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# EXECUTIVE SUMMARY

**“We are not opposed to the road construction and we like development, all we are asking for is compensation, adequate notice and a dignified way of evictions”**

Violet Nabwangu, a resident of Jomvu informal settlement.

On the night of 17 May 2015 scores of families living in Jomvu, an informal settlement along the A 109 highway in Mombasa, Kenya, awoke to the sound of a bulldozer and the arrival of armed police. Even as they desperately tried to salvage their belongings, the bulldozer demolished their homes and small businesses. It was a terrifying ordeal, which left many people homeless.

The demolitions were carried out as part of preparations for a highway expansion project. The A109 connects Mombasa to Uganda, Rwanda, Burundi and the Democratic Republic of Congo, and is critical for regional trade. The highway expansion project involves widening part of the road to ease traffic congestion. It has been financed by the African Development Bank, the German Development Bank, the European Investment Bank, the EU-Africa Infrastructure Trust Fund, and the Government of Kenya.

International human rights standards are unequivocal: forced evictions are illegal; they are never justified, even where people do not have a legally recognized right to the land or house that they occupy. Forced evictions constitute a grave violation of the right to housing and they can lead to violations of a number of other human rights such as the rights to life, food, water, health, education and work. Forced evictions also undermine the goals of sustainable development, which, in Kenya, are reflected in the country's Vision 2030 development plan.

Hundreds more people are at risk of forced evictions in Jomvu and the nearby settlement of Bangladesh, where the Kenyan authorities have painted large yellow crosses on homes and other structures scheduled for demolition. People have been issued with eviction notices related to the highway expansion, but have not received information on when they will be evicted or if they will be offered any option to resettle.

This report exposes how the highway project, as the Kenya National Highways Authority

(KENHA) is currently implementing it, has ignored well-established safeguards, which would prevent forced evictions taking place. It also reveals how the international financial institutions involved have failed to carry out adequate human rights due diligence to ensure they the projects they fund do not cause or contribute to human rights violations.

The report is based on research conducted by Amnesty International in Mombasa in June, July and August 2015. Researchers visited two informal settlements and interviewed 110 women and men affected by the highway expansion project. In addition they reviewed a range of project documents. Researchers also met with representatives of several different government ministries and departments involved in the highway expansion project, as well as representatives of the African Development Bank and the European Investment Bank.

## CONTEXT

In 2008 Kenya launched Vision 2030, an ambitious blueprint for long-term national development that aims to transform Kenya into a middle-income country by 2030. The national development plan prioritises investment in infrastructure, including the creation of a network of roads, railways, ports, airports, waterways and telecommunications. Mombasa County, with Mombasa city as its capital, has an important place in Kenya's economic development because the port of Mombasa is a gateway for trade into and out of East Africa. Therefore Mombasa County is host to several of the planned projects under Vision 2030.

Mombasa County is one of the most densely populated counties in Kenya. Unresolved historical land ownership issues have meant that large tracts of land are occupied by people who do not have a legally recognised right to the land. This phenomenon, together with rapid urbanisation and a lack of adequate planning by the authorities, has contributed to the growth of informal settlements. Research carried out by county government and Pamoja Trust, a national NGO, documented 147 informal settlements in Mombasa County, estimated to be home to 65% of the county's population.

Two of these informal settlements are Jomvu and Bangladesh. Parts of both these settlements are on land alongside the A 109 in the area where the highway will be expanded.

## MOMBASA-MARIAKANI ROAD DUALLING PROJECT

The highway expansion is technically called the Mombasa-Mariakani Road Dualling Project (MMRDP). It envisages the expansion of a 41.7 kilometres stretch of the A 109 highway (also known as the Mombasa-Mariakani highway). The project is funded by the Government of Kenya, the Africa Development Bank, the German development bank, the European Investment Bank and the EU-Africa Infrastructure Trust Fund. The project involves expanding the width of the existing highway by 60 metres and will impact homes, businesses and farms along the 41.7 kilometre stretch. The project will be implemented over five years – from 2015 to 2020.

## FORCED EVICTIONS IN JOMVU

In January 2015, scores of residents and business owners in Jomvu informal settlement received 30-day eviction notices from the Kenya National Highways Authority (KENHA) informing them that their homes and businesses occupied public land reserved for road construction. Their structures were also marked for demolition with yellow crosses. People in Jomvu told Amnesty International that they had not been consulted about the proposed

evictions and, beyond the notices, had received no information on the eviction process, resettlement or compensation. On 17 May 2015, between 11pm and midnight, residents of Jomvu were woken from their sleep by the arrival of a bulldozer accompanied by scores of armed police. According to eyewitnesses, the bulldozer systematically demolished shops and homes that bore yellow crosses. Those operating the bulldozer and the police did not inform Jomvu residents about the purpose of the demolition or on whose orders they were acting. The demolition stopped at around 4am, although not all of the marked structures had been demolished. While leaving the area and declaring their intention to return the following day, those carrying out the demolitions advised people whose houses or businesses had been marked to demolish their structures by themselves. Many people started tearing down their homes and shops soon after the bulldozer left the area, in order to try and save valuable building material for reuse.

The demolitions at Jomvu constitute forced evictions and a violation of international human rights law. They rendered more than a hundred people homeless and destroyed livelihoods. People were not provided with compensation. Moreover, by carrying out the demolitions at night, the authorities not only increased the risk of serious injury but caused considerable distress to the community. International law prohibits evictions at night-time.

#### **FEAR AND UNCERTAINTY IN BANGLADESH SETTLEMENT**

The forced eviction in Jomvu also created a climate of fear and uncertainty among people in the adjacent Bangladesh informal settlement. Like their neighbours in Jomvu, scores of households in Bangladesh settlement had been issued eviction notices by KENHA and the authorities had marked their structures with yellow crosses. While some of the affected people had heard from the village elders and the Assistant Area Chief that they would be compensated for the loss of their home or business, none of the people Amnesty International interviewed had any information on the process of eviction or the amount of compensation they would receive. People told Amnesty International that after the forced evictions in Jomvu, they expected the bulldozer to arrive any day and for them to be made homeless without warning. They spoke of their extreme anxiety about the impending evictions and the impact it would have on their lives, their livelihoods and their ability to provide for their children. Many said that if their homes and businesses were to be destroyed like those of their neighbours in Jomvu, they wouldn't know where to take their families or how to start their lives again.

#### **KENHA'S ROLE**

KENHA was set up under the Kenya Roads Act 2007 with an explicit regulatory function. As a governmental agency it has an obligation under international human rights law not to carry out forced evictions.

Despite being the authority that issued the eviction notices to people in the Jomvu community, KENHA initially denied having any role in the forced evictions. On 13 August 2015, KENHA organized a 'public sensitization meeting' that was attended by residents of Jomvu and Bangladesh informal settlements. At this meeting, KENHA's representatives, for the first time, publicly admitted that they had carried out the demolitions of homes and businesses in Jomvu. On 28 September, KENHA responded to letters sent by Amnesty International in July and September, asking the authority about their role in the forced evictions. KENHA's letter said that the demolitions were meant to remove encroachments

from another area but were “accidentally extended” to Jomvu.

#### FAILURE TO PROVIDE EFFECTIVE AND TIMELY REMEDIES

KENHA, for the first time, indicated that they would consider providing some form of remedy in the ‘public sensitization meeting’ on 13 August. KENHA told the forcibly evicted people to form a committee, calculate their losses and submit these to KENHA for consideration. However, at this meeting, KENHA did not provide any further explanation about how they would process the submitted material and whether and when affected people could expect to be compensated.

In subsequent meetings and communications with Amnesty International in September, KENHA and the project’s funders committed to putting in place a process that would enumerate all those forcibly evicted and develop a corrective resettlement action plan, as a matter of priority. KENHA also committed to refraining from forced evictions anywhere in the project area. KENHA and the project’s funders must ensure that they fulfil these commitments in a manner that respects the human rights of project-affected people.

#### LACK OF GENUINE CONSULTATION

Although the Environmental and Social Impact Assessment (ESIA) and Resettlement Action Plan (RAP) commissioned by KENHA for the highway project state that consultations were carried out with affected communities, none of the 110 project-affected people Amnesty International researchers interviewed had heard of, let alone attended, these meetings.

In a meeting with KENHA on 23 September Amnesty International raised concerns regarding the absence of project-people affected from Jomvu and Bangladesh at the June 2014 consultations referred to in the ESIA and RAP. KENHA’s consultants who prepared the ESIA and RAP and were present at the meeting, told Amnesty International that it was indeed possible that people not affected by the project attended the June 2014 public consultations referred to in the above documents.

The information provided by KENHA at the ‘public sensitization’ meeting in Mombasa on 13 August, at which Amnesty International representatives were present, was insufficient and did not include details on resettlement and compensation measures. KENHA did not provide affected people with the ESIA or RAP, or any project documents.

At the time of printing of this report, the only information that KENHA has provided to project-affected people in Jomvu and Bangladesh is that road construction work will begin by June 2016 and that affected people will receive some compensation (no amount was specified) prior to eviction. However, as noted above, those already forcibly evicted have yet to receive any compensation.

#### THE ROLE OF INTERNATIONAL PROJECT FINANCERS

The primary responsibility for the forced evictions at Jomvu and the ongoing risk of further forced evictions at both Jomvu and Bangladesh lies with the Kenyan authorities. However, banks and donor governments that finance development projects also have a responsibility – and in some cases a legal obligation – to ensure they do not fund projects that will cause or contribute to human rights violations. The development banks that have provided finance to the highway expansion in Mombasa have institutional policies that explicitly commit them to

ensuring that project-affected people are consulted and their human rights respected and protected.

Forced evictions are a well-documented negative impact of major infrastructure developments, a fact which all development banks are aware of. In this case the project financiers appear do not appear to have taken adequate measures to ensure that a major infrastructure project would not result in human rights violations. The African Development Bank and the European Investment Bank only learned about the forced eviction in Jomvu when Amnesty International brought it to their attention a month after it had taken place. It was not until three more months had passed that the Banks visited Jomvu to see the situation of the people. Moreover, the European Investment Bank's board approved funding for the project after the forced eviction in Jomvu was brought to their notice and even though KENHA had not taken any steps to provide the victims with effective remedies.

#### CONCLUSION AND RECOMMENDATIONS

Affected people in Jomvu and Bangladesh informal settlements repeatedly told Amnesty International that they were not opposed in principle to infrastructure development projects and could envisage some of the benefits these projects would bring. However, they emphasised that this development must benefit everyone, and that they must be listened to and their rights respected.

In forcibly evicting the people at Jomvu, KENHA has broken international law. Amnesty International is calling on the authority to urgently provide all those forcibly evicted at Jomvu, including those who demolished their own homes after being told they would be bulldozed, with effective remedies. These must include compensation for their losses and provision of adequate alternative housing. It is also critical that KENHA urgently puts in place an effective and accessible mechanism for redress of grievances for project-affected people, and a plan to ensure any further action to remove structures from the project area and evict people is carried out in strict compliance with Kenya's domestic, regional and international human rights obligations.

The Government of Kenya should ensure that forced evictions are prohibited by national law, and provide guidelines for the conduct of evictions that reflect international standards.

The international financial institutions that are funding the Mombasa-Mariakani highway expansion project have contravened their own institutional policies in failing to ensure that the projects they fund do not lead to human rights violations. Amnesty International is calling on the project financiers to ensure that victims of the forced evictions in Jomvu have access to effective remedies. In addition, they must secure adequate guarantees from KENHA that project implementation will not lead to any further human rights violations and establish mechanisms to monitor the project to ensure that such guarantees are complied with. Project financiers must also ensure that information relating to project impacts, timelines and resettlement is available to project-affected people in a timely manner and in a form that facilitates their meaningful participation in developments that affect their lives.

# METHODOLOGY

This report, “Driven Out for Development: Forced Evictions in Mombasa, Kenya”, is the outcome of research conducted by Amnesty International in Mombasa, Kenya in June, July and August 2015. It builds on a substantial body of research already carried out by Amnesty International since 2009 on the right to adequate housing for residents of Kenya’s informal settlements. In Mombasa, Amnesty International has worked on the rights of people living in informal settlements since 2013, campaigning and carrying out capacity building workshops.

The report focuses on the human rights implications of the Mombasa-Mariakani Road Dualling Project on people living in Jomvu and Bangladesh informal settlements. This project is being implemented by the Kenya National Highways Authority (KENHA) and financed by the African Development Bank (AfDB), the European Investment Bank (EIB), the German development bank (KfW) and the EU-Africa Infrastructure Development Fund.

During their visit to Mombasa, researchers documented the experiences of 110 residents of Jomvu and Bangladesh informal settlements through group meetings and individual interviews. Amnesty International researchers also met with residents of Bangladesh who raised concerns about the human rights implications of the Bangladesh-Runyu-Mikindani road project that cuts through Bangladesh informal settlement. The report represents the experiences of a wide range of residents of Jomvu and Bangladesh informal settlements including women, men, people with disabilities, with HIV AIDS, young adults, older people, business owners, structure owners and tenants.

