of the policy objectives;
- The Eviction and Resettlement Guidelines (2009) provides a plan to promote fair and justifiable management of evictions and resettlement procedures in Kenya. The guidelines also recommends that all persons subjected to any eviction should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. However, there is no legal instrument that would provide for the implementation of this guideline.
- Kenyan Constitution (2010) is explicit on the Bill of rights and Article 2 on the Supremacy of the Constitution, provides that any treaty or convention ratified by Kenya is considered as part of the Constitution. Some of these treaties include;
 - (a) International Covenant on Economic, Social and Cultural Rights;
 - (b) Convention of the Rights of the Child;
 - (c) Convention of the Rights of Persons with Disability.
- The right to property is protected under Article 40 the Kenyan Constitution (2010). Article 40(3) states that the State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description. Article 40 (4) further states that provision may be made for compensation to be paid to occupants in good faith. Article 40 (6) additionally warns that the rights under this Article do not extend to any property that has been found to have been unlawfully acquired. Based on this provision, Land will not be considered for compensation under this CAP as it has been documented as a road reserve.
- The National Lands Act (2012) establishes the National Land Commission (NLC). One of the mandates of the NLC is to investigate, on its own initiative or on a complaint, into present or historical land injustices, and to recommend appropriate redress. NLC will therefore guide the process in formulation of appropriate grievance solving mechanism to address any emergent grievances. It will also help in grievance redress that may arise during implementation of the Corrective Action Plan.

The following Lenders policies and standards were triggered and have therefore been recognised;

- AfDB's Operations Safeguard 2 on Involuntary Resettlement: Land Acquisition, Population Displacement and Compensation;
- EIB's Environmental and Social Standard6: Involuntary Resettlement;
- EIB's Environmental and Social Standard 7: Rights and Interests of Vulnerable Groups,
- EIB's Environmental and Social Standard 10: Stakeholder Engagement. and
- KfW Development Bank's Sustainability Guideline

In developing the mitigations measures and appropriate action plans, considerations were made to these standards in comparison to the Kenyan standards, and those found to be more stringent were espoused. (Reader is persuaded to refer Audit report's gap analysis between the Kenyan and Lenders' standards).

1.2.2 Categories of Evictees

Evictees were categorised into the following four broad groups:

(a) Structure owners

Structure owners were categorised as the follows:

- Non-resident structure owners (37);
- Owner occupied structure owners (92);

One of the structures was co-owned by 12 *khat* (miraa) sellers. This therefore implies that a total of 117 structures were identified during the audit exercise. Some of these structures were subdivided into multi uses (business and residential) and multiple users.

(b) Tenants

Tenants were categorised as follows:

- Business Tenants (89);
- Residential Tenants (15);
- Mix use (business and residential) tenants (1).

A total of 105 tenants were identified during the Audit exercise.

(c) Employees

Employees were identified through their former employers. It was up to the employer to declare their employees, including those who had since been laid off as a direct result of the impacts of evictions. Since the type of employment was generally casual, and also the informal nature of businesses being carried along the road, there was no proof of evidence. The audit enumerated a total of one hundred and eighty three (183) employees (presented as 110 male while 73 female) who were affected by the evictions. However, on verification, only 93 employees were found to be having valid documentation in form of national identity cards which was an indication that they were within the acceptable labour force participation age.

(d) Household Membership

A total of Thirteen (13) structures were used for residential purposes. These structures have a total of 20 housing units. A total of sixty nine (69) family members resided within these households. From the analysis, there were persons with special needs who were identified within these families. These persons will need to be assimilated into implementation program, by giving them special assistance. This assistance will be towards eliminating barriers that would impede them from experiencing the same benefits as the rest of PAPs.

(e) Total PAPs

The findings of the audit study confirm that four hundred and seventy two persons (472) were reported to have been affected by the demolitions. This number covers the people who either lived or worked at the affected site.

Following the validation exercise it emerged that only ninety three (93) employees that were declared by the employers had National Identification Cards (ID Cards). Eligibility for compensation was based on the premise that individuals must have official names and also be in possession of a valid identification document as a sign of qualifying into the legal acceptable labour force participating age. Lack of these documents was a possible sign that some of these employees were below 18 years of age hence they would not be eligible for formal employment. As such, employees who did not have official names and identification documents were not included into the list of final persons due for compensation. They are however set aside as grievances and will be handled as such.

As such the revised number of affected persons who lived or worked at the site is three hundred and eighty two (382) persons as presented in Table 1.1 below.

Table 1.1: Total Number of PAPs

PAP/ Evictees Type	Male	Female	Total
1.Structure Owners	85	42	127
Luvoi Youth Group*	-	-	1
Soul Harvest Church	-	-	1
2.Tenants	59	46	105
3.Employees	68	25	93
4.Dependents	34	21	55
Total	246	135	382

*Luvoi youth group, with a membership of 10 people had rented out their structure, while membership of Soul Harvest Church was not clear.

It is also understood that compensation will be paid to the affected unit representative and not his dependants (children, relatives living / working in the affected premises). Hence the number of persons to be paid is less than three hundred and eighty two (382) persons as explained in section (f) below.

(f) Eligible PAPs for Entitlements

The eligible PAP's for compensation were established to be three hundred and twenty seven (327) persons. This number excludes the dependants outlined in Table 1.1 above.

Table 1.2: Eligible PAPs for compensation

PAP/ Evictees Type	Total
1.Structure Owners	127
Luvoi Youth Group	1
Soul Harvest Church	1
2.Tenants	105
3.Employees	93
Total	327

1.2.3 Vulnerability Analysis

Vulnerability analysis was conducted as a means of establishing highly vulnerable PAP's in need of immediate and/or tailored assistance or special attention further to compensation entitlements. In this regard, a Participatory Vulnerability Analysis (PVA) method was used to assess

vulnerability among the evictees. The evictees were assessed along the following parameters of vulnerability and vulnerability scores assigned for each:

- Source of income;
- Action taken after the eviction by evictees;
- Current occupation after evictions;
- Membership to social networks;
- Age;
- Marital status;
- Disability levels;
- Sex/Gender;
- Number of dependants;
- Income levels after evictions;
- Source of funding for reconstitution;
- Presence/level of chronic illness.

A framework for measuring and ranking vulnerability was developed (see Appendix I). This framework was based on correlation of eviction impacts as declared by the evictees to indicators of vulnerability for each unit. Its key premise was that all evictees would require tailored support since they are encroachers on government land and, hence, vulnerable in terms of tenure. At the same time, the purpose of this assessment was to identify precarious cases requiring urgent reaction by KeNHA. The findings show that none of the evictees were in a precarious state while the majority (121) of those evicted were classified as lowly vulnerable with the rest being moderately vulnerable. Tailoring of corrective action is essentially reflected in the livelihood restoration measures adopted under in the CAP's Entitlement Matrix: these include counselling sessions, financial training and some level of security of tenure until the RAP kicks-in.

KEY	REMARKS	Scores level	Number
Highly Vulnerable (Precarious)	Special assistance and / or emergency assistance needed	41-60	0
Moderately Vulnerable	No additional assistance required above what is recommended in the entitlement matrix	21-40	113
Lowly Vulnerable		<20	121

In this regard, none of the evictees were considered to be in need of dire special or emergency assistance or additional assistance over and above what was recommended in the entitlement matrix.

1.2.4 Comparison of Existing Valuation Report and the Audit Findings

The audit also noted that the *Draft Valuation Report for the demolished structures on the Mombasa-Mariakani Report (October 2015)* conducted by NLC, only identified ninety four (94 No) structures. The audit report identified a total of one hundred and twenty seven structures (127 no.). Comparison between the Audit Report findings and the Valuation Report shows that there were eighty three (83 No) consistent names of structure owners.

One of the recommendations made in the Audit report is that the pending 33 structures to undergo valuation based on the same methodology used. This has already been done. Further to this, the compensation payment already issued to the PAPs by KeNHA against the additional compensation payments proposed within the CAP stands at **32,956,995** and **31,947,346** respectively.

1.2.5 Impact on Housing and Related Services

Some of the houses were partially demolished and some of the evictees claimed exposure to harsh weather as they were rained on and only moved afterwards. Others reported that they moved to other areas to find rental housing. By the time of the audit, no evictee was found to be living in those structures.

A faction of the evictees claimed that they were homeless for two nights until their neighbours took them in. Similarly, by the time of the audit survey, none of the evictees reported being homeless.

Scrap metals, wood and nails left over from the demolitions (debris) were reported to present a risk of injury to persons accessing the site. The evictees also reported that most of the abandoned partially demolished structures have been turned to toilets by the surrounding community, thus degrading the sanitation standards within the road reserve. As a result of this, the affected area is perceived by the surrounding community as a health hazard.

1.2.6 Impact on Occupation and Incomes

Business owners reported that their customer base had decreased since some of the evictees are yet to return to the area. This has resulted in reduced incomes for the businesses in the area. A trickle effect of the reduction in income is that some businesses were forced to close down after the eviction, due to reduced incomes. This implies that due to the loss of customers the businesses were no longer turning profits.

Other businesses have been forced to scale down. For example, businesses with five employees have now scaled down to two employees. This implies that some people were laid off as a result of the demolitions.

A number of structure owners reported reduced incomes from their housing unit. Similarly, tenants claimed that their current income level is too low and that they are unable to pay their rent.

For the businesses that were not re-established, the remaining customer base has moved to areas where demolitions have not been done. The example given was that MPESA customers have now moved to Mariakani area.

1.2.7 Impact on Children

The two main reported impacts on children were:

- Psychological torture for those who were present during the demolitions. A total of sixteen (16 No) children (aged below 18 years) were reported to be present during the night of demolition. Audit report established that Fifteen(15 No) of the children were attending school at the time of the demolitions;
- Cumulative claims for impact on education were as a result of reduced income in both the affected households and businesses.

As a result, there is likelihood of reduced incomes among the evictees. The following claims of impacts were also reported by the evictees:

- Some parents reported that they were not able to continue paying schools in private schools and had to move their children from private schools to more affordable public schools;
- The performance of children in school has dropped as a result of the evictions;
- There was a claim that some children were forced to drop out of schools due to lack of school fees.

Additional consultations were therefore held with the parents who claimed impacts on education of their children as a direct result of the evictions. The key queries raised with the parents were basically to determine how the pre-eviction income from the economic activities conducted on the affected area were contributing to their children's education. The parents therefore had to disclose the school fees they were paying per term or per year for their children and any other dependants they were paying school fees for.

The second issue that was discussed was how eviction had interfered with this income and conversely, the payment of school fees. It became clear that they relied on other off-site sources of income to pay for their children's school fees.

From the comparison of the school fees that they reported to be paying in these schools and the actual contribution from the income from the eviction area, it was clear that the income from the eviction area was not the main source of funding for their children's education.

Verification on the psychological impacts of the eviction on children and their performance in school should however be considered in view of any special needs that children may have with regard to psychosocial support and as advised by experts in child psychology. An appropriate partner would be the Gender and Social Services provided by the National Government at sub-county level.

1.3 Evictees Expectations on Proposed Corrective Actions

Consultations were held with the evictees to determine their expectations on the corrective actions. Key issues arising and analysis of these discussions are presented below:

1.3.1 Compensation

The evictees expressed their keenness to receive cash compensation for damages experienced during the demolitions along the categories listed below:

- Compensation for demolished structures to enable re-establishment of the same;
- Compensation for tenants on loss of rental expenditure incurred (lost rent paid) on the affected structure;
- Compensation for 'loose' assets. These include furniture, electronics and other household items;
- Compensation for loss of business stock due to looting as a direct result of the evictions. It was reported that evictees were able to rescue their merchandize from the demolished structures, but lost them from looters who took advantage of the situation to loot business stock. Type and value of stock varied depending on the type of business affected.

Valuation of structures was conducted by a registered Land and Asset Valuer in September 2015, and a compensation package for 94 structures prepared. The list established as a result was compared with the list from the Audit exercise and only eighty three (83 no.) structures were confirmed to be consistent. The remaining 33 structures have since been valued by another registered valuer and their valuation is included in this CAP.

To meet Lenders' standards, and in line with the Kenyan Constitution (2010), which call for payment in good faith, there is need to consider compensation for loss of rent, assets and business stock, as well as for loss of income, incl. compensation for employees. From the survey findings some of the evictees claimed of lost stock, ranging from a minimum of Kshs.20, 000.00 to a maximum of Kshs 3,674,000.00.

Verification of the claims made was carried out in the month of July 2016. Calculation of entitlement was based on the entitlement matrix presented in Appendix II.

1.3.2 Additional Assistance to the Evictees

Apart from cash compensation, the evictees get additional assistance in the form of training on financial management and psychological guidance during CAP implementation.

The compensation offered to the evictees is expected to include cash payments and, whilst this CAP recognises that the final decision on how the evictees will actually utilise this compensation lies with the evictee's themselves, it offers guidance to the evictees on financial management as a complementary measure.

1.3.3 Assistance in Securing a Resettlement Site

The need for a site free from future eviction came out clearly from the consultations. Considering that the evictees were on road reserve, one of the considerations would be identification of an area where they would have some form of security of tenure, even if it was on tenancy status.

The respondents were keen on resettlement sites that are not far from the current project area. The perception is that this is the area they know and starting a business in a whole new place was daunting for them. It was felt that they better understood the business dynamics at their current location hence, re-establishment in a familiar area would be easier to accept than re-establishment in a whole new area.

This plan recognises that the affected area is earmarked for road development and may not necessarily be suitable for commercial purposes. Furthermore, the health and safety risks for residential uses are also high to the point of making it unsuitable for housing.

Based on the consultations held with Mombasa County City Planner, two possible sites for markets were identified that are near the project footprint. These sites are approximately 2km from *Kwa Jomvu*. KeNHA, in conjunction with NLC, will liaise with Mombasa County Government to identify the most appropriate site where evictees can be relocated in the context of the project's Resettlement Action Plan.

Other possible sites mentioned include a lorry park in Miritini area where, if possible, the evictees would be relocated. From the discussions during the meeting with NLC, this site is public land that would be used to relocate persons being moved under roads and railway projects in the area.

This plan is cognisant of the RAP update that is currently ongoing and of KeNHA's commitment to include businesses impacted by the evictions of May 2015 under the RAP's definitive livelihood restoration measures. In this light, the CAP suggests that the entitlement matrix developed in the updated RAP includes these evictees, thereby enabling all PAPs along the road be treated as one entity.