In June 2015, Amnesty International researchers met with the Assistant County Commissioner for Mombasa, the County Minister for Housing and Land, the Chief Officer in the County Minister for Transport, the Project Manager for KENHA and the Assistant Area Chiefs of Jomvu and Bangladesh informal settlements. Researchers also met with the Chief Executive Officer of the National Land Commission in Nairobi and the Commission’s representative officer in Mombasa, and had a telephone conversation with the Mombasa County Commissioner. A number of development banks and agencies have provided finance to the project. As part of the research Amnesty International met with representatives of the African Development Bank and had a telephone meeting with representatives of the European Investment Bank.

Amnesty International researchers met several civil society and community based organizations based in Nairobi and Mombasa to gain a better understanding of the key concerns related to housing and evictions not only in Bangladesh and Jomvu informal settlements, but more generally in Mombasa County. Amnesty International researchers also met with a number lawyers representing individuals and communities with cases on housing and forced evictions in the county.

In July and August 2015, Amnesty International wrote to the County Commander for Mombasa, national government representatives in Mombasa County, the National Land



Commission and KENHA seeking additional information and opportunities for dialogue on concerns relating to forced evictions and right to housing of people affected by the project.

An Amnesty International researcher attended the 'public sensitization meeting' on 13 August organized by KENHA on the highway expansion project. The researcher also participated in a 'civil society organizations consultation' with the project's international funders on 17 September.

Amnesty International also wrote to KENHA and the project's financiers to share findings of the research and offer them an opportunity for comment. Following this, Amnesty International researchers met with KENHA, AfDB and EIB to discuss some of the concerns raised in this report. From June to September 2015, Amnesty International has been engaged in regular communications with the project's funders. This report includes some of the additional information that emerged from this dialogue.

# BACKGROUND

**“The Coastal Strip has the largest single concentration of landless people in Kenya and that most of the landless live as ‘squatters’, licencees and unprotected tenants on private or government land in both rural and urban areas at the Coast”.<sup>1</sup>**

Mombasa County is the smallest of Kenya’s 47 counties in terms of land mass.<sup>2</sup> Mombasa city, the county’s capital and Kenya’s second largest city and main port, serves as a point for trade between several countries in east Africa including Uganda, Rwanda and the Democratic Republic of Congo.

Home to over a million people, Mombasa ranks among Kenya’s most densely populated counties with 4,291 people per square kilometre.<sup>3</sup> According to the First Integrated Development Plan for Mombasa County 2013-2017, the number of people living in unplanned areas has grown significantly and population density in areas that have relatively better infrastructure has increased.<sup>4</sup> The existence of employment opportunities in areas

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<sup>1</sup> Republic of Kenya, ‘Report of the Select Committee on the Issue of Land Ownership Along the Ten-mile Coastal Strip of Kenya 1978’ in Report of the Truth, Justice and Reconciliation Commission Volume II, 2013.

<sup>2</sup> Mombasa County covers a land area of 229.9 km<sup>2</sup>. First County Integrated Urban Development Plan, Mombasa 2013 – 2017 p. iv. <http://www.mombasa.go.ke/downloads/1st%20CIDP%202013-2017%20Mombasa%20County.pdf> (last accessed on 29 September 2015).

<sup>3</sup> Kenya Population Situation Analysis, Government of Kenya and United Nations Population Fund – Kenya Country Office, July 2013 p.188. [http://countryoffice.unfpa.org/kenya/drive/FINALPSAREPORT.pdf?\\_sm\\_au\\_=iVVZ0sLSJqVSt655](http://countryoffice.unfpa.org/kenya/drive/FINALPSAREPORT.pdf?_sm_au_=iVVZ0sLSJqVSt655) (last accessed on 29 September 2015).

<sup>4</sup> First County Integrated Urban Development Plan, Mombasa 2013 – 2017 p. iv. <http://www.mombasa.go.ke/downloads/1st%20CIDP%202013-2017%20Mombasa%20County.pdf> (last

close to Mombasa's Export Processing Zones, the Port, and Moi International Airport have contributed to the rise in density in some areas.<sup>5</sup>

In 2014 the Mombasa county government and Pamoja Trust, a national non-governmental organisation (NGO), published an inventory of informal settlements in Mombasa County. The inventory documented 147 informal settlements, all of which lacked adequate housing and essential infrastructure, including for water and sanitation, although the scale of the problems varied across the different settlements. Mombasa's informal settlements are home to 65% of the county's population.<sup>6</sup>

Recognizing the need to address the poor housing situation for a significant proportion of the county's residents, the First Integrated Development Plan notes that one of the major hurdles to physical planning in the county has been the very complex pattern of land ownership and occupation.<sup>7</sup>

Land tenure along the coast generally, and specifically in Mombasa, is characterized by:

- a high number of people who have historically held land but do not have it registered in their names;
- irregular and illegal allocation of public plots, especially along the beach, to private individuals;
- slow process of decision-making and finalization of settlement schemes to legalize informal settlements and provide residents with security of tenure;
- and large tracts of land belonging to absentee landlords leading to a phenomenon known as 'tenants-at-will'<sup>8</sup>, including on land that may not have approved layouts.<sup>9</sup>

Land use and land ownership in Mombasa County and throughout the former Coastal Province, has historically been a thorny issue. Originally held communally by indigenous communities, land in the coastal areas has subsequently been controlled by non-indigenous

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*accessed on 29 September 2015).*

<sup>5</sup> First County Integrated Urban Development Plan, Mombasa 2013 – 2017  
<http://www.mombasa.go.ke/downloads/1st%20CIDP%202013-2017%20Mombasa%20County.pdf> p. 42-43 (*last accessed on 29 September 2015*).

<sup>6</sup> Pamoja Trust and Mombasa County Government, 'Devolution: Whose Reality Counts? An Inventory of Informal Settlements in Mombasa-Kenya' 2014.

<sup>7</sup> First County Integrated Urban Development Plan, Mombasa 2013 – 2017  
<http://www.mombasa.go.ke/downloads/1st%20CIDP%202013-2017%20Mombasa%20County.pdf> p. viii (*last accessed on 29 September 2015*).

<sup>8</sup> Tenants-at-will are individuals who have permission from the landlord to construct on the land. They therefore own the structure but not the land that it is built on. Tenants-at-will are sometimes not recognized as having an interest in the land in cases of land acquisition or evictions.

<sup>9</sup> Entitlement without Titles, The case of unregistered land owners in Kilifi, Kwale and Mombasa Counties, HakiYetu, February 2013.

groups including the Sultan of Zanzibar, the Imperial British East Africa Company and the colonial British government, before Kenya attained independence. The ten mile coastal strip of land, which includes Mombasa was controlled by the Sultan of Zanzibar until 1963. Under colonial rule, large parts of land along the coast were either converted to Crown Land (or land held by the colonial state) or handed over to a few well-connected families who were able to establish their claims to pieces of land under the 1908 Land Titles Ordinance.<sup>10</sup> As a result, several coastal communities who did not have the necessary papers became squatters on the land that they had been living on for generations.

While subsequent governments in independent Kenya promised to resolve the land issue in the coastal areas, in reality, they made little progress. In 2003 the then government set up the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, also known as the Ndung'u Commission. The Commission's report, released in 2004, highlighted that allocation of public land had become a means of political patronage. The report examined in great detail the allocation and nature of land holdings throughout Kenya. The Commission recommended a number of remedial steps including the revocation of titles for illegally acquired land and the repossession of public land. For Mombasa Municipality, the report recommended the revocation of 407 plots which were reserved for public use but had been illegally allocated by the Municipality to private individuals.<sup>11</sup>

Recognising the centrality of the land issue to conflict in Kenya, the Truth Justice and Reconciliation Commission, set up in 2008, also examined in detail land use and ownership. The report of the Commission, with reference to the Coastal Province, noted, "In most urban centres, the demand for housing has outstripped supply, leading to the spread of slum and squatter settlements without clean water supply or sewerage. While rapid urbanization and poverty are the main causes of this scenario, the situation is aggravated by inappropriate and ineffective regulatory frameworks, limited access to affordable finance, high construction costs and inaccessibility to affordable, serviced land. As the demand for low-cost housing increases, especially in the urban centres, new ways of providing housing need to be sought. The insecurity of titles due to unresolved historical land ownership issues has had an impact on the ability of residents to develop permanent structures or use the land they occupy to obtain loans to invest in economic development".<sup>12</sup>

## SECURITY OF TENURE

The UN Committee on Economic, Social and Cultural Rights established to oversee implementation of the International Covenant on Economic, Social and Cultural Rights by states parties including Kenya has emphasised that security of tenure is one of the crucial elements of the right to adequate housing. Tenure takes various forms, including, rental (public and private) accommodation, cooperative housing, lease, owner-

<sup>10</sup> For a detailed discussion see Report of the Truth, Justice and Reconciliation Commission, 2013, Volume II page 170.

<sup>11</sup> Africa Centre on Open Governance, 'Mission Impossible: Implementing the Ndungu Report', [https://www.africog.org/reports/mission\\_impossible\\_ndungu\\_report.pdf](https://www.africog.org/reports/mission_impossible_ndungu_report.pdf) p.25 (last accessed on 29 September 2015).

<sup>12</sup> Report of the Truth, Justice and Reconciliation Commission, 2013, Volume II p. 117.

occupation, emergency housing and informal settlements. According to the UN Committee: “[N]otwithstanding the type of tenure all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>13</sup>

The failure of successive governments to resolve the land issue has contributed to a scenario where 65% of the population of Mombasa lives in informal settlements without security of tenure. Many of these people live with the threat of forced evictions from both government and private entities. In the absence of a national level law prohibiting forced evictions, the only effective option for those without legal title is to seek judicial intervention based on Kenya’s constitutional recognition of the right to adequate housing.<sup>14</sup> HakiYetu, a community based organisation, is currently engaged in at least 14 legal cases concerning housing and access to land in some of the larger informal settlements in Mombasa.<sup>15</sup> These cases involve disputes with private entities as well as public agencies. As HakiYetu and other NGOs point out, court processes are both time consuming and expensive, more so as evictions cases, categorized as civil matters, are not covered by Kenya’s legal aid programme. The prevalence of absentee landlords, corruption, and lack of transparency in land transactions exacerbates the difficulties faced by residents of informal settlements when trying to claim their right to adequate housing.<sup>16</sup>

Set against this backdrop in Mombasa County, are several infrastructure development projects planned both by the county and the national governments.

The national government has identified Mombasa County as an area where several of Kenya’s flagship projects under Vision 2030 will be rolled out. Vision 2030, launched in 2008, is the blueprint for long term national development, intended to transform Kenya into a newly industrializing, middle-income country by 2030. Vision 2030 has three key pillars: Economic; Social; and Political.

The Economic Pillar aims to achieve an average economic growth rate of 10% per annum and sustain this rate until 2030. The Social Pillar seeks to engender just, cohesive and equitable social development in a clean and secure environment focussing on housing, health and water and sanitation. The Political Pillar aims to realize an issue-based, people-centered, result-oriented and accountable democratic system.<sup>17</sup>

Vision 2030 prioritises the development of infrastructure through investment in a network of roads, railways, ports, airports, waterways, and telecommunications. The Sessional Paper

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<sup>13</sup> UN Committee on Economic, Social and Cultural Rights, The right to adequate housing (Art. 11(1)) 13/12/1991, CESCR General Comment 4, paragraph 8(a).

<sup>14</sup> Meeting conducted by Amnesty International with Kituo Cha Sheria on 7 June 2015.

<sup>15</sup> Meeting conducted by Amnesty International with HakiYetu on 2 June 2015.

<sup>16</sup> Meeting conducted by Amnesty International with Transparency International on 8 June 2015, Kituo Cha Sheria on 7 June 2015 and HakiYetu on 2 and 6 June 2015.

<sup>17</sup> Kenya Vision 2030 website [http://www.vision2030.go.ke/?page\\_id=1195](http://www.vision2030.go.ke/?page_id=1195) (last accessed on 29 September 2015).

outlining plans under Vision 2030 states, “To ensure that the main projects under the economic pillar are implemented, investment in the nation’s infrastructure will be given the highest priority”.<sup>18</sup> Significantly, the political pillar of Vision 2030 identifies the rule of law as one of the six strategic areas for transformation. Clarifying further, the Vision 2030 document notes, “Under rule of law, the 2030 Vision is “adherence to the rule of law as applicable to a modern, market-based economy in a **human rights-respecting state** (emphasis added)”.<sup>19</sup>

The economic, social and political pillars of Vision 2030 are mutually reinforcing and need to be developed together in order to achieve its aims. Therefore, as the government invests its resources in achieving the goals articulated as part of the economic pillar, it must also ensure that elements of the social pillar, such as housing, and those of political pillar, such as adherence to the rule of law and respect for human rights, are fully integrated.

Mombasa County’s First County Integrated Development Plan (CIDP) 2013 – 2017 also includes infrastructure projects that are to be implemented alongside the national flagship projects envisaged under Vision 2030. The Governor of Mombasa County has stated: “The purpose of this CIDP is to provide a ‘road map’ towards the County Government’s Vision of Mombasa County being a vibrant, modern, regional commercial hub with a high standard of living for its residents”.<sup>20</sup> The CIDP includes a number of strategies for achieving its targets including on energy and infrastructure and housing. Closely linked to the CIDP is a county government-led process that is currently underway to draw up the Mombasa Masterplan. With funding from the Japan International Cooperation Agency, the project aims to develop concepts of sustainable urban development and improve living conditions based on an integrated urban development plan for Mombasa city.<sup>21</sup>

Some of the key infrastructure projects that have been planned as a result of the above-mentioned development planning processes include:

- the Standard Gauge Railway project,
- the Dongo Kundu by-pass project,
- the Mombasa-Mariakani Road Dualling Project,
- the Dongo Kundu Free trade Zone,

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<sup>18</sup> Office of the Prime Minister, Ministry of State for Planning, National Development and Vision 2030 ‘Sessional Paper 2012 on Kenya Vision 2030’.

<sup>19</sup> Office of the Prime Minister, Ministry of State for Planning, National Development and Vision 2030 ‘Sessional Paper 2012 on Kenya Vision 2030’ p. vii.

<sup>20</sup> First County Integrated Urban Development Plan, Mombasa 2013 – 2017 <http://www.mombasa.go.ke/downloads/1st%20CIDP%202013-2017%20Mombasa%20County.pdf> p. iii (last accessed on 29 September 2015).

<sup>21</sup> Project Formulation of Comprehensive Development of Master Plan in the Mombasa Gate City, Japan International Cooperation Agency. [http://www.jica.go.jp/english/our\\_work/social\\_environmental/id/africa/kenya/c8h0vm000092ptby.html](http://www.jica.go.jp/english/our_work/social_environmental/id/africa/kenya/c8h0vm000092ptby.html) (last accessed on 29 September 2015).

- the Mombasa Port Development Project,
- Construction of the Second Nyalı Bridge,
- the National Urban Transport Improvement Project,
- Expansion of the Moi International Airport and
- The Bangladesh-Mikindani-Runyu Road project.

Many of these projects will require access to land, both public and private. Given the high population density in the county, there is every possibility that accessing land will require the eviction of people from both residential and commercial properties. In order to ensure that the development benefits all residents of Mombasa - land owners and those who are occupying land without legal title - it is essential that these projects operate within a legal and policy framework that can fully and effectively safeguard human rights.

Amnesty International researchers visited Mombasa in June 2015 to explore whether and in what way these projects were having an impact on the right to housing of people living in informal settlements. Two weeks prior to their visit, the Kenya National Highways Authority (KENHA) carried out forced evictions in Jomvu, an informal settlement located in the Mombasa-Mariakani Road Dualling Project (MMRDP) area. Scores of Jomvu residents had been rendered homeless. In Bangladesh, an informal settlement adjacent to Jomvu, and also in the project area, people were extremely anxious about whether they too would be forcibly evicted.

Amnesty International decided to document the experiences of MMRDP affected communities in Jomvu and Bangladesh settlements in order to ensure that victims of the forced evictions are provided with effective remedies and that MMRDP and other infrastructure development projects do not cause any further human rights violations. Almost all the people who have, and will be affected by the project in these two settlements, do not have security of tenure and are therefore particularly vulnerable to forced evictions.

## MOMBASA-MARIAKANI ROAD DUALLING PROJECT

In Vision 2030, the development of transport and infrastructure is a key strategy for achieving economic growth, wealth creation and poverty eradication.<sup>22</sup> Project documents refer to the Mombasa-Mariakani Road Dualling Project (MMRDP), also sometimes called the Regional Mombasa Port Access Road,<sup>23</sup> as a flagship project for Vision 2030.<sup>24</sup> The stretch of road forms part of the Northern Corridor that provides trade links from Mombasa to Uganda, Rwanda, Burundi and the Democratic Republic of Congo and is an important part of

<sup>22</sup> Office of the Prime Minister, Ministry of Planning, National Development and Vision 2030, Sessional Paper 2012.

<sup>23</sup> At least two of the project's funders – The European Investment Bank and the EU-Africa Infrastructure Trust Fund call the project the 'Regional Mombasa Post Access Road'. The project appraisal report however calls it the Mombasa Mariakani Road Dualling Project.

<sup>24</sup> 'Environmental and Social Impact Assessment Report' by AECOM RoA (Pty) Ltd and CAPE consult for Kenya National Highways Authority October 2014 p. 15 <http://www.eib.org/infocentre/register/all/57406119.pdf> (last accessed on 29 September 2015).

Kenya's economic growth strategy.<sup>25</sup> The project essentially involves widening part of the current A 109 highway by 60 metres to ensure easy flow of traffic. As the land parallel to the existing highway is currently occupied by commercial and residential properties, as well as a few large factories, widening the highway will inevitably lead to evictions.

The African Development Bank's Appraisal Report for the project states that it will negatively impact 488 households representing 1,352 project-affected persons (PAPs) owning 394 structures, 39 fences, 97 trees and 3 prayer houses.<sup>26</sup>

## PROJECT OVERVIEW

The project is located along the A109 highway in Mombasa and Kilifi counties, in coastal Kenya. It begins at the junction of Kenyatta Avenue (A109) and Digo Road (A14) within Mombasa City and extends north through Changamwe, Miritini and Mazeras before terminating shortly after the Mariakani Weighbridge.<sup>27</sup>

On 11 March 2015, the African Development Bank Group, the project's largest funder, approved an Africa Development Fund<sup>28</sup> loan of 80 million UA<sup>29</sup> to the Government of Kenya for the Mombasa-Mariakani Highway Upgrading Project.<sup>30</sup> Other funders for the project are the Government of Kenya (8.54 million UA), KfW of Germany (42.03 million UA), European Investment Bank (42.03 million UA) and EU - Africa Infrastructure Trust Fund (16.82 million UA). The Project involves 'dualling' or expansion of 41.7 kilometres of the Mombasa–Mariakani Highway. The overall implementation period is five years (2015 – 2020) with an additional maintenance period of five years. According to the AfDB's appraisal report, project beneficiaries are corridor residents who will have greater economic opportunities and improved access to social services and goods. Regional beneficiaries include producers, manufacturers and traders who will have an improved access on the main corridor to the Port of Mombasa, easing movement of exports and imports at a reduced time and cost.

<sup>25</sup> Facilitating regional integration in East Africa: AfDB supports Mombasa-Mariakani Highway project, 12 March 2015, <http://www.afdb.org/en/news-and-events/article/facilitating-regional-integration-in-east-africa-afdb-supports-mombasa-mariakani-highway-project-14047/> (last accessed on 29 September 2015).

<sup>26</sup> Africa Development Fund, 'Mombasa-Mariakani Highway Project, Appraisal Report', February 2015, page 10 [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Kenya\\_\\_AR-Mombasa-Mariakani\\_Highway\\_Project\\_-\\_03\\_2015.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Kenya__AR-Mombasa-Mariakani_Highway_Project_-_03_2015.pdf) (last accessed on 29 September 2015).

<sup>27</sup> Environmental and Social Impact Assessment Report' by AECOM RoA (Pty) Ltd and CAPE consult for Kenya National Highways Authority October 2014 p. 2 <http://www.eib.org/infocentre/register/all/57406119.pdf> (last accessed on 29 September 2015).

<sup>28</sup> The Africa Development Fund is the concessional lending arm of the Africa Development Bank.

<sup>29</sup> A Unit of Account or UA is the official currency of AfDB projects. 1 UA is equivalent to 1 unit of the International Monetary Fund's Special Drawing Rights. For the purposes of this project, 1 UA is equal to USD 1.53481, KES 131.222 and EURO 1.18938.

<sup>30</sup> Facilitating regional integration in East Africa: AfDB supports Mombasa-Mariakani Highway project, 12 March 2015, <http://www.afdb.org/en/news-and-events/article/facilitating-regional-integration-in-east-africa-afdb-supports-mombasa-mariakani-highway-project-14047/> last accessed on 29 September 2015).



The civil works for the road construction will be tendered in two lots – Lot 1 covers Mombasa to Kwa Jomvu (11.3 kilometres) and Lot 2 covers Kwa Jomvu to Mariakani (30.4 kilometres).<sup>31</sup>

Key documents publicly available for the MMRDP are the Environmental and Social Impact Assessment Report (ESIA) of October 2014 and the Resettlement Action Plan (RAP) of October 2014. Both these documents have been commissioned by the Kenya National Highways Authority (KENHA), the agency implementing the project. The RAP available on AfDB's website is not the complete and final document. It is in the process of being updated and revised to meet the policy requirements of the project's funders.<sup>32</sup> According to AfDB's project classification, MMRDP is a Category 1 public sector project. This category refers to projects that may cause significant adverse and irreversible social and environmental impact.<sup>33</sup>

The MMRDP is a national infrastructure project, with over 90% of its funding coming from international funders, implemented at the county level on public land that is controlled by the national government. There are a number of different actors involved, each with specific responsibilities for the successful implementation of the project.

The Ministry of Transport and Infrastructure is responsible for procuring resources from the national treasury for the overall project. KENHA, an agency of the national government under the Ministry of Transport, is in charge of implementing the project and among other aspects of the project, is responsible for preparing the RAP and ensuring that it is agreed with the project financiers. The National Land Commission is responsible for: processing the request for land from KENHA; land acquisition; inspection of properties; and finalising compensation amounts. The county offices of the National Land Commission will get involved if affected people are dissatisfied with the compensation award. It is the responsibility of the county government to ensure that the affected people are satisfied with the RAP and to provide alternative market places to traders who will be displaced by the project.<sup>34</sup>

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<sup>31</sup> For more details, see Africa Development Fund, 'Mombasa-Mariakani Highway Project, Appraisal Report', February 2015 [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Kenya\\_\\_\\_AR-Mombasa-Mariakani\\_Highway\\_Project\\_-\\_03\\_2015.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Kenya___AR-Mombasa-Mariakani_Highway_Project_-_03_2015.pdf) (last accessed on 29 September 2015).

<sup>32</sup> Meeting conducted by Amnesty International with AfDB on 25 September 2015 and with EIB on 28 September 2015.

<sup>33</sup> 'Environmental and Social Impact Assessment Report' by AECOM RoA (Pty) Ltd and CAPE consult for Kenya National Highways Authority October 2014 p. 17 <http://www.eib.org/infocentre/register/all/57406119.pdf> (last accessed on 29 September 2015).

<sup>34</sup> 'Resettlement Action Plan Report - Preliminary and Detailed Engineering Design for the Dualling of Mombasa - Mariakani (A109) Road' by AECOM RoA (Pty) Ltd and CAPE consult for Kenya National Highways Authority October 2014 p. 22 [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Kenya\\_-\\_Mombasa\\_Mariakani\\_Road\\_Upgrading\\_Project\\_-\\_RAP\\_-\\_11\\_2014.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Kenya_-_Mombasa_Mariakani_Road_Upgrading_Project_-_RAP_-_11_2014.pdf) (last accessed on 29 September 2015).

While the funding for the project has been approved by the banks, the disbursement of funds will take place once KENHA satisfies key contractual requirements, including the preparation of a complete resettlement action plan.<sup>35</sup>

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<sup>35</sup> Meeting conducted by Amnesty International with AfDB on 25 September 2015.

# FORCED EVICTIONS IN JOMVU AND THE RISK OF MORE DOWN THE ROAD

“Evictions will continue because there are still some more houses to demolish in Bangladesh”

Assistant Area Chief of Jomvu.<sup>36</sup>

On the night of 17 May 2015 scores of families living in Jomvu, an informal settlement along the A 109 highway in Mombasa, Kenya, awoke to the sound of a bulldozer and the arrival of armed police. Even as they desperately tried to salvage their belongings, the bulldozer demolished their homes and small businesses. Mwende Wambua told Amnesty International that she narrowly escaped electrocution as the bulldozer damaged some electric wires while destroying her property.<sup>37</sup> It was a terrifying ordeal, and left many people including children homeless.

Parts of Jomvu and Bangladesh informal settlements will be affected by the MMRDP. Amnesty International visited these settlements in June 2015. In both settlements, houses, workshops and other buildings had been marked with yellow crosses in preparation for demolition. The marked structures are located on public land, which in this case is a ‘road reserve’ or land that is designated for road construction. A climate of fear and uncertainty was prevalent in the settlement, especially among those whose homes and properties bore the yellow cross. The fear and anxiety felt by people was exacerbated by the forced eviction of scores of households in Jomvu on the night of 17 May. More than a hundred people were made homeless overnight.