1.3.4 Employment opportunities

The evictees requested that the locals be given opportunity for employment during the roads construction phase.

This can also be considered as additional support if opportunity for employment is offered to the evictees. However, modalities for employment of the evictees by the project would have to be integrated into the specifications and requirements for the construction contracts specifically for non-skilled or semi-skilled staff for the Contractor.

2 ANALYSIS OF CORRECTIVE ACTIONS

2.1 Background

The Terms of Reference for the assignment included a proposed entitlement matrix as provided by the Lenders for discussion with KeNHA and relevant stakeholders as well as analysis on the feasible remedial measures as per the assignment findings.

The proposed matrix provided for discussion and analysis as part of the assignment is presented in Appendix 1 of this Report.

An analysis of the deliberations undertaken on the proposals originally tabled in the matrix is presented in Table 2.1 below.

Table 2.1: Analysis of the Entitlement Framework for Forcefully Evicted People on Kenya's Road Reserve

Category of Evictees	Loss	Proposed Corrective Action as per the Lenders Standards	Feedback from NLC	Feedback from KeNHA	Proposed Action
Informal land users	Land occupied	Land compensation is not foreseen under Lenders' standards. However promotion of security of tenure is desirable when considering remedial measures for these groups of affected population.	<ul style="list-style-type: none"> No compensation. Evictees were settled on the road reserve illegally 	<ul style="list-style-type: none"> No compensation for those residing on road reserve 	No Compensation is offered on the land occupied. Solutions promoting secure tenure for these evictees (and other PAPs) are expected to be considered under the project's RAP, in that they will endeavour, to the extent possible, to entail protection from exposure to repeat evictions in future.
Structure Owners	Business structure (kiosk, restaurant, hotel, workshop, rental property, etc.)	<ul style="list-style-type: none"> Compensation at replacement value for loss of business structure; Compensation at replacement value for loss of residential house ; Compensation at replacement value for loss of other structures associated to affected structure. 	The valuation report as prepared by the Registered Land and Asset valuer was adopted by NLC. Therefore compensation will be based on the methodology adopted by the Land and Asset valuer.	<ul style="list-style-type: none"> Compensation for structures would best be based on valuation using valuation principles based on the market value. The computation of such was drawn from the valuer's methodology as documented in the Valuers Report Adoption of 'full replacement cost' would be deemed as rewarding or endorsing an illegality as per the Kenyan Law 	Cash compensation based on the market value including a 15% disturbance allowance
	Residential Structure				
	Residential building cum business structure				
	Equipment, Material, Assets, Merchandise	Compensation at full replacement costs	<ul style="list-style-type: none"> Valuation methodologies and principles do not cover stocks/household goods as these are termed as "loose assets". As such they would therefore not be able to determine a methodology for determining the cash compensation for such losses as claimed by the evictees; It would be difficult to confirm that these assets were actually on site during the evictions as it is all based on what the evictees stated; Compensation of such items would also raise audit queries. 	<ul style="list-style-type: none"> In general, it would be very difficult to justify payments on these assets without any evidence or proof especially during audits; It would be difficult to authorise KeNHA's Finance department to make such payments due to lack of laws or regulations to back-it up. KeNHA would have to re-look at this issue after consultation with their legal officers; 	<ul style="list-style-type: none"> Cash compensation as follows; <ul style="list-style-type: none"> For those with documentation validated during verification, an equal value will be compensated For those lacking documentation, compensation will be based on the mean average of the documented enumerated losses of assets in the CAP
	Loss of income	<p>Monthly income payment for loss of business, rents, etc. from the day of forced eviction until full remedial compensation has been paid.</p> <p>This does not include the payment they will receive for being finally resettled (this aspect will be handle separate in the RAP)</p>	<ul style="list-style-type: none"> Not applicable in Kenya context as there is no law that considers compensation due to loss of income 	<ul style="list-style-type: none"> There was no evidence of income one was earning and it would not be possible to compensate based on the figures claimed by the evictees; Plausible records include income tax returns which can be verified under the law; Supports the inclusion of Kenya Revenue Authority (KRA) in this exercise to assist in the verification of the claims. 	<ul style="list-style-type: none"> Cash compensation will be based on a calculated average loss of income over a six month period <ol style="list-style-type: none"> Where income may be verified, compensation will amount on that equal value Where income may not be verified, compensation's calculation will be based on the mean average of the documented income losses in the CAP Where structure owners-cum-business operators compensated so far have also experienced loss of income, KeNHA will assess any difference between the compensation provided under the 15% disturbance allowance and the respective entitlement referring to the loss of income for the structure owner and accordingly rectify any gaps in this regard. In terms of longer-term livelihood restoration measures, evictees will be involved in the preparation of the livelihood restoration plan under the RAP and will be entitled to benefit from it. Once RAP compensations are paid in full and livelihood restoration measures are launched, and the clearance of the section is due, these business operators who have remained on-site will be given adequate notice (minimum 1 month) to vacate the land/premises
Structure	Moral and	Hardship allowance for moral and	It may be better to consider counselling	It may be wise to engage local Non-	<ul style="list-style-type: none"> Three sessions of group counselling to be

Category of Evictees	Loss	Proposed Corrective Action as per the Lenders Standards	Feedback from NLC	Feedback from KeNHA	Proposed Action
Owners	psychological damage due to forced eviction	psychological damage(Amount to be determined)	services since moral and psychological damage may be a challenge to put monetary value to it.	Governmental Organisations (NGOs) or CSOs to assist in training or counselling the evictees on use of compensation funds.	offered as follows; a. Before compensation b. During compensation c. After compensation
	Expenses which arose as direct consequence to the forced evictions incident, incl. loan servicing	Compensation of all expenses, which arose due to the forced eviction, (rent of a new house, administrative costs to replace papers lost due to forced eviction, any other costs resulting from the forced eviction, loan taken to re-establish business/home, transportation to meetings related to forced eviction, medical costs, legal counselling, etc.)	Not Applicable	Those with evidence especially on medical cost should be refunded.	Monthly instalment for six month period subject to verification of impact borne.
Tenant	Tenancy in affected building residential use	Compensate all cost related to moving plus transaction costs and if the rent is higher than before the difference to the previous rent for a determined time span.	Compensation for tenants is only considered for those with long-term leases as proof that relocation would have a direct impact on their income. In such cases, NLC computes loss of income and provides compensation to such tenants. However, in this case, the evictees are unlikely to have long terms leases or any proof of rental payments.	<ul style="list-style-type: none"> It would be difficult to offer cash compensation to tenants without proof of tenancy Categorize the tenants into two groups of those with proof of tenancy (i.e. long term lease) and those without proof of tenancy. As such, for the case of those with proof of tenancy, NLC would compute loss of income and provide compensation to such tenants, those without proof of tenancy, KeNHA and NLC would agree on how to mitigate the tenant. 	<ul style="list-style-type: none"> An intermediate livelihood plan of cash compensation and site retention for business operators, at their own risk, until RAP kicks in. Cash compensation will be based on a calculated average loss of income over a six month period <ul style="list-style-type: none"> Where income may be verified, compensation will amount on that equal value Where income may not be verified, compensation's calculation will be based on the mean average of the documented income losses in the CAP Where structure owners-cum-business operators compensated so far have also experienced loss of income, KeNHA will assess any difference between the compensation provided under the 15% disturbance allowance and the respective entitlement referring to the loss of income for the structure owner and accordingly rectify any gaps in this regard. In terms of longer-term livelihood restoration measures, evictees will be involved in the preparation of the livelihood restoration plan under the RAP and will be entitled to benefit from it. Once RAP compensations are paid in full and livelihood restoration measures are launched, and the clearance of the section is due, these business operators who have remained on-site will be given adequate notice (minimum 1 month) to vacate the land/premises.
	Tenancy in affected building residential use and business use				