## WHAT IS A FORCED EVICTION?

**A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards. The Commission on Human Rights has said that forced evictions constitute a gross violation of human rights, in particular the right to adequate housing.**<sup>38</sup>

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<sup>36</sup> Meeting conducted by Amnesty International with Assistant Area Chief of Jomvu, 9 June 2015.

<sup>37</sup> Interview conducted by Amnesty International in Jomvu on 5 June 2015.

<sup>38</sup> Commission on Human Rights resolution 1993/77, para. 1.

Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives to eviction have been explored and appropriate procedural protections are in place. Such safeguards include:

- An opportunity for genuine consultation with those affected;
- Adequate and reasonable notice for affected people prior to the eviction;
- Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- Government officials or their representatives to be present during the evictions;
- Anyone carrying out the eviction to be properly identified;
- Evictions not to take place in particularly bad weather or at night unless the affected people consent;
- Provision of legal remedies;
- Provision, where possible, of legal aid to people who are in need of it to seek redress from the courts.

Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction. Adequate alternative housing and compensation for all losses must be made available to those affected prior to eviction.<sup>39</sup>

Not every eviction that is carried out by force constitutes a forced eviction – if all the legal safeguards and protections required under international law are complied with, and if the use of force is proportionate and reasonable, then the eviction would not violate the prohibition on forced evictions.

## FORCED EVICTIONS IN JOMVU

*“I don’t know what I will do next. I am trying to calm down and clear my mind. That house and the income from it would have educated my children...They have finished us – destroyed everything we had. They have not given us anywhere to go. I want to ask them – was that your intention – to finish us?”*

Regina Wanjala, a structure owner in Jomvu<sup>40</sup>

Part of Jomvu is an informal settlement along the A 109 highway between Mombasa and Mariakani. Most of the settlement extends back away from the highway towards the Mikindani area. The section of the settlement along the highway comprises small residential and commercial properties, as well as a few small factories. The settlement is close to large shipping container loading sites and around 2.5 kilometres from the Export Processing Zone

<sup>39</sup> UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comment No. 7 on Forced Evictions, paragraphs 15 and 16.

<sup>40</sup> Interview conducted by Amnesty International in Jomvu on 7 June 2015.

(EPZ).

The section of Jomvu that is close to the highway is located on land that has been set aside for the construction of roads. Known as the road reserve, such land is public land and is held by the national government. The area affected by the MMRDP includes a mix of structure (both shops and residences) owners and tenants. As occupants of public land, none of the structure owners have security of tenure.

Evictions are not a new phenomenon in Jomvu. People living and working there told Amnesty International that the government had sought to evict them on several occasions in the past. Many had lived through previous forced evictions and threats to demolish their homes and livelihoods.

On 19 and 20 January 2015 KENHA issued eviction notices to residents and business owners stating that they had encroached on the road reserve in Jomvu. The notices, which Amnesty International researchers saw, gave people 30 days to vacate the area and stated that failure to do so would lead to KENHA taking steps to remove the structures. Citing the Kenya Roads Act 2007, they also warned the affected people that the encroachment was an offence and upon conviction, could lead to imprisonment or a fine. The notices did not state the purpose of the eviction, nor whether affected people would be entitled to any legal redress, compensation or assistance towards resettlement. Around the time that KENHA served the eviction notices on Jomvu residents, people who did not identify themselves came to the settlement and painted large yellow crosses on the homes and shops of those to be evicted. The yellow crosses are visible from the A 109. Jomvu residents told Amnesty International researchers that those handing out the notices and those who painted the yellow crosses did not explain the rationale for evictions or the process that would follow.

Violet Nabwangu, a dressmaker and structure owner in Jomvu described to Amnesty International researchers events around the time when KENHA served the notices.

*"In January 2015, my house was marked with an X by KENHA. The day they marked it, I asked for any written communication explaining this but they did not give me anything. I was aware they had left some letters with my neighbours. Mine was the last house they marked that day. Two young people accompanied by police officers in administration police uniform armed with guns came taking measurements. They did not tell us what it is they were doing neither did we ask what it was they were measuring. I had just arrived from hospital, my neighbours told me that they were roads people and that they had left letters. It was not clear how many metres they wanted of the road reserve. People had crowded at my house so the people taking measurements got scared and did not stretch the strings to my place they just estimated and from a distance verbally instructed the ones painting to mark my house and so it was marked.*

*The following day we mobilised all structure owners whose houses had been marked and we went to the village elder. We sought to know if the village elder was aware of the whole thing. He told us that the government from the top county official to the local area chief were aware and that there was nothing he could do about it. He advised that people just start planning how to find their own alternatives and vacate because once the government has decided, there is nothing they can do. I left this meeting so disillusioned and started looking for a place to*

*keep my belongings.”<sup>41</sup>*

Following the marking of houses, some residents recounted that representatives of the Area Chief’s office visited affected persons and noted down their details including their national identity card numbers, their occupations and the type of structure they occupied. However, not everyone knew what purpose the lists served. In the words of Thomas Chitoja, a Jomvu resident, *“Many lists are compiled here. These are done by the village headman to show the Chief about the people who live here. The last list was prepared in March this year. They said the purpose was to find out how many people live here...no, I have not seen the list”*.<sup>42</sup>

All interviewees told Amnesty International researchers that apart from the people who came to mark their structures, there was no communication from KENHA about next steps including on evictions and compensation.

Following months of silence on the impending evictions, on 17 May 2015, between 11pm and midnight, residents of Jomvu were woken by the sound of a bulldozer accompanied by scores of armed police. Eyewitnesses told Amnesty International researchers that the bulldozer, accompanied by armed police, systematically demolished shops and homes that bore yellow crosses and were adjacent to the highway. Apart from police vehicles, some witnesses also noticed one or two civilian vehicles that appeared to be part of the demolition group. Almost all, however, pointed out that the license plates of the vehicles involved were covered in mud as if they wanted to avoid identification. Neither those operating the bulldozer, nor the police, announced who had ordered the evictions. The identity of those operating the bulldozers was not disclosed. Witnesses described to Amnesty International how most of the people tried to move their families out of harm’s way and save their belongings from being destroyed.

Sitting on the rubble that used to be his home 38-year-old Saidi Juma told Amnesty International: *“...someone came and woke me and told me that the bulldozer is coming so we came out to see. We tried to pick up sugar, grain etc that we had in our grocery store in front of the house. I used to live here with my wife and five children. There were around 50-60 police following the bulldozer. I did not want to engage with the police – they had tear gas. Around 30 houses were demolished. It took around 3-4 hours. We did manage to save school uniforms, books etc. but my six-year-old daughter got hurt in the commotion – her leg was cut by the tin sheets that had been taken down. I took her to hospital – she is better now and has just resumed school”*.<sup>43</sup>

The lack of warning and the decision to demolish houses when most people would be asleep in their homes, not only represents a blatant disregard for people’s safety but is a serious breaching of international human rights law and standards.

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<sup>41</sup> Interview conducted by Amnesty International in Jomvu on 7 June 2015.

<sup>42</sup> Interview conducted by Amnesty International in Jomvu on 7 June 2015.

<sup>43</sup> Interview conducted by Amnesty International in Jomvu on 5 June 2015.

Isaac Masungu a 23 year old man with disabilities, had been renting a room in Jomvu for five years before the forced eviction. Due to the disability in his legs that made it difficult for him to walk unassisted, he needed to live in a place that was close to the road so that he could be carried to the *matatu*, a mini bus or van that serves as public transport. On the night of the demolition, Isaac Masungu woke up when he heard the bulldozer destroying houses. Unable to quickly leave the premises, he was still in his room when the front rooms of the building where he lived were demolished. While his neighbours eventually helped him to get out of the room, he was unable to salvage his belongings as everyone was busy trying to save their own homes and property. Isaac Masungu has since moved to another settlement where he said that his rent is significantly higher. He also told Amnesty International that he had lost the two month advance rent he paid in Jomvu as well as Ksh 3000 he had paid as deposit.<sup>44</sup>

The demolition stopped at around 4am. At this point more than 30 structures had been demolished, but the majority of marked structures were left standing. Before leaving, those operating the bulldozer told the people whose houses and shops were not yet demolished, to demolish their homes and shops by themselves. They also announced that they would return the following night to complete the task of demolishing all marked structures. As a result, many people started demolishing their own homes and shops soon after the bulldozer and police left the area. They told Amnesty International researchers that they did this as they felt that they had no choice and at least this way they could save some of the more expensive construction material such as tin sheets, doors and window frames, for reuse.

The bulldozer did not return, and nor did anyone from the government or any other agency visit the area to explain what was happening or address the needs of those who had been forcibly evicted. At the time of Amnesty International's visit to Jomvu in June 2015, scores of homes and shops along the A109 stood half broken, without roofs, windows and doors.

#### AN EVICTION WITHOUT DUE PROCESS

The UN Committee on Economic, Social and Cultural Rights, established to oversee implementation of the International Covenant on Economic, Social and Cultural Rights to which Kenya is party, has emphasized that even when an eviction is considered to be justified, "it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality."<sup>45</sup> From the description of events on the night of 17 May, it is clear that the national and county governments showed blatant disregard for people's safety, human rights and human dignity. They also did not put in place the necessary human rights safeguards against forced evictions before carrying out the demolitions in Jomvu.<sup>46</sup>

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<sup>44</sup> Interview conducted by Amnesty International with Isaac Masungu on 8 June 2015.

<sup>45</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 7 on Forced Evictions, paragraph 14.

<sup>46</sup> See box on "What is a forced eviction?" for the full list of safeguards required.

## GENUINE CONSULTATION

The UN Committee on Economic, Social and Cultural Rights has identified ‘genuine consultation’ with affected people as a fundamental safeguard against forced evictions. Genuine consultation includes the provision of full, accurate and timely information to those affected, in order to facilitate their meaningful participation in any consultation process. The information must be in a form and language that is accessible to all affected people. Genuine consultation also includes the opportunity for affected individuals and families to reflect upon, discuss, raise concerns and submit comments to the authorities about the eviction and any related plans, including on compensation and resettlement, and to receive responses from the authorities. Affected people should be able to participate collectively, through their elected representatives, if they have any, and in smaller groups and individually.

According to information provided by affected people in Jomvu, the national government, through KENHA, did not adequately carry out due process requirements such as **genuine consultations on the evictions and alternatives to them, with the affected people**. Although the Resettlement Action Plan and the Environmental and Social Impact Assessment prepared for the MMRDP mention a series of consultations with project-affected people in 2014, none of the Jomvu residents that Amnesty International researchers interviewed in June 2015 were aware of, or had participated, in these. Among the interviewees, three Jomvu residents told Amnesty International that upon receiving the eviction notices, they tried to seek more information about the project and the eviction process from KENHA. However, when they approached KENHA’s office, they were told to obtain a copy of the plan on their own. When these people questioned the marking of their properties with yellow crosses, KENHA said that if they had titles to the land they occupied and felt aggrieved, they could hire a lawyer and approach the courts.<sup>47</sup> Disheartened by KENHA’s response, Nyae Chaka, a structure owner who has lived with his family in Jomvu for the past 15 years, said *“I don’t have the title to the land, how can I go and hire a lawyer?”*<sup>48</sup>

Contrary to international human rights safeguards against forced evictions, those carrying out the evictions also did not **identify themselves**. None of the people Amnesty International interviewed knew for certain who had carried out the forced evictions. No government authority took responsibility for the forced evictions in Jomvu until mid-August 2015.

Amnesty International researchers contacted multiple authorities to establish who ordered the demolitions. The Assistant County Commissioner for Mombasa told researchers in a meeting on 8 June that he was unable to comment on the demolitions as he was not in Mombasa on 17 May, the night the evictions took place. The County Commissioner for Mombasa advised Amnesty International researchers in telephone conversation on 9 June to speak with KENHA if they had questions about the Jomvu demolitions. The Assistant Area Chief for Jomvu settlement said that the demolition was carried out by the national government while the bulldozer was provided by the Ministry of Transport. He did not specify which arm of the

<sup>47</sup> Interview conducted by Amnesty International in Jomvu on 7 June 2015

<sup>48</sup> Interview conducted by Amnesty International in Jomvu on 7 June 2015



national government ordered the demolitions.<sup>49</sup>

Amnesty International researchers also contacted the AfDB and EIB, the project financiers, about the forced evictions in Jomvu. Not only were they unaware that the demolitions had taken place but, after contacting KENHA about the issue, EIB representatives informed Amnesty International in a telephone meeting on 25 June that KENHA had explicitly denied any involvement.<sup>50</sup>

Among the safeguards against forced evictions listed by the UN Committee on Economic, Social and Cultural Rights in General Comment 7 is that **evictions must not take place in particularly bad weather or at night**.<sup>51</sup> Contrary to this safeguard, the Jomvu evictions were carried out between 11pm and 4am, at a time when people were asleep. According to the Assistant Area Chief, this time of the night is particularly suitable for demolitions as those carrying out the demolitions are least likely to face resistance and violence at that time. The timing of the forced eviction not only caught people by surprise but it also instilled fear among community members, several of whom told Amnesty International that they had been sleeping outside their homes since 17 May, fearing that the bulldozers could return any night.