Category of Evictees	Loss	Proposed Corrective Action as per the Lenders Standards	Feedback from NLC	Feedback from KeNHA	Proposed Action
			<p>as claimed by the evictees;</p> <ul style="list-style-type: none"> It would be difficult to confirm that these assets were actually on site during the evictions as it is all based on what the evictees stated; Compensation of such items would also raise audit queries. 	<p>up. As such KeNHA would have to re-look at this issue after consultation with their legal officers;</p>	<p>mean average of the documented enumerated losses of assets in the CAP</p>
	Loss of Income	<p>Monthly income payment for loss of business, from the day of forced eviction until full remedial compensation has been paid. For tenancy of businesses. This does not include the payment they will receive for being finally resettled (this aspect will be handled separate in the RAP).</p>	<p>No comment was made on this matter</p>	<ul style="list-style-type: none"> There was no evidence of income one was earning and it would not be possible to compensate based on the figures claimed by the evictees; Plausible records include income tax returns which can be verified under the law; Supports the inclusion of Kenya Revenue Authority (KRA) in this exercise to assist in the verification of the claims. 	<ul style="list-style-type: none"> Considering that the evictees were operating Cash compensation will be based on a calculated average loss of income over a six month period <ul style="list-style-type: none"> Where income may be verified, compensation will amount on that equal value Where income may not be verified, compensation's calculation will be based on the mean average of the documented income losses in the CAP Where structure owners-cum-business operators compensated so far have also experienced loss of income, KeNHA will assess any difference between the compensation provided under the 15% disturbance allowance and the respective entitlement referring to the loss of income for the structure owner and accordingly rectify any gaps in this regard. In terms of longer-term livelihood restoration measures, evictees will be involved in the preparation of the livelihood restoration plan under the RAP and will be entitled to benefit from it. Once RAP compensations are paid in full and livelihood restoration measures are launched, and the clearance of the section is due, these business operators who have remained on-site will be given adequate notice (minimum 1 month) to vacate the land/premises
	Moral and psychological damage due to forced eviction	<p>Provide a hardship allowance</p>	<p>It may be better to consider counselling services since moral and psychological damage may be a challenge to put monetary value to it.</p>	<p>It may be wise to engage local Non Governmental Organisations (NGOs) or CSOs to assist in training or counselling the evictees on use of compensation funds.</p>	<ul style="list-style-type: none"> Three sessions of group counselling to be offered as follows; <ul style="list-style-type: none"> Before compensation During compensation After compensation
	Expenses which arose as direct consequence to the forced evictions incident, incl. loan servicing	<p>Compensate all expenses, which arose due to the forced eviction, (administrational costs to replace papers lost due to forced eviction, any other costs resulting of the forced eviction, loan taken to re-establish business/home transportation to meetings related to forced eviction, medical costs, etc.)</p>	<p>It would therefore be difficult to set a compensation amount on expenses that arose due to demolitions.</p>	<p>Those with evidence especially on medical cost should be refunded.</p>	<p>Monthly instalment for six month period subject to verification of impact borne</p>
Employee	Loss of income due to loss of employment	<p>Monthly income until new work has been found or maximum until full remedial compensation has been paid.</p>	<p>The main challenge raised was the lack of precedent setting in compensation under evictions that would act as a guide. Considering how challenging it is for structure owners the challenges are higher for tenants and employees.</p>	<p>No cash compensation would be accorded to this category of evictees, but rather some form of mitigation measure such as avenues of employment opportunities during implementation of the road project and inclusion in the skills empowerment training opportunities in the project</p>	<ul style="list-style-type: none"> One month cash compensation in lieu of notice, based on established minimum wage as per the Kenyan Law

2.2 Promoting Livelihood Restoration

From the analysis of the entitlements provided in Table 2.1 above, the following action has been determined for promoting livelihood restoration.

2.2.1 Compensation and Site Retention

The evictees will be compensated and allowed to operate in the same site until the project's updated RAP is implemented. Those whose structures were demolished will be advised not to rebuild on the same space. Others currently operating in the area will continue doing so without any disruption. This action is deemed best since road reserve along the entire stretch has been occupied and there are plans to compensate the PAPs along the road.

KeNHA will therefore permit evictees to remain on the road reserve until the updated RAP is implemented, thereby enabling any livelihood restoration measures of the RAP to benefit persons whose livelihoods were affected by the May 2015 evictions.

2.3 Relevant Stakeholders for CAP Implementation

The following stakeholders were identified during the audit and can be of relevance during CAP implementation;

Table 2.2: List of Relevant Agencies for CAP Implementation

S/N	Organization	Relevant Department	Role
1	KeNHA	Design & Construction Planning and Environment	Implementing Agency
2	National Land Commission	Valuation and Taxation	Valuation and compensation of impacts
3	EIB/AfDB/KfW	Project teams	Project Financiers
4	Ministry of Interior	DCC Jomvu Chief Miritini Location, Assistant Chief JomvuKuu Sub location	Verification and Dispute resolution
5	Committee of Evictees	Committee of Evictees	Reception of grievances/disputes
6	Local CSOs	HakiYetu, Rapid Response Team ¹	Monitor implementation

¹ Haki Yetu and Rapid Response Team (RRT) are the local CSOs identified during the Forced Eviction Audit that have been working closely with the evictees. RRT is Amnesty International's grassroots partner in Mombasa. The evictees had in the past selected Haki Yetu to act as an independent observer to the Evictions Audit and the CAP development process.

3 CORRECTIVE ACTION PLAN

3.1 Introduction

3.1.1 General Information

This CAP is established to provide a roadmap for ensuring that the livelihoods of evictees return to ex-ante levels until the project RAP's implementation kicks in. This CAP is equally expected to outline a timeframe for implementation of the proposed corrective action at the earliest possible time.

This CAP is aligned with the provisions of the project's RAP, thereby establishing a seamless integration between this Plan and the updated RAP currently under preparation.

3.1.2 Review of Available RAP Report

The *Resettlement Action Plan: Preliminary and Detailing Engineering for the Dualling of Mombasa-Mariakani (A109) October 2014*; recognizes informal traders as among the Project Affected Persons (PAPs). As such, the entitlement matrix proposed therein identifies loss of asset, income and livelihoods as forms of impact affecting the evictees. In this regard, the entitlement matrix recommends cash compensation, indirect beneficial mitigation measures as well as additional assistance to these evictees.

3.1.3 Review and Update of the RAP and its Implications on the CAP

KeNHA has embarked upon updating the existing RAP document to include effective and sustainable livelihood restoration measures for affected street hawkers and informal stand keepers.