Benson Masha, a 40-year-old resident of Jomvu who demolished his own home said, *“I have lived here for seven years. I bought this place – I have a sale agreement...I built my house during the day – I am not a thief. Why did they have to demolish it at night?”*<sup>52</sup>

#### IMPACTS OF THE FORCED EVICTION

*“As a person carrying out the business, I have lost a lot. I don’t think I can recover from this”*  
Simon Mbea, aged 64, tenant in Jomvu<sup>53</sup>

Homelessness is a direct and immediate impact of the demolition of homes in Jomvu. While some affected people made arrangements to live with relatives or found rental accommodation elsewhere, others said that they were living around their destroyed homes without any access to even basic shelter. The UN Committee on Economic, Social and Cultural Rights has noted, “Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home, and the

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<sup>49</sup> Meeting conducted by Amnesty International with Assistant Area Chief of Jomvu on 9 June 2015

<sup>50</sup> Amnesty International’s conference call with representatives of the European Investment Bank on 25 June 2015.

<sup>51</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 7 on Forced Evictions, paragraph 13.

<sup>52</sup> Interview conducted by Amnesty International in Jomvu on 5 June 2015.

<sup>53</sup> Interview conducted by Amnesty International in Jomvu on 7 June 2015.

right to the peaceful enjoyment of possessions.”<sup>54</sup>

The forced evictions in Jomvu disrupted the lives and livelihoods of all those whose homes were demolished as well as those who were instructed to demolish their own homes. Simon Mbea an elderly tenant who lived with his family of four in Jomvu told Amnesty International that although he had been able to relocate his family in other parts of the settlement, he continues to run his hardware store from the demolished structure. The location of the shop, close to the main highway is critical for his business. However, as his workshop no longer has any doors, he has to carry all his tools and material back and forth from his new place of residence to the shop on a daily basis.

The demolitions also impacted those whose livelihoods were closely linked to the demolished structures. For instance, Safari Baya, whose kiosk in Jomvu was demolished in 2013, has since worked as a caretaker for some of the shops along the highway. After the demolition of 17 May, many of the owners demolished their shops and moved elsewhere. As a result, Safari Baya was once again out of work. *“I used to be a professional acrobat but then one day I hurt my leg and shoulder and had to leave the profession. Now I work as a caretaker but that too looks like it is going to end”* he said.<sup>55</sup>

The forced eviction in Jomvu has disrupted efforts made by some residents to obtain security of tenure. For instance, Ali Mwanza, along with scores of other people in Jomvu, had been petitioning the local government since 1984 to regularise the land they occupied and provide them with titles. According to him, after several attempts, the Mombasa council told him and other petitioners that in order to obtain title to the land, they would need to cover the arrears in land rates (rent paid to the municipalities for occupying public land on a lease basis) that the previous owner of the land had accrued. He showed Amnesty International land rates receipts to prove that he had been paying land rates to the local government, since 1996.

Ali Mwanza had also recently taken a micro-finance loan to renovate the house on the land that he occupied. His house, which is located one row behind the row of structures immediately next to the highway, was marked but was not demolished on 17 May 2015. As a result, although he was still living there, the forced eviction has caused Ali Mwanza considerable anxiety as he fears that not only was it just a matter of time before he would be made homeless, but also that he would lose all the money that he had paid to the municipality to obtain a title to the land he occupied while the burden of repaying the micro-finance loan remained.

#### KENHA'S ROLE IN THE FORCED EVICTIONS

As explained earlier, initially no government authority took responsibility for the forced evictions in Jomvu. KENHA initially denied any involvement in the forced eviction when EIB asked them about it.<sup>56</sup> On 13 August 2015, KENHA organized a ‘public sensitization

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<sup>54</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 7 on Forced Evictions, para 4.

<sup>55</sup> Interview conducted by Amnesty International in Jomvu on 7 June 2015.

<sup>56</sup> On 18 June, soon after Amnesty International had alerted EIB to the forced evictions in Jomvu, the

meeting' that was attended by residents of Jomvu and Bangladesh informal settlements. At this meeting, KENHA's representatives, for the first time, publicly admitted that they had carried out the demolitions of homes and businesses in Jomvu.

On 28 September, KENHA responded to letters sent by Amnesty International in July and September, asking the authority about their role in the forced evictions. KENHA's letter said that the demolitions were meant to remove encroachments from another area but were "accidentally extended" to the Jomvu area. The letter also stated that the evictions were carried out at night as KENHA believed that the structures were mainly small businesses and that no one was living in them.<sup>57</sup> KENHA's explanation for carrying out the demolitions at night contradicts the explanation provided by Jomvu's Assistant Area Chief who told Amnesty International that demolitions are normally carried out at night in order to minimise resistance by affected people. Explanations given by government authorities in Nairobi for demolitions at night or in the early hours of the morning also echo the Assistant Area Chief's explanation.<sup>58</sup>

#### FAILURE TO PROVIDE EFFECTIVE AND TIMELY REMEDIES

KENHA, for the first time, indicated that they would consider providing some form of remedy in the 'public sensitization meeting' on 13 August. KENHA told the forcibly evicted people to form a committee, calculate their losses and submit these to KENHA for consideration. However, at this meeting, KENHA did not provide any further explanation about how they would process the submitted material and whether and when affected people could expect to be compensated.

From 16-18 September, KENHA along with AfDB, EIB and KfW visited Mombasa and met with project affected people as well as victims of the forced eviction in Jomvu. On 17 September, KENHA called for a 'civil society consultation meeting' with the project's funders, at which KENHA took responsibility for the forced evictions and agreed to put in place a process to remedy the forced eviction.<sup>59</sup> At this meeting, the project's funders stated that KENHA had made a commitment that they would not carry out forced evictions anywhere in the project area.

In a subsequent meeting with Amnesty International on 23 September, KENHA representatives expressed regret for the forced evictions in Jomvu and as a part of the remedial measures, explained that they intended to conduct a census of all those forcibly

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bank replied by email stating that they had confirmation that no forced evictions had taken place in the project area. This was also stated in a conference call between Amnesty International and EIB on 25 June 2015.

<sup>57</sup> KENHA's letter to Amnesty International on concerns raised by Amnesty International regarding the forced evictions in Jomvu. Letter was dated 23 September 2015 but was sent to Amnesty International by email on 28 September (Ref: KeNHA/D&C/A109/Vol.4 (85)).

<sup>58</sup> 'We Are Like Rubbish In This Country: Forced Evictions in Nairobi, Kenya' 2013 (index: AFR 32/005/2013) p 16.

<sup>59</sup> Amnesty International attended this meeting.

evicted, including those who demolished their own properties. KENHA also committed to involving the National Land Commission in preparing a corrective resettlement action plan to remedy the forced eviction.

In a letter sent to Amnesty International on 28 September, KENHA, explained the reason for the delay in taking steps to provide effective remedies. KENHA stated that soon after being informed by EIB, the authority took steps to document the impact of the forced eviction but could not proceed further because on 23 July, a “hostile group came in and tore all the data that was collected which had the names of those affected and their losses”<sup>60</sup>. KENHA did not refer to this destruction of data in the 13 August ‘public sensitization meeting’ or at the ‘civil society organizations consultation meeting’ on 17 September.

## THE RIGHT TO EFFECTIVE REMEDY

International law entitles all victims of human rights violations to effective remedies and reparation. Reparation requires that, as far as possible, the consequences of the violation are corrected. The body providing a remedy should award the measures necessary to repair the specific harm suffered by victims, including some or all of the following:

- restitution, for example by restoring homes that were taken away during a forced eviction;
- compensation;
- rehabilitation, through services to address physical or psychological harm;
- satisfaction, by imposing additional or alternative remedies that are satisfactory to the victim; for example, a public apology, and
- a legally binding guarantee of non-repetition.

KENHA’s commitment to remedy the human rights violations in Jomvu, albeit delayed, is a welcome first step. However, KENHA has not put in place a special mechanism for grievance redress for the project-affected people as required by the resettlement action plan.<sup>61</sup> The only available mechanism, at the time of printing the report, for people to bring complaints to

<sup>60</sup> KENHA’s letter to Amnesty International on concerns raised by Amnesty International regarding the forced evictions in Jomvu. Letter was dated 23 September 2015 but was sent to Amnesty International by email on 28 September (Ref: KeNHA/D&C/A109/Vol.4 (85).

<sup>61</sup> ‘Resettlement Action Plan Report - Preliminary and Detailed Engineering Design for the Dualling of Mombasa - Mariakani (A109) Road’ by AECOM RoA (Pty) Ltd and CAPE consult for Kenya National Highways Authority October 2014 p. 26  
[http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Kenya\\_-\\_Mombasa\\_Mariakani\\_Road\\_Upgrading\\_Project\\_-\\_RAP\\_-\\_11\\_2014.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Kenya_-_Mombasa_Mariakani_Road_Upgrading_Project_-_RAP_-_11_2014.pdf) (last accessed on 29 September 2015).

KENHA's attention is a generic complaints box in KENHA's office. According to EIB, an adequate grievance redress mechanism for project-affected people will only be in place in early 2016.<sup>62</sup>

For the remedy to be effective, in line with international human rights standards, Kenyan authorities would need to do much more than merely compensate victims of the forced eviction. Full compliance would include ensuring and promoting victims' access to legal redress, publicly guaranteeing non-repetition throughout the project area and putting in place an effective and transparent complaints mechanisms capable of repairing the specific harms suffered by project-affected people, in a timely manner.

## RISK OF FORCED EVICTIONS IN BANGLADESH SETTLEMENT

*"My children are not able to go to school because I have no money. We often sleep hungry. I heard that they were to evict us from this area and I have been wondering what I would do if they send us away from here... When I came from my rural home I expected that Mombasa would be a good place but it has not. I cannot go back to my village empty handed. I really don't know what to do".*

Rebecca Atieno, resident of Bangladesh<sup>63</sup>

Bangladesh is one of the largest informal settlements in Mombasa County. Spread over 20 acres of land, the settlement forms a part of Mikindani ward in Changamwe / Jomvu constituency.<sup>64</sup> Like Jomvu, Bangladesh is located along the A 109 highway. Some houses and commercial buildings line the highway, but a large majority of the settlement extends back, away from the highway.<sup>65</sup>

The community in Bangladesh comprises structure owners and tenants, who mainly earn their livelihood through small commercial enterprises in and around the settlement or by working in nearby factories, grain storage facilities, the Mombasa Airport and the Export Processing Zone.<sup>66</sup> Bangladesh is also home to a mixture of people who were born in the settlement and have lived there almost all their lives and people who moved to Mombasa from other parts of Kenya in search of work opportunities.

Part of Bangladesh along the A 109 lies in the road reserve and therefore falls within the MMRDP area. As a result, scores of structures in the settlement will have to make way for the expansion of the highway. KENHA issued eviction notices to occupants of scores of these

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<sup>62</sup> Meeting conducted by Amnesty International with EIB on 28 September 2015.

<sup>63</sup> Interview conducted by Amnesty International in Bangladesh informal settlement 6 June 2015.

<sup>64</sup> Pamoja Trust, Muungano wa Wanavijiji and HakiYetu, 'Bangladesh, Kibarani, Kwa Punda Enumeration Report'.

<sup>65</sup> According to the inventory of all informal settlements carried out by the Pamoja Trust and the Mombasa County government, Bangladesh informal settlement is located on public land held by at least two agencies of the national government – Kenya Power and Kenya Ports Authority.

<sup>66</sup> The profile of residents of Bangladesh is similar to that of Jomvu.

structures in January and February 2015, telling them to vacate the area within 30 days, and – as in Jomvu – painted yellow crosses on structured targeted for eviction. Similar to Jomvu, the notices were delivered by two people who did not identify themselves, accompanied by armed police.

When Amnesty International researchers first visited Bangladesh on 2 June, they were struck by the levels of anxiety amongst the residents. The Jomvu forced evictions had taken place just two weeks earlier, and Bangladesh residents were very frightened that they would be next. People in Bangladesh had previously experienced forced evictions and were acutely aware of the distress this would cause. Beatrice Machainge, a 23-year-old resident of Bangladesh, said: *“I came here in 2005 and I have lived here since that time. I have come to live with fear of being evicted. They keep threatening us with eviction. We cannot even repair the houses because we are afraid of possible evictions. The first time they came around in 2010 and they threatened us. I had to remove all my possessions and doors to avoid damage”*.<sup>67</sup>

#### INADEQUATE INFORMATION AND GENUINE CONSULTATION

The UN Basic Principles and Guidelines on Development-based Displacement and Evictions stipulate: “Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.”<sup>68</sup>

Although the Environmental and Social Impact Assessment (ESIA) and Resettlement Action Plan (RAP) commissioned by KENHA for the highway project state that consultations were carried out with affected communities in June 2014, none of the 110 project-affected people Amnesty International researchers interviewed had heard of, let alone attended, these meetings.

Amnesty International’s research in Bangladesh settlement found that although their houses had been marked for demolitions in order to make way for the expansion of the Mombasa-Mariakani highway seemed to be well underway, residents who would be affected by the project had very little information about it. Amnesty International also found that, similar to the situation in Jomvu, and despite the fact that the ESIA for the project mentions a series of consultations with affected people, none of the people interviewed had attended or even

<sup>67</sup> Interview conducted by Amnesty International in Bangladesh informal settlement 6 June 2015.

<sup>68</sup> Principle 37, UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

heard of these consultations.<sup>69</sup>

A majority of those interviewed said that they first heard about the project in January 2015 when their Assistant Area Chief for Bangladesh called a public meeting to tell them about it. According to interviewees hardly any details were provided except that affected people would be provided with compensation for their losses as a result of the project. According to one Bangladesh resident, it was difficult for people to ask questions at the public meeting because they were afraid of appearing to oppose the government.

The Assistant Area Chief for Bangladesh settlement also appeared to have limited information about the project. She told Amnesty International researchers that as far she knew, there would be compensation for land holders, however, those without title would only receive a 'disturbance allowance'. She did not know what these amounts were and how they were going to be calculated.<sup>70</sup>

Some project-affected people, such as 23-year-old Patrick Mutuka, who often worked night shifts, had not heard anything about the public meeting called by the Assistant Area Chief.<sup>71</sup> For them, the eviction notices and painting of the yellow cross was the first and only interaction with representatives of the authorities responsible for the project.

People whose houses had not been marked with a yellow cross and had not yet received eviction notices were also very fearful of being forcibly evicted. One woman interviewed by Amnesty International researchers who rents her house in the settlement said that she was extremely worried about whether she too would be evicted. While her home of five years had not been marked, she told Amnesty International that her landlord's sons had told her that her home would be affected. Her neighbour's house on the same row as hers had been marked. She had a three week old baby at the time of the interview and was worried about where she would take her family, and especially the new-born baby, if they were forcibly evicted.

Amnesty International researchers were also shown homes in Bangladesh settlement that bore a yellow cross plus a number. This additional marking had caused confusion exacerbated by the lack of any mechanism via which people could raise their concerns and have relevant authorities answer their questions. Recounting his experience of when structures were being marked with yellow crosses in the community, Wilfred Nyongesa, a tenant who has been living in Bangladesh settlement for over ten years, said:

*"In February 2015, I saw four people (two administration police and two civilians), the two civilians were carrying paint and marking crosses on people's houses. I did not understand what was happening. I tried to ask them but the people were very hostile; they did not want*

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<sup>69</sup> Amnesty International researchers met with 110 people in Jomvu and Bangladesh informal settlements.

<sup>70</sup> Meeting conducted by Amnesty International with Assistant Area Chief of Bangladesh on 9 June 2015.

<sup>71</sup> Interview conducted by Amnesty International in Bangladesh informal settlement on 6 June 2015.

*to be asked any questions. They marked my neighbour's house with a cross and added +17, which I did not understand. When I sought the meaning the response was hostile. Initially they replied that the residents should figure out the meaning themselves. Then just before they finished around our area they said in passing that it simply that means "that your house too will be affected. They also added it was obvious that we were within 17 metres of the cross. The 17 metres included the five households in our plot".<sup>72</sup>*

HakiYetu, a community-based organization located in Bangladesh settlement, told Amnesty International that they had met with one of KENHA's project engineers along with a group of community members in January 2015 to ask questions about the impact of the project. In that meeting, KENHA advised HakiYetu to present their concerns in a memorandum through the office of the Assistant Area Chief. KENHA told HakiYetu that stakeholder meetings had been organized in the Assistant Chief's office in Birikani (another informal settlement) by consultants working for KENHA. KENHA, however, were not able to share more details about these consultations as the minutes had not been shared with the Mombasa office at the time of HakiYetu's meeting with KENHA. According to HakiYetu, KENHA's representative at the meeting agreed to visit Bangladesh community and speak with affected people. He also agreed to revoke the notices that had been issued and issue new ones only after meeting the community. However, the KENHA representative also stated that he would need to consult with his senior colleagues before taking the promised action. In June 2015 when Amnesty International met with HakiYetu, KENHA representatives had not visited Bangladesh settlement for a consultation meeting.<sup>73</sup>

KENHA's reluctance to share publicly available documents was evidenced in a meeting between Amnesty International's researchers and the Senior Engineer, Design and Construction. When researchers requested copies of the RAP for the project, the senior engineer refused to furnish them, saying that while they were not secret documents, he would not give them to Amnesty International without instructions from his supervisors in Nairobi.<sup>74</sup>

#### INADEQUATE CONSULTATION

As referred to in earlier sections of this report, on 13 August 2015, almost three months after the forced evictions, KENHA organised a 'public sensitization meeting'. An Amnesty International researcher attended this meeting. KENHA representatives began the 'sensitization meeting' by providing general information on the project and explaining that the area needed for the project would be cleared of all structures by June 2016. They stated that the project would need at least 60 metres of land for widening the existing highway.

Participants at the meeting asked KENHA why, at certain parts of the project, the existing road was being expanded only on the side that was occupied by informal settlements. KENHA responded by saying that the plan was designed to ensure that they did not disturb a major

<sup>72</sup> Interview conducted by Amnesty International in Bangladesh informal settlement on 6 June 2015.

<sup>73</sup> Meeting conducted by Amnesty International with HakiYetu on 6 June 2015.

<sup>74</sup> Meeting conducted by Amnesty International with Senior Engineer, Design and Construction, KENHA 4 June 2015.



water pipeline. However, when people asked whether it would not be easier to reroute the water pipeline if KENHA indeed wanted to minimize evictions, the officials did not respond.

During the meeting, KENHA representatives informed people about the existence of the Environmental and Social Impact Assessment and the Resettlement Action Plan for the project and also summarised the main features of the same. This is the first time that a majority of the people present had heard about these documents.

KENHA explained that there would be land acquisition, compensation and the disbursement of a 'disturbance allowance'. In response to a question regarding those occupying the land without a title, KENHA representatives said that they would recognise any formal documentation including lease agreements and sale receipts. However they did not clarify the entitlements of those without formal documents, or the entitlements of tenants.

KENHA representatives did not provide any details about the amounts for compensation and how these would be determined, citing that the responsibility for devising this lay within the mandate of the National Land Commission. KENHA's representatives did not consider it their role to ensure that the National Land Commission consulted or otherwise engaged the affected people and guarantee them access to this essential information that would impact their lives.

In line with international human rights standards, access to accurate and timely information is essential for people to effectively participate in any consultation process. The information must be provided in writing and in the local language or languages of the affected community. It must also be provided in a manner that allows all sections of the community - including those who cannot read - to participate effectively in the consultation process. Anyone affected by a proposed eviction must be given adequate time and opportunity to reflect upon, discuss, raise concerns and submit comments to the authorities about the eviction and any related plans, including plans for compensation and resettlement. They must also be given an opportunity to suggest any feasible alternatives to eviction. Authorities must make provision for people, individually and collectively, to seek additional information and receive responses to any questions arising from the information provided.

The 'public sensitization meeting' organised by KENHA on 13 August 2015 does not meet the criteria for genuine consultation as envisaged by international human rights standards. KENHA did not provide the affected people with any documents related to the project. When participants at the meeting asked KENHA for the ESIA and the RAP, they were told that these documents could be obtained from KENHA's website. When some of the participants pointed out that the documents were in fact not available on the website, KENHA said they would put them up shortly. In letter to Amnesty International sent by KENHA on 28 September, KENHA stated that while the ESIA and RAP were disclosed on KENHA's website in November 2014, due to maintenance issues, it is not currently accessible and that KENHA was working to address this problem.<sup>75</sup>

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<sup>75</sup> KENHA's letter to Amnesty International on concerns raised by Amnesty International regarding the forced evictions in Jomvu. Letter was dated 23 September 2015 but was sent to Amnesty International

Additionally, it is untenable to expect residents of informal settlements who may, at best, have limited access to the internet to find the necessary documents on websites. It is KENHA's responsibility to make all the information available to the affected people prior to any consultation meeting. Worryingly, soon after the 'public sensitization' meeting ended, KENHA's project lead told Amnesty International's researcher that the RAP was in fact a confidential document.<sup>76</sup>

#### IMPACTS OF THE LACK OF INFORMATION

At the time of printing, residents of Bangladesh have not had any opportunity to engage in genuine consultation with the project authorities and have received very little information. This deficit has fuelled rumours in the community. When Amnesty International visited the settlement in June 2015, many residents believed that their homes would be demolished in the coming weeks if not days.

For example, the stress of not knowing what would happen and when they would be evicted created a lot of anxiety for 20-year-old Chrispinos Owuma whose house had not been marked, but was on the same row as other's whose homes did bear the yellow cross. He had heard a rumour that while structure owners like him would be compensated, the compensation amount would be calculated at half the market value of the property. He had also heard that the demolition would take place in the coming few days. Chrispinos felt particularly vulnerable as he was a young adult looking after his two school-going siblings after his parents' death. He was worried about where he would take them if he was evicted from Bangladesh and how he would support their education.<sup>77</sup>

Many people affected by the project earned their livelihood from renting rooms for living as well as for work places. They feared that the threat and rumours of forced evictions was leading to tenants finding alternative places to live and work and it would affect their ability to earn a living.

However as several tenants pointed out, it will not be easy for them to find affordable alternative housing that is as conveniently located in terms of work opportunities as Jomvu or Bangladesh informal settlements. A single mother and tenant in Bangladesh settlement described her situation as particularly precarious. She had decided to start looking for alternative housing but had found that in light of the developments in Bangladesh and Jomvu, rents in the nearby area had risen significantly due to the anticipation of increased demand. She pointed out that, *"As a single mother and bread earner I am very worried about this. Now if I move, because of rising rents, I will not be able to pay my son's school fees. I also fear that I might only be able to afford a house far from here. Sometimes I need to leave work late and return home at 8pm. Being close to work is important for me. All houses here have their individual bathrooms and water. I fear that if I go elsewhere I will not be able to*

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by email on 28 September (Ref: KeNHA/D&C/A109/Vol.4 (85).

<sup>76</sup> Discussion between Amnesty International researcher and the KENHA team leader on 13 August 2015.

<sup>77</sup> Interview conducted by Amnesty International in Bangladesh settlement 6 June 2015.

*afford this.*<sup>78</sup>

## **BANGLADESH-MIKINDANI-RUNYU ROAD PROJECT**

While parts of Bangladesh settlement adjacent to the A 109 are affected by the MMRDP, community members living in the interior of the settlement are also likely to be affected by a road that will cut through the settlement linking Bangladesh to Mikindani via the Runyu area. The Mikindani-Runyu road does not have foreign funding and is a county government project financed by the constituency development fund. However, like the MMRDP, the Bangladesh community has had very little information about the design and impacts of the Mikindani – Runyu road project.

Bangladesh residents first learnt about the road construction project when the County Governor announced its construction in March 2015 at a public meeting at the settlement. This was followed by a public meeting held by the Assistant Area Chief. According to dozens of Bangladesh residents, while the two public meetings confirmed plans to construct a road through the settlement, they provided no information on the exact route of the road and the number of people it would impact. Some residents said that they had a vague understanding of the design of the road as they had walked with the engineers when they were trying to map out the route. However, no one had seen an official map clearly defining the planned route. Several residents were concerned that the Catholic Church and a maternity clinic in the settlement would be affected by the road. Based on discussions with members of the Bangladesh Road Committee, a community initiative established to seek more information about the road project, it was evident that the lack of adequate information had created an atmosphere of distrust of government representatives.

Bangladesh community members have noted that, while they recognize that the road would provide access to emergency and essential services for them, they would like the project to be carried out in a manner that respects their human rights and seeks their participation. Community members are also concerned that people who would lose their land and structures to the project would not be compensated as both the County Governor and the Assistant Area Chief had categorically told them that there were no funds to compensate those who would be adversely affected by the road construction.<sup>79</sup>

Amnesty International researchers raised the question of compensation for Bangladesh- Mikindani- Runyu project-affected people with the Assistant Area Chief, the Chief Officer, County Ministry for Transport and the County Minister for Land and Housing. The County Minister for Land and Housing agreed that every project, regardless of who is funding it, must have a resettlement action plan if it is going to lead to displacement. However, the Assistant Area Chief and the Chief Officer, County Ministry of Transport were clear that there was no budget for compensation in the project plans, so no one affected by the road project would be compensated.<sup>80</sup> From their point of view compensation and resettlement were a matter of budgets rather than rights. According to the Chief Officer, in cases where there was no budget to compensate affected people, the housing and transport ministries would engage with the affected people, explain how the project would benefit them and in most cases, affected people would voluntarily give up their land. Where people were opposed to

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<sup>78</sup> Interview conducted by Amnesty International in Bangladesh settlement 6 June 2015.