Eligible evictees within this CAP will also fall under PAPs identified in the Project RAP. However, the timing of the two undertakings is distinct, in that production and implementation of this Plan precedes those of the RAP.

As such, this CAP's entitlement matrix drew on discussions and feedback with key stakeholders, specifically the Lenders' representatives and KeNHA as well as National Land Commission when establishing actions in alignment with the underlying principles of the updated RAP. KeNHA has committed to pursue continuity between the two documents and the Terms of Reference of the respective assignments (CAP elaboration and RAP revision) reflect as much.

This CAP has also put emphasis on the future engagement of the eligible evictees to provide timely access to information during the CAP implementation, as well as on proposals to promote participatory grievance management from grassroots level and meaningful consultation.

3.2 Corrective Actions

Based on the audit findings and discussions on the corrective actions for the evictions, the following are the measures adopted under this CAP.

3.2.1 Informal Land Users

Land occupied by PAP's prior to the demolitions is a road reserve owned by KeNHA and hence claim for loss of land may be deemed as illegal under national law.

Corrective Action

No compensation on those who claim to own sections of the land where structures were constructed is therefore foreseen in this Plan. However, as the promotion of security of tenure is desirable under Lenders' standards in cases of groups of affected informal land users, it is expected that solutions promoting secure tenure for these evictees (and other PAPs) will be explored under the project's RAP, that will endeavour, to the extent possible, to entail protection from exposure to repeat evictions in future.

3.2.2 Loss of Structures

All the 117 structures have been valued and their entitlements computed. The Corrective Action as per the Lenders guidelines proposes compensation at 'full replacement cost' for loss of business structure, residential house, including other structures associated with affected structure. The valuation report developed by the Land and Asset Valuer was based on the market value principles. Kenyan Law recognizes that a 'just compensation' must be granted to the owner for the loss of structures.

Corrective Action

- Cash compensation based on market value including 15% disturbance allowance.

Table 3.1 Total Compensation for loss of structures

Payments for	Total Estimate of loss	Amount already paid	Balance to be paid
Loss of structures	42,725,530	32,956,995	9,768,535

Refer to *Schedule I* of the full compensation matrix for the case by case computations (See Appendix IV).

3.2.3 Loss of Equipment, Material, Assets, Merchandise

All stocks, equipment, assets and household goods destroyed during the evictions are deemed as "loose assets" in this Plan.

Corrective Action

- For those able to furnish evidence of those assets' value, subsequently validated during verification, an equal value will be compensated
- For those lacking such evidence, compensation will be based in good faith and on the mean average of the documented enumerated losses of assets in the CAP.

Table 3.2 Total Compensation for Loss of Assets

Payments for	Total Estimate of loss	Amount already paid	Balance to be paid
Loss of assets	3,224,325	NIL	3,224,3259

Refer to *Schedule I* of the full compensation matrix for the case by case computations (See Appendix IV).

3.2.4 Loss of Income

This Plan endorses the principle of a monetary compensation equivalent to the loss of income from business, rents, etc. for six (6) full months. This payment will complement any livelihood restoration measures evictees will benefit from under the updated RAP.

Corrective Action

- Cash compensation based on a calculated average loss of income over a six month period;
 - Where income may be verified, compensation will amount on that equal value
 - Where income may not be verified, compensation's calculation will be based on the mean average of the documented income losses in the CAP
 - Where structure owners-cum-business operators compensated so far have also experienced loss of income, KeNHA will assess any difference between the compensation provided under the 15% disturbance allowance and the respective entitlement referring to the loss of income for the structure owner and accordingly rectify any gaps in this regard.
- In terms of longer-term livelihood restoration measures, evictees will be included in the preparation of the livelihood restoration measures under the RAP and will, in principle, be entitled to benefit from it (See Appendix 9).
- Once eligible RAP compensations are paid in full and livelihood restoration measures are launched, and the clearance of the section is due, these business operators who have remained on-site will be given adequate notice (minimum 1 month) to vacate the land/premises

Table 3.3 Total Compensation for loss of Income

Payments for	Total Estimate of loss	Amount already paid	Balance to be paid
Loss of income/business	16,537,788	NIL	16,537,788

Refer to *Schedule I* of the full compensation matrix for the case by case computations (See Appendix IV).

3.2.5 Moral and psychological damage

This Plan supports the principle of remedying moral and psychological damage..

Corrective Action

- Three counselling sessions to be offered as follows; One before, another during compensation and last one after compensation.

3.2.6 Tenants on Loss of Rented Premises

This plan recommends compensation for loss of rent due to abrupt relocation. .

Corrective Action

- Cash compensation of two months' rent is endorsed by this Plan therein allowing for the abrupt relocation.

Table 3.4 Total Compensation for loss of Rent

Payments for	Total Estimate of loss	Amount already paid	Balance to be paid
--------------	------------------------	---------------------	--------------------

Loss of rent	1,249,800	NIL	1,249,800
--------------	-----------	-----	-----------

Refer to *Schedule I* of the full compensation matrix for the case by case computations (See Appendix IV).

3.2.7 Employees

The nature of businesses carried along the road was predominantly falling in the informal sector and, as such, mostly casual. There was no proof of evidence of employment record and it was up to the employer to declare their employees, including those who had since been laid off as a direct result of the impacts of evictions.

To confirm the individual employees to be compensated as per the CAP Entitlement Matrix, employers were required to provide their employees' official names and valid National Identification (ID) Numbers.

The employers were only able to provide information for ninety three (93) employees. Possible reasons for this include:

- Some of the employees declared during the Audit have since left the site hence their employers were not able to get this information;
- Some of these employees were below eighteen years of age, which means they were underage when they were employed.

Notwithstanding the lack of an in-country precedent for compensation awarded under this category of impact, KeNHA is furthermore unable to write cheques for the ninety individuals whose details are not available.

The remaining ninety employees were therefore not included in the list of persons to receive compensation under the CAP. Providing they fulfil the national minimum age employment criteria by the time works start on the project and without discrimination to equality of opportunity for other interested parties outside this specific group or impediments to the skillsets needed by contractor(s), they nevertheless stand to be considered as a matter of priority for avenues of employment opportunities to emerge during the implementation of the project. Inclusion in the skills empowerment training opportunities entailed in the project presents with further opportunities..

Corrective Action

- One month cash compensation in lieu of notice, based on established minimum wage as per the Kenyan Law.

Table 3.5 Total Compensation for Employees

Payments for	Total Estimate of loss	Amount already paid	Balance to be paid
Employees	930,000	NIL	930,000

Refer to *Schedule I* of the full compensation matrix for the case by case computations (See Appendix IV).

3.3 Verification Process and way forward

KeNHA has already made payment to 83 structure owners who were found to be consistent as outlined in the audit report. The valuation methodology was based on the market value with an additional 15% as disturbance allowance factored in the compensation value. However, there are a number of items/ losses that were not included in the first round of valuation undertaken. Additional payments to address this gap have been factored and they will be made in the next phase of payments.