<sup>79</sup> Based on meetings conducted by Amnesty International in Bangladesh settlement on 2 and 3 June 2015.

<sup>80</sup> Meetings conducted by Amnesty International on 9 June and 5 June respectively.

giving up their land, the Ministry would not implement the project.

The approach, as explained by the representative of the Ministry of Transport, is rather unusual in Kenya and it remains to be seen if, in a case where affected people are opposed to a particular project, the Mombasa County government would not implement it.

The Chief Officer of the County Ministry of Transport went on to explain that in the case of the Bangladesh-Mikindani-Runyu project, problems had arisen because the community was divided over the project. While some were opposed to it, others had expressed their support. According to him, the Catholic Church was opposing the project because the project would impact the Church's encroachment on public land.

In May 2015, the Catholic Church represented by the St. Patrick Missionary Society filed a case against the county government in the Mombasa High Court seeking an injunction to prevent construction of the Bangladesh-Mikindani-Runyu project until consultations around the project and damage caused to residents was taken into account. The project has been halted pending the Court's decision.

# ROLE OF PROJECT FINANCIERS

As noted in the preceding section the Mombasa-Mariakani highway expansion project is funded by the Government of Kenya and loans from the African Development Bank (AfDB), the European Investment Bank (EIB) and the German development bank (KfW), together with a grant from the EU-Africa Infrastructure Trust Fund (EU-AITF).<sup>81</sup> Civil works for the project have been divided in two - Lot 1 covers 11.3 kilometres from Mombasa to Kwa Jomvu and is funded by the AfDB while Lot 2 covers 30.4 kilometres from Kwa Jomvu to Mariakani and is funded by EIB, KfW and EU-AITF.<sup>82</sup> The project is however treated as one unit by the funders as well as by KENHA for the purposes of its environmental and social impacts as well as issues of resettlement although AfDB, and EIB and KfW have the primary responsibilities for the parts of the project that they fund.<sup>83</sup>

Each of the banks as well as the EU-AITF has to ensure that their projects comply with human rights standards. The EU-AITF and the EIB are bound by the Charter of Fundamental Rights of the European Union, the EU's charter on human rights which applies to all institutions and bodies of the EU.<sup>84</sup> Furthermore, the Treaty on the European Union, a founding treaty of the EU, specifically refers to the EU's commitment to human rights, including in its external action and its relations with the wider world.<sup>85</sup> Similarly the Treaty on the Functioning of the European Union in the context of development cooperation states that: "The Union and member states shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations."<sup>86</sup>

Additionally, human rights obligations of states extend to state-owned organisations like the KfW which are empowered by the law of that State to exercise elements of government authority or which are acting on the instructions of that State.<sup>87</sup> The UN Committee on Economic, Social and Cultural Rights has repeatedly stated that in order to comply with their obligations under the International Covenant on Economic, Social and Cultural Rights, States

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<sup>81</sup> The EU-AITF grant is managed by KfW.

<sup>82</sup> Africa Development Fund, Kenya, Mombasa Mariakani Highway Appraisal Report, OITC/EARC February 2015, page 2.

<sup>83</sup> As explained by EIB in a conference call with Amnesty International on 28 September 2015.

<sup>84</sup> See 'The EIB approach to human rights', 25 May 2011, <http://www.eib.org/infocentre/press/news/all/business-and-human-rights.htm> (last accessed on 29 September 2015).

<sup>85</sup> Treaty on the Functioning of the European Union in the context of development cooperation states.

<sup>86</sup> See Article 208 (2) of the Treaty on the Functioning of the European Union in the context of development cooperation states.

<sup>87</sup> Article 5 and 8 of the ILC Articles on Responsibilities of States for Internationally Wrongful Acts (2001), UN Doc A/56/10.

are required to ensure that they respect the enjoyment of these rights in other countries.<sup>88</sup>

The AfDB states that in accordance with its mandate, it respects the principles and values of human rights as set out in the UN Charter and the African Charter of Human and Peoples' Rights.<sup>89</sup>

Additionally, as stated by the CESCR, "States parties *have an obligation to take whatever measures they can* to ensure that the policies and decisions of those organizations are in *conformity with their obligations under the Covenant...*".<sup>90</sup> Thus, States that are members of the European Union and the African Development Bank have to ensure that the actions of these institutions are consistent with, and do not violate, international human rights law and standards. States cannot circumvent their international human rights obligations by acting through inter-governmental bodies or multilateral institutions.<sup>91</sup>

## **ABOUT THE PROJECT'S FINANCERS**

The African Development Bank (AfDB) is the largest investor in the project and has committed a loan of 80 million UA through the Africa Development Fund.<sup>92</sup> The AfDB Group is a multilateral development finance institution established to contribute to the economic development and social progress of African countries that are the institution's regional member countries. The Bank Group has 80 member countries, comprising 54 regional member countries and 26 non-regional member countries. The non-regional member countries are primarily from Europe, America and Asia.

The European Investment Bank (EIB) which has committed to lend to 42.03 million UA to the project, is the EU's Bank and represents the interest of EU member states. The EIB finances investment projects which contribute to furthering EU policy objectives. More than 90% of the EIB's activity is focused on Europe but it also supports projects which further the EU's external and development policies outside the EU. The 28 EU member states form the shareholders of the EIB. The EIB's policy on involuntary resettlement states: "Avoid and/or prevent forced evictions and provide effective remedy to minimise their negative impacts should

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<sup>88</sup> See, for example, CESCR, General Comment 12, para. 36; General Comment 15, para. 31; General Comment 19, para. 53, General Comment 14, para. 39.

<sup>89</sup> Preamble, AfDB, Integrated Safeguards System - Policy Statement and Operational Safeguards, Safeguards and Sustainability Series, Volume 1, Issue 1, January 2014; EIB's Environmental and Social Handbook, 2013.

<sup>90</sup> CESCR, General Comment 17, para 56. The phrase 'have an obligation' in regard to international organisations was also utilised in General Comment 13, para 56 and General Comment 14, para 39. The CESCR has also made this obligations clear to Germany: 'Concluding Observations: Germany' (2001) UN Doc E/C.12/1/Add.68 para. 31.

<sup>91</sup> ILC Articles on International Organisations 2011) UN Doc A/66/10, Article 61 (1).

<sup>92</sup> A Unit of Account or UA is the official currency of AfDB projects. 1 UA is equivalent to 1 unit of the International Monetary Fund's Special Drawing Rights. For the purposes of this project, 1 UA is equal to USD 1.53481 , KES 131.222 and EURO 1.18938.

prevention fail.”<sup>93</sup>

KfW, which has committed to lend 42.03 million UA, is a German government-owned development bank. KfW supports development projects in South-East Europe, Asia, Africa and Latin America. On behalf of the German Federal Government, and primarily the Federal Ministry for Economic Cooperation and Development, KfW finances and supports programmes and projects that mainly involve public sector players in developing countries and emerging economies.

The EU - Africa Infrastructure Trust (EU-AITF), which has agreed to a grant of 16.82 million UA to the project, promotes infrastructure projects in Sub-Saharan Africa with a regional impact. EU-AITF donor contributions come from the European Development Fund (EDF) budget and from several European Union Member States.

In addition to relevant human rights standards, the AfDB and EIB also have their own ‘safeguards policies’ that address issues of consultation, information sharing and involuntary resettlement. Both institutions require adherence to certain standards during the planning and implementation of projects that they fund.<sup>94</sup> With reference to the MMRDP, the EIB’s ‘Non Technical Summary’ of the project states:

“The scope of the resettlement action plan will ensure that all guidelines of the various lenders are adhered to. Specifically, the African Development Bank’s Policy on Involuntary Resettlement, i.e. Involuntary Resettlement Policy (2013); will be adhered to, complemented by specific provisions of the standards held by the European Investment Bank (EIB). The policy requires the borrower to prepare a full resettlement action plan (RAP) for any project that involves the displacement of a significant number of people (200 or more persons) who would be displaced with loss of assets, loss of access to cultural assets or reduction in their livelihood. The project at hand falls within such category, necessitating the elaboration of a RAP.”<sup>95</sup>

The project’s funders have very clear requirements on participation, consultation and resettlement in the safeguard policies. For example, according to the AfDB’s Operational Safeguard on Involuntary Resettlement requirements, the borrower should consult affected people about their preferences with regard to resettlement and give them genuine choices of

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<sup>93</sup> ‘European Investment Bank, Environmental and Social Handbook, Standard 6 Involuntary Resettlement’, 2013, p. 52  
[http://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf) (last accessed on 29 September 2015).

<sup>94</sup> African Development Bank, Safeguards and Sustainability Series, Volume 1, Issue 1, December 2013; EIB’s Environmental and Social Handbook, 2013  
[http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December\\_2013\\_-\\_AfDB%E2%80%99S\\_Integrated\\_Safeguards\\_System\\_-\\_Policy\\_Statement\\_and\\_Operational\\_Safeguards.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf) (last accessed on 29 September 2015).

<sup>95</sup> European Investment Bank, Non Technical Summary, p. 5  
<http://www.eib.org/infocentre/register/all/59088417.pdf> (last accessed on 29 September 2015).

feasible resettlement options. In particular, project-affected people should be given the opportunity to participate in the negotiation of compensation packages and in decisions on resettlement assistance. They should also be consulted about decisions on eligibility requirements, the suitability of proposed resettlement sites and the proposed resettlement timings.<sup>96</sup> The EIB's policy on involuntary resettlement also highlights among its policy objectives, preventing of forced evictions and providing effective remedies as well as ensuring that project-affected people are kept informed and meaningfully consulted on resettlement measures throughout the resettlement process.<sup>97</sup> However, the evidence gathered by Amnesty International at Jomvu and Bangladesh points to failures by the project's funders so far, to ensure the standards they have set out are adhered to in reality.

## INADEQUATE HUMAN RIGHTS DUE DILIGENCE

A robust human rights due diligence process is essential for avoiding human rights violations during the planning and implementation of a project. The AfDB, EIB, KfW and EU-AITF (managed by KfW) are governed or owned by states that have human rights obligations. These states have human rights obligations and have a duty to ensure that their institutions, or those they are members of, respect human rights and do not cause or contribute to human rights violations. Donors and financial institutions providing project funding should ensure that they undertake a robust human rights due diligence process in order to become aware of and prevent, or mitigate any risks to human rights as a result of the project. In the case of the MMRDP, as a first step for human rights due diligence, AfDB, EIB, KfW and EU-AITF should have identified gaps between national legislation and practice with regard to community participation in consultations, evictions and resettlement and their own policies.

The funders should also have considered Kenya's track record on forced evictions. Had this been done, it would have been clear that forced evictions were a significant risk, which needed to be discussed with the government authorities. The subsequent project documents – including the ESIA and RAP – should then have reflected agreed measures to ensure that all evictions were carried out in compliance with the policies of the funding institutions.

Many residents in Jomvu and Bangladesh informal settlements told Amnesty International that they had previously faced forced evictions. James Nguya, a 33-year-old resident of Bangladesh informal settlement said, "They demolished our houses in 2002. At that time they came in the morning and started demolishing homes. I was hurt during that demolition as I was trying to remove the tin sheets and run away from the tractor and I fell... That time

<sup>96</sup> African Development Bank, Safeguards and Sustainability Series, Volume 1, Issue 1, December 2013. p.33 [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December\\_2013\\_-\\_AfDB%E2%80%99S\\_Integrated\\_Safeguards\\_System\\_-\\_Policy\\_Statement\\_and\\_Operational\\_Safeguards.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf) (last accessed on 29 September 2015).

<sup>97</sup> 'European Investment Bank, Environmental and Social Handbook, Standard 6 Involuntary Resettlement', 2013, p 52 [http://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf) (last accessed on 29 September 2015).



there was no notice. We can't wait for when they will come – they can come anytime”.<sup>98</sup>

In January 2015, before the project had been approved by the major investors, KENHA had marked structures within the potential project area in Jomvu and Bangladesh informal settlements with yellow crosses indicating they were due for demolition. KENHA had also issued 30-day eviction notices at that time to residents and business owners living on the road reserve in both locations. EIB representatives confirmed in a conference call with Amnesty International that they had noted the yellow crosses when they visited the project area in January 2015. However, they said that KENHA told them that all the structures marked for demolition were shops and small businesses. EIB representatives added that because of the large size of the project area (41 kilometres), they felt that at that stage they were not in a position verify KENHA's claims.<sup>99</sup>

A robust human rights due diligence framework would have made note of these and other attempts at forced evictions in the project area and would have taken steps to ensure that KENHA does not carry out any forced evictions while implementing the project.

Amnesty International is concerned that EIB board approved funding for the project on 21 July 2015. This decision to approve the funds was taken after Amnesty International brought information of the Jomvu forced eviction to EIB's notice and before KENHA had admitted to carrying out the forced eviction and taken any steps to provide people with effective remedies.