Table 3.1 below presents items that are considered as already compensated (**Marked ✓**) and those that should be included in the second phase for compensation (**marked as ✕**);

Table 3.6: Compensation yet to be paid

Category of Evictees	Loss	Compensation made
Structure Owners	Loss of structures	✓
	Equipment, Material, Assets, Merchandise	✕
	Loss of Income	✕
Tenant	Loss of Rent	✕
	Equipment, Material, Assets, Merchandise	✕
	Loss of income	✕
Employee	Loss of income due to loss of employment	✕

3.4 Entitlement Matrix

A summary of the entitlements endorsed under this Plan are presented in Table 3.7 below:

Table 3.7: Entitlement Matrix

Loss	Category of Evictees	Entitlement
Land	Informal and occupiers/users	<ul style="list-style-type: none"> No compensation
Business structure (kiosk, eateries, workshop, rental property, etc.); Residential Structure Residential building cum business structure	Structure Owners	<ul style="list-style-type: none"> Cash compensation based on the market value including a 15% disturbance allowance
	Tenants suffering abruptly disrupted tenancy	<ul style="list-style-type: none"> Cash compensation of two month's rent
Equipment, Material, Assets, Merchandise	Asset owners	<ul style="list-style-type: none"> Cash compensation as follows; <ul style="list-style-type: none"> For those with documentation validated during verification, an equal value will be compensated For those lacking documentation, compensation will be based on the mean average of the documented enumerated losses of assets in the CAP
Loss of Income	Business operators	<ul style="list-style-type: none"> An intermediate livelihood plan of cash compensation and site retention for business operators, at their own risk, until RAP kicks in. Cash compensation will be based on a calculated average loss of income over a six month period <ul style="list-style-type: none"> Where income may be verified, compensation will amount on that equal value Where income may not be verified, compensation's calculation will be based on the mean average of the documented income losses in the CAP Where structure owners-cum-business operators compensated so far have also experienced loss of income, KeNHA will assess any difference between the compensation provided under the 15% disturbance allowance and the respective entitlement referring to the loss of income for the structure owner and accordingly rectify any gaps in this regard. In terms of longer-term livelihood restoration measures, evictees will be involved in

Loss	Category of Evictees	Entitlement
		<p>the preparation of the livelihood restoration plan under the RAP and will be entitled to benefit from it.</p> <ul style="list-style-type: none"> • Once RAP compensations are paid in full and livelihood restoration measures are launched, and the clearance of the section is due, these business operators who have remained on-site will be given adequate notice (minimum 1 month) to vacate the land/premises.
	Landlords	<ul style="list-style-type: none"> • Cash compensation will be based on a calculated average loss of income over a six month period <ul style="list-style-type: none"> ○ Where income may be verified, compensation will amount on that equal value ○ Where income may not be verified, compensation's calculation will be based on the mean average of the documented income losses in the CAP ○ Where structure owners compensated so far have also experienced loss of income, KeNHA will assess any difference between the compensation provided under the 15% disturbance allowance and the respective entitlement referring to the loss of income for the structure owner and accordingly rectify any gaps in this regard.
	Employees	<ul style="list-style-type: none"> • One month cash compensation in lieu of notice, based on the established minimum wage
	All evictees	<ul style="list-style-type: none"> • Training on financial management: a one-off, full-day training will be arranged by KeNHA for all evictees
Hardship and moral and psychological damage due to forced eviction	All evictees	<ul style="list-style-type: none"> • Three sessions of group counselling to be offered as follows; <ul style="list-style-type: none"> ○ Before compensation ○ During compensation ○ After compensation
Expenses which arose as direct consequence to the forced evictions incident, incl. Loan servicing	All evictees	<ul style="list-style-type: none"> • Monthly instalment for six month period subject to verification of impact borne

3.5 Institutional Arrangements for CAP Implementation & Stakeholder Consultation

KeNHA will be responsible for implementing the CAP, in conjunction with other stakeholders such as the National Lands Commission (NLC) and the Deputy County Commissioner Jomvu Sub County. Relevant institutional arrangements were established to this end during stakeholder consultations. Coordination between the different parties is necessary for the effective implementation of this CAP.

This section outlines the institutional organizations and their responsibilities in the implementation of the CAP.

3.5.1 CAP Steering Committee (CSC)

The steering committee will comprise the following members from KeNHA:

- Project Coordinator-Chairperson;
- Project Sociologist;
- Project Land surveyor;
- Project finance Manager.

This committee will work closely with the National Lands Commission for advice during CAP implementation process.

The roles and responsibilities of the steering committee will include, but not limited to:

- Overall implementation of this CAP as per its schedule and facilitating inter-departmental co-operation within KeNHA and with external organizations;
- Effecting necessary policy, administrative and financial decisions and actions, necessary for the successful implementation of the CAP;
- Facilitation of timely release of necessary funds to the CAP implementation committee for implementation of the compensation program, as per the approved implementation schedule;
- Delegating responsibility and powers to CAP implementation committee, KeNHA staff proposed to carry out implementation/any appointed representative from KeNHA, as required, for smooth implementation of this CAP;

3.5.2 CAP Implementation Committee (CIC)

- Project Sociologist - Chair
- Project Surveyor
- Community Liaison Officer
- Project Land Valuer
- Finance Officer
- Legal officer

The tasks of this committee shall be as follows:

- Administration of payment of cash compensations to evictees;
- Conduct regular meetings with evictees and other stakeholders to assess and report on the progress of the implementation exercise;
- Management of impediments to the implementation of the CAP;
- Overall management of the implementation and monitoring of the CAP;
- Ensuring timely and inclusive disclosure of information to all evictees over their entitlements;

Preparation of weekly internal monitoring progress reports for the CAP Steering Committee (CSC).

3.5.3 Community Liaison Office (CLO)

Consultation and participation is a two way process where the executing agencies, and affected persons discuss and share their concerns in a project process. Standard 10 of the EIB Environmental and Social Standards on stakeholder engagement requires establishment and maintenance of a constructive dialogue between the promoter, the affected communities as well as other interested parties throughout the project life cycle.

During the development of this CAP, stakeholder engagement principles were upheld and this should be maintained throughout CAP implementation. Local civil society organisations were also involved in the process and this should also be maintained to ensure compliance with EIB and AfDB stakeholder engagement requirements.

The above can be achieved through establishment of a Community Liaison Officer who will provide the linkage between the CIC (and by extension KeNHA) and the evictees. The CLO will be instrumental in stakeholder's engagement in disclosure process, in an appropriate and effective manner throughout the project lifecycle.

There will be a CLO stationed at the Deputy County Commissioner's (DCC's) office during the entire period of the CAP's implementation.

Duties of the CLO will include but not limited to;

- The CLO will undertake community engagement activities as well as coordination of grievance redress linked to the CAP.
- He/she will provide liaison between CIC and the Grievance Management Committee (GMC) and Civil Society Organisations (CSO) engaged/interested in the project
- Manage arising community matters
- Liaise with the DCC to ensure that grievances are tracked, reported and feedback given accordingly.

3.5.4 General Recommendations on the Engagement Program

The following recommendations need to be observed, for a successful implementation of CAP;

- Access to information by all stakeholders: Information must be relayed to stakeholders to enable them make an informed decision towards proper implementation of this CAP. Information regarding compensation package, any decision arrived at higher levels, that are relevant to CAP implementation should be relayed to the final beneficiaries (evictees). Any delay may cause unnecessary gap that can be filled with rumours hence affecting the general progress.
- Access to Consultation: Consultation between evictees, KeNHA and NLC should be encouraged. Information dissemination meetings should be organized whenever there is a need to inform the public about the progress. This will enable stakeholders get prompt updates on the progress of the CAP.

3.6 CAP Grievance Management Mechanism

3.6.1 General Information

A grievance is a perceived or actual concern or problem raised by an individual or group that may give ground to a complaint. KeNHA will work proactively to prevent and resolve grievances through developing a channel where all queries are responded to within the earliest possible timeframe. Such grievance management mechanism should be effectively facilitated to enable it undertake its mandate.

3.6.2 Objectives of the CAP Grievance Management Mechanism

The objectives of the CAP grievance management mechanism are to:

- Provide evictees and any other organisation with a clear process for raising grievances through a non-judicial channel;
- Allow evictees or any person/organization the opportunity to raise comments/concerns anonymously/in secret through a well-established and safe channel;
- Structure and manage the handling of comments, responses and grievances, and allow monitoring of effectiveness of the mechanism; and
- Ensure that comments, responses and grievances are handled in a fair and transparent manner.

(See Appendix 3) for the Terms of Reference for the Proposed Grievance Resolution Management Committee

3.6.3 Expected Grievances

The grievances expected to arise during the CAP's implementation may include but not limited to:

- Disputes between separated spouses on who should receive compensation;
- Disputes among co-owners on sharing of the compensation package;
- Emerging disputes over ownership of the affected structure. Similar cases were identified and recorded during the audit as presented in the Audit Report;
- Emerging cases of 'new' evictees claiming compensation. These cases may emerge from persons claiming they were not aware of all the previous discussions and surveys since the evictions;
- Disputes arising from the compensation payment process or the compensation packages offered.

3.6.4 Proposed Grievance Management Committee

A sixteen (16) member grievance management committee will be formed. The committee will comprise the following members:

- Deputy County Commissioner (DCC), Jomvu –Chairperson of GMC;
- KeNHA's Community Liaison Officer (CLO) – Secretary
- Twelve community representatives: Four (4 no) representatives from each of the three villages (KwaJ omvu, Madafuni, Narcol and Ngamani Voi). The representatives should be from each of the following groups: structure owners, tenants (business and household), and employees). Gender balance must be observed in the selection of these members;
- Two religious leaders (Islamic and Christian representatives).

The committee will have access to advisors and relevant professionals from the following government agencies:

- National Lands Commission (NLC);
- Gender and Social Services;
- Partners among the civil society active in the project area, preferably HakiYetu;

In the event of grievances, the presence of the representatives of the affected village will be required. For the sake of transparency, other community representatives in the committee will be invited to participate. In addition, the only advisors present at any one hearing are those that are required for a particular grievance under consideration. As such, it is not expected that all the community representatives and advisors mentioned above will need to be present for every single grievance hearing.

Logistical facilitation of these advisors to attend meetings is covered under this CAP.

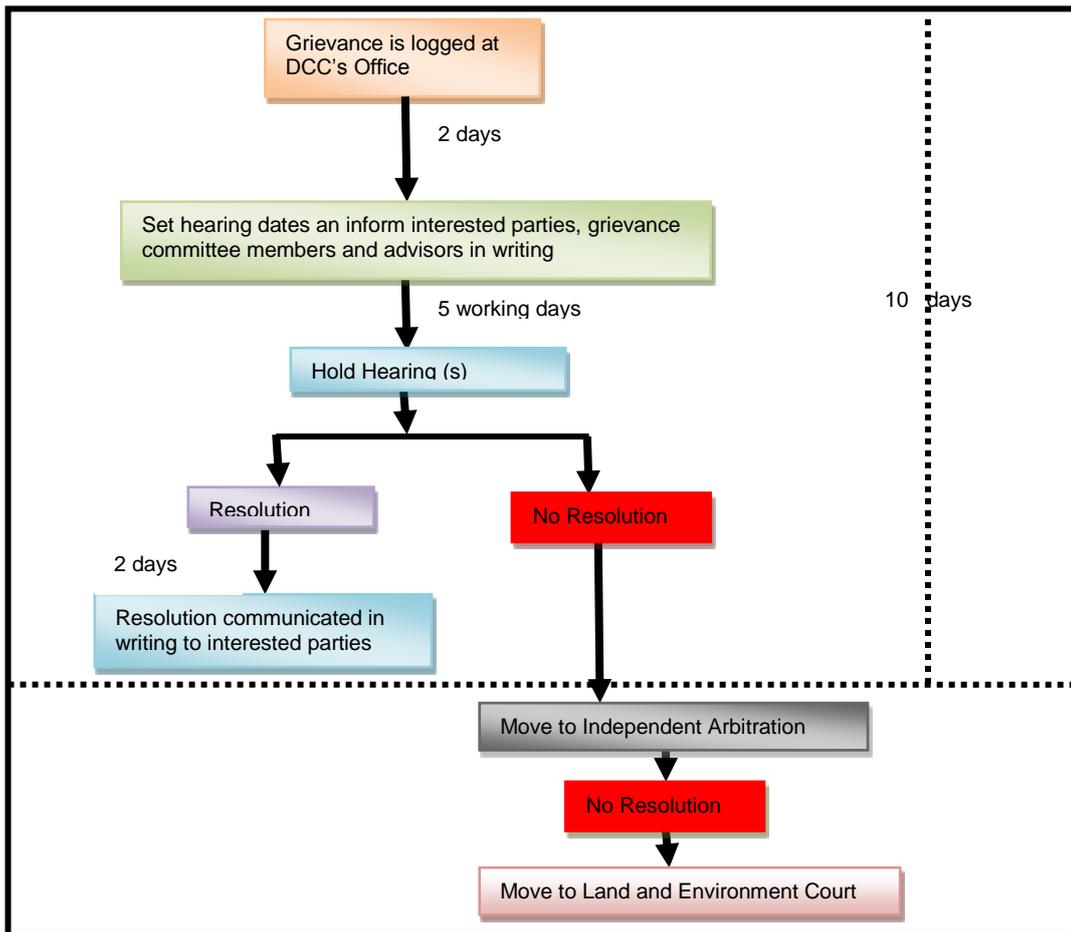
3.6.5 Procedure for Grievance Handling under the CAP

Grievance will be handled in the following steps:

1. Complaints or grievance can be made through the Chief's office at Miritini, or Assistant Chief's office at Jomvu kuu or at the Deputy County Commissioner (DCC) Jomvu Office. This approach is adopted so that only genuine complaints are registered. Complainants may register their grievance either as an individual or as a group;
2. Suggestion boxes will be placed at these offices where an anonymous grievance may be submitted;
3. Complainants are registered as grievances in the Grievance and Comments Logging Form (and are labelled before they are forwarded to the DCC who is the Grievance Mechanism Committee (GMC) chair;
4. DCC then invites all the GMC members within two days to inform them about the registered grievance;
5. All relevant parties are informed of the date of the hearing through a written notice. The notice should have a minimum of five (5 No) working days between the delivery of the notice and the actual hearing;
6. A copy of the complaint should be delivered to the CAP Implementation Committee immediately it is received by the DCC's Office for their information;
7. The Grievance Committee then holds the hearing as per the notice;
8. The Grievance Committee will communicate its ruling to the affected persons and the CIC within two (2 No) working days;
9. If no resolution is met or the aggrieved is not satisfied with the decision, the case may be moved to independent arbitration as advised by the National Lands Commission. In following with the Kenyan Eviction Guidelines, this may require inputs by the Kenya National Human Rights Commission;
10. If no resolution is met after independent arbitration, the case may be moved to the Land and Environment Court.

Figure 3-1 below shows a summary of the proposed mechanism.

Figure 3-1 Flow chart of Grievance Redress Mechanism



3.7 CAP Implementation Schedule

For a smooth implementation process, the following activities will need to be undertaken as specified in Figure 3.2:

- Disclosure of the Audit and CAP Reports in Mombasa to PAPs;
- Launch of KeNHA procurement for close-down audit service provider
- Financial Training;
- CAP Implementation;
- Counselling
- Grievance management and resolution of cases;
- Close-down audit.

An outline of a proposed implementation schedule is as presented in Figure 3-2 below.

Figure 3-2: CAP Implementation Schedule

Activities	PERIOD																							
	Aug-16				Sep-16				Oct-16				Nov-16				Dec-16				Jan-17			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Disclosure of the Audit and CAP Reports in Mombasa to PAPs;				↓																				
Launch of KeNHA procurement for close-down audit service provider				█	█	█	█	█	█	█	█	█	█	█	█	█								
Financial Training;																								
CAP Implementation;								█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█
Counselling																								
Grievance management and resolution of cases;								←	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█
Close-down audit.																						█	█	█

3.8 Estimated Costs for CAP Implementation

Table 3.8 to 3.10 below shows a summary of entitlements payments already made, entitlement payments to be made and the estimated additional costs for CAP Implementation.

Table 3.8 Summary of Payment Made

No	Item	Amount (in Kshs)
I	Payments to 83 structure owners	32,956,995

Table 3.9 Summary of Payments to be made

No	Item	Estimated Amount (in Kshs)	Remarks
I	Payments to 33 additional structure owners	11,126,453	Refer to <i>Schedule I</i> of the full compensation matrix (See Appendix IV)
II	Payments to Tenants	13,743,007	
III	Payments to Employees	930,000	
IV	Additional Amount for the 83 structure owners initially paid	5,319,636	Refer to <i>Schedule II</i> of the full compensation matrix (See Appendix IV)
V	Cheques that were not paid due to inconsistencies	828,250	Refer to <i>Schedule III</i> of the full compensation matrix (See Appendix IV)
Total payments to be made to PAP's		31,947,347	

Table 3.10 Estimated Additional Cost for CAP Implementation

No	Item	Estimated Amount (in Kshs)
I	Total payments to be made to PAP's	31,947,347
VII	Counselling and training services	300,000
VIII	Facilitation of GRM committees	1,000,000
IX	CAP Exit Audit	600,000
Additional Total Cost for CAP Implementation		33,847,346

4 MONITORING AND EVALUATION OF CAP

4.1 Background

Monitoring and Evaluation (M&E) are practical tools which should form an essential part of good management practice. Monitoring is an internal project activity designed to provide constant feedback on the progress of a project, the problems it is facing, and the efficiency with which it is being implemented. Evaluation, on the other hand, is mainly used to measure project outcome and help in the selection and design of future similar projects.

Monitoring and Evaluation are designed to provide project management, with timely and operationally useful information on how efficiently each stage of the project is operating, the degree to which intended impacts are being achieved and the lessons for future projects.

4.2 Monitoring the CAP Implementation Inputs

This will be done through performance monitoring which aims at assessing the extent to which CAP inputs are being allocated in accordance with the approved budget, timetable and stated objectives. It will also gauge whether the intended outputs are being produced in a timely and cost-effective manner.

In the monitoring of the CAP implementation inputs KeNHA will employ the use of quantitative surveys and direct observation to collect data. Results of the surveys will be compared with the set objectives to check if the implementation team is achieving its targets.

4.3 Monitoring the CAP Implementation Process

4.3.1 Responsibility

KeNHA's CIC will be in charge of M&E organizational arrangements, while the identified CSO's will act as independent observers aiming to promote transparency in the CAP's implementation. The purpose of Process Monitoring is to provide feedback on the efficiency and effectiveness of the CAP delivery system. Areas of particular importance are:

- The analysis of how engagement activities are perceived by the target population;
 - The effectiveness of the communication and organizational linkages between the CAP implementers and the target stakeholders;
 - The costs incurred during CAP implementation vis a vis the expected and realised outputs of the CAP process.
-

4.4 Methods of Monitoring the Efficiency and Effectiveness of the CAP Implementation Process

4.4.1 Monitoring the overall efficiency and effectiveness of the CAP's Implementation

Monitoring by KeNHA will include a descriptive analysis of factors such as the following:

- Achievement of the overall CAP's objectives which is to remedy all harm caused by the forced evictions incident of May 2015 in compliance to Kenyan Law and Lenders'

standards. Thereby, this CAP is expected to restore livelihoods to *ex ante* levels until the project's RAP implementation kicks in; ;

- Satisfaction of participating stakeholders with the overall management and delivery of the CAP program;
- Effectiveness of communication actions and problem-solving mechanisms.

4.4.2 Developing summary indicators

The following will be key indicators for use by KeNHA in the analysis:

- Number of evictees whose lives have been restored to *ex ante* levels;
- Total costs incurred as compared with estimated budgeted amounts;
- Stakeholders', including evictees', perceptions on CAP implementation against the expected achievements;
- Level of community mobilization undertaken compared with target set;
- Time taken to resolve grievances i.e Dispute handling procedures;
- Number of grievances that remain unresolved.

The above indicators will be reviewed separately and then combined to produce an overall index of project efficiency.

4.4.3 Indicators of the efficiency of individual CAP activities

Special criteria can be applied to each component but it is also useful to develop a set of indicators which can be used for comparative purposes, as presented below:

- Speed of CAP implementation in comparison with the planned schedule of activities;
- Benefits of psychosocial interventions effected.

4.5 Tools for Participatory Monitoring of CAP

4.5.1 Focus Group Discussions

Participants of an FGD drawn from various groups can be a good source of data for the M&E process. The participants can be sensitised on the goals and objectives of CAP then asked to discuss specific issues with regard to the efficacy and effectiveness of the CAP. An active FGD can also be used to identify bottlenecks to the CAP implementation process from their perspective hence assist in identification of root causes of inefficiencies or challenges being faced during CAP implementation.

4.5.2 The engagement of the local CSOs may prove valuable in enhancing the participatory character of monitoring.

4.6 Reporting

4.6.1 Reports

Monthly reports will be prepared and presented to the Manager, Design and Construction Department. All these reports must be transmitted to the Director General for approvals.

The report should include (but not limited to):

- Progress on activities in CAP implementation conducted during the period;
- Key findings/concerns emerging from meetings with evictees and stakeholders;
- Indication of grievances submitted during said period, area of complaint and handling by the GRM established for the project, if any;
- Plans for the next reporting period.

4.6.2 Final Reports

A final report accounting for the CAP's results will be elaborated. This report will provide detailed evidence of all payments made and how the CAP met its stated objectives (along the indicators outlined under 4.4 in this Plan). It will furthermore entail a summary of grievances submitted and will discuss their resolution statistics. The report will also include a section on the performance and efficacy of the CAP vis a vis budgetary and resources allocated. It will, finally, highlight lessons learnt in case of future similar incidents.