#### **FAILURE TO ADEQUATELY MONITOR THE PLANNING AND IMPLEMENTATION OF THE PROJECT**

Neither AfDB nor EIB knew about the forced eviction in Jomvu until Amnesty International informed them a month after it had occurred. Indeed, a KENHA representative urged Amnesty International's researcher not to publicise KENHA's involvement in the Jomvu forced evictions as it could lead to cancellation of the project by the financiers.<sup>100</sup> This highlights a lack of independent monitoring of the process of eviction and resettlement in the project area by the project's financiers, and is linked to Amnesty International's concerns about a lack of adequate due diligence by them.

Both AfDB and EIB have provisions in their safeguards policies that explicitly require them to monitor compliance of the project with their own standards. Additionally, they recognize an aggravated duty to monitor projects where high environmental or social risks have been anticipated.<sup>101</sup> The ESIA and the RAP for the project refer to consultations in June 2014.

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<sup>98</sup> Interview conducted by Amnesty International in Bangladesh settlement 6 June 2015.

<sup>99</sup> Conference call between European Investment Bank representatives and Amnesty International on 25 June 2015.

<sup>100</sup> Discussions between KENHA's representative and Amnesty International's researcher on 13 August 2015.

<sup>101</sup> African Development Bank, Safeguards and Sustainability Series, Volume 1, Issue 1, December 2013 p 17; EIB's Environmental and Social Handbook, 2013 p. 10  
[http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December\\_2013\\_-\\_AfDB%E2%80%99S\\_Integrated\\_Safeguards\\_System\\_\\_](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System__)

None of the people Amnesty International interviewed in June 2015 had heard of or attended these meetings. The funders do not appear to have monitored the consultation process to ensure that all project-affected people have been adequately consulted, informed and enabled to participate in decisions that affect their rights.

It is noteworthy that even after Amnesty International brought concerns about a lack of adequate information provided to project-affected people was brought to the attention of the funders, there was still no representation from the banks or EU-AITF in the 13 August 2015 'public sensitization meeting' held by KENHA in Mombasa. Had the project financiers attended the meeting, they would have noted, among other lapses that despite questions from people on applicable safeguard policies of the various donors, KENHA did not provide this information. KENHA also failed to inform people about the existence of complaints mechanisms that some of the project financiers have in place to enable people negatively impacted by a project to raise concerns.

From 16-18 September, four months after the forced evictions in Jomvu, the project's funders along with KENHA conducted a site visit to Jomvu and met with some of the victims of forced evictions as well as other project-affected persons. Based on their visit, EIB, outlined their main findings in a meeting with Amnesty International on 28 September. EIB confirmed that the forced eviction was within the project area, that it was carried out by KENHA, and that although KENHA had initially estimated that 20 structures had been demolished, it was clear to EIB that the number was much higher.

EIB also told Amnesty International that they were dissatisfied with KENHA's slow pace of providing remedies for victims of forced evictions in Jomvu. EIB had subsequently hired a consultant who would monitor the progress of the remedial measures taken by KENHA.

#### LACK OF CLARITY ON THE APPLICABLE SAFEGUARDS

Complete, accurate and timely information on project plans and applicable policies is essential so that project-affected people as well as civil society actors working with communities can understand potential impacts, guard against human rights violations and hold the government and funders accountable for lapses and non-compliance with established requirements.

As noted earlier in the report, the two main documents publicly available for the MMRDP are the Environmental and Social Impact Assessment (ESIA) of October 2014 and the Resettlement Action Plan (RAP) also of October 2014. At the time of printing the report, people in affected communities did not have clarity about which specific safeguards are being used by the financiers. So far, despite a statement in EIB's 'Non-Technical Summary' of the project, that the RAP will adhere to AfDB's safeguards on involuntary resettlement complemented by specific standards held by the European Investment Bank (EIB), neither the ESIA or the RAP clarify which EIB standards will complement AfDB's safeguard policies.

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*\_Policy\_Statement\_and\_Operational\_Safeguards.pdf (last accessed on 29 September 2015).*

#### LACK OF MEANINGFUL PARTICIPATION OF AFFECTED PEOPLE

The ESIA for the project provides a list of public consultations held in June 2014. However, the project-affected people who Amnesty International met in June 2015, including those who had received KENHA's eviction notices, had not heard of or attended these consultations and had very little information about the project, its impacts and measures that would be taken to mitigate the impacts. Amnesty International researchers asked everyone they interviewed in June 2015 whether they were invited to any consultation or meeting organized KENHA or anyone acting on behalf of KENHA with regard to the project and to discuss its impacts. No-one was aware of or invited to such consultations.

Chrispinos Mukei, a 55-year-old tenant who has been living in Bangladesh settlement for almost 10 years said, "*Personally I have not been involved in any consultations with the roads authority. We were even shocked that the houses were marked without our knowledge. No one ever sought our opinion. I feel so bad about the Jomvu evictions. I am so worried, I am not sure that the same will not happen to us. So much investment was destroyed in that demolition. [Referring to the shops and small businesses that were destroyed], This is what was this community's main source of livelihood. They have nothing to turn to. This is disturbing. Besides the X marks which are not clear, they have further complicated it by adding plus 16, 17...*".<sup>102</sup>

In a meeting with KENHA on 23 September Amnesty International raised these concerns regarding the absence of those affected in Jomvu and Bangladesh at the June 2014 consultations referred to in the ESIA and RAP. KENHA's consultants who prepared the ESIA and RAP and were present at the meeting, told Amnesty International that it was indeed possible that people not affected by the project attended the June 2014 public consultations referred to in the above documents.

In a meeting with AfDB on 25 September, representatives of the bank stated that they had assessed the ESIA and they felt satisfied with the information in it as well as with the level of consultation with affected people.

EIB, in a meeting with Amnesty International on 28 September clarified that KENHA had completed the ESIA before EIB joined the project as a development partner. The EIB also stated that it had not independently verified the information on consultations in the ESIA. EIB also told Amnesty International that they had carried out a 'spot-check' for the part of the project (from Kwa Jomvu to Mariakani) that the bank is funding, and concluded that KENHA needed to put in place a stakeholder engagement plan as a contractual requirement. EIB clarified that, at the time of printing this report, KENHA had not prepared the required stakeholder engagement plan.<sup>103</sup>

One of the objectives of EIB's policy on involuntary resettlement is to ensure that resettlement measures are designed and implemented through informed and meaningful

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<sup>102</sup> Interview conducted by Amnesty International in Bangladesh settlement 6 June 2015.

<sup>103</sup> Conference call between Amnesty International and the European Investment Bank on 28 September 2015.

consultation and participation of the project-affected people throughout the resettlement process.<sup>104</sup> The ‘public sensitization meetings’ organised by KENHA on 13 August 2015 – almost three months after the Jomvu evictions, and seven months after eviction notices were served on people in Jomvu and Bangladesh – do not constitute an opportunity for genuine consultation or meaningful participation. KENHA representatives at the ‘public sensitization meeting’ invited interested community based organisations to provide inputs on the RAP but did not explain either the process for providing inputs, or options for further engagement with communities on the issue. KENHA representatives also told the Amnesty International researcher after the ‘public sensitization meeting’ that the RAP was confidential and could not be shared.<sup>105</sup>

AfDB’s 2013 safeguards policy states that for category 1 public sector projects with potential for high social and environmental impacts, such as the MMRDP, final and cleared versions of key environmental and social assessment documents, including the ESIA and RAP should be publicly disclosed at least 120 days before Board consideration.<sup>106</sup> According to AfDB’s project appraisal report, summaries of the ESIA and RAP were approved and posted on the Bank’s website on 7 November 2014.<sup>107</sup> While this meets the 120 day criterion referred to above, it is not an adequate or appropriate means for sharing information with project-affected people, many of whom run shops and other small businesses or are casual labourers and workers in factories, have low levels of literacy and may not have easy access to the internet.

#### INADEQUATE RESETTLEMENT ACTION PLAN

KENHA and the project’s funders have clarified that the RAP available on AfDB’s and EIB’s website is not the final document and that it needs to be brought into compliance with their safeguards policies.

The current RAP covers a number of aspects pertaining to resettlement including the legal and institutional framework, broad timeframes, purpose of the socio-economic survey and census, eligibility criteria (which notes the existence of ‘squatters’) and some potential negative impacts of the project. The RAP also requires the setting up of a mechanism for the

<sup>104</sup> ‘European Investment Bank, Environmental and Social Handbook, Standard 6 Involuntary Resettlement’, 2013, p. 52  
[http://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf) (*last accessed on 29 September 2015*).

<sup>105</sup> Discussion between Amnesty International researcher and the KENHA team leader on 13 August 2015.

<sup>106</sup> African Development Bank, Safeguards and Sustainability Series, Volume 1, Issue 1, December 2013. p.28 [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December\\_2013\\_-\\_AfDB%E2%80%99S\\_Integrated\\_Safeguards\\_System\\_-\\_Policy\\_Statement\\_and\\_Operational\\_Safeguards.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf) (*last accessed on 29 September 2015*).

<sup>107</sup> Africa Development Fund, ‘Mombasa-Mariakani Highway Project, Appraisal Report’, February 2015, page 16 [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Kenya\\_\\_AR-Mombasa-Mariakani\\_Highway\\_Project\\_-\\_03\\_2015.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Kenya__AR-Mombasa-Mariakani_Highway_Project_-_03_2015.pdf) (*last accessed on 29 September 2015*).

redress of grievances. However, the RAP falls short on providing specific information with regard to many of these aspects, in particular on the loss of homes and the process to redress the same.

One of the minimum requirements for a RAP listed in EIB's policy on involuntary resettlement, is that it provides details on the project impacts and identifies all those who would be displaced as a result of the project.<sup>108</sup> The RAP, however, falls short of this requirement. It does not give details about the number of people affected in each area or specify the number of project-affected person according to tenure status. The RAP gives the impression that the high density sections of the area impacted by the project comprise largely of businesses rather than the homes. Amnesty International's research in the area found that the project-affected zones of both Jomvu and Bangladesh informal settlements have many people living in them, often in the same buildings used for commercial purposes. Often the front rooms of a structure are used for commercial purposes while the remaining rooms are used as housing.

This omission means that the correct number of people affected, and the loss of housing is not accurately captured by the RAP, and subsequently not accounted for in the compensation packages. KENHA's consultants who prepared the ESIA and the RAP also confirmed later, in a meeting between KENHA and Amnesty International that most structures in Jomvu and Bangladesh serve as homes and places of work and therefore agreed to review their enumeration.<sup>109</sup>

Additionally, the RAP does not include annexes, which are listed in the table of contents of the document. According to the table of contents, the annexes contain information critical for affected people, including information on assets lists, summary of the household survey, stakeholder consultations and attendance lists thus denying people the opportunity to check whether they have been counted and their assets adequately listed.

The AfDB's Operational Safeguard 2 on involuntary resettlement, in the section on the requirements of a full resettlement action plan, lays down, "Displaced people are provided with targeted resettlement assistance with the aim of ensuring that their standards of living, income-earning capacity, production levels and overall means of livelihood are improved beyond pre-project levels. To this end, a comprehensive livelihood improvement programme is formulated and implemented as part of the Resettlement Action Plan".<sup>110</sup> However, the

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<sup>108</sup> 'European Investment Bank, Environmental and Social Handbook, Standard 6 Involuntary Resettlement', 2013, p. 61

[http://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf) (*last accessed on 29 September 2015*).

<sup>109</sup> Meeting conducted by Amnesty International with KENHA on 23 September 2015

<sup>110</sup> African Development Bank, Safeguards and Sustainability Series, Volume 1, Issue 1, December 2013. p.31 [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December\\_2013\\_-\\_AfDB%E2%80%99S\\_Integrated\\_Safeguards\\_System\\_-\\_Policy\\_Statement\\_and\\_Operational\\_Safeguards.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf) and 'European Investment Bank, Environmental and Social Handbook, Standard 6 Involuntary Resettlement', 2013, p. 35

RAP does not contain any details on resettlement assistance. Although it states that under AfDB's policy on involuntary resettlement 2003, those occupying land without legal title are entitled to resettlement assistance, which will include land, housing and infrastructure, there are no further details about the number of people entitled to resettlement assistance in each area and the nature of the assistance.<sup>111</sup>

The RAP contains an 'entitlement matrix' which states that land parcels will be acquired from registered land holders, those with proof of purchase but without registered titles, and squatters, and that cash compensation will be paid to the individuals concerned.<sup>112</sup> However, the RAP, later, contradicts itself and citing AfDB's involuntary resettlement policy 2003, it states that squatters will not be eligible for compensation for the land they occupy and instead will be provided with resettlement assistance.<sup>113</sup>

Based on the research conducted by Amnesty International, it is clear that the institutions funding the MMRDP are not complying with their own policies and neither are they ensuring that project partners like KENHA act in a manner that does not lead to, or exacerbate, human rights violations.

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[http://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf) (last accessed on 29 September 2015).

<sup>111</sup> Resettlement Action Plan Report - Preliminary and Detailed Engineering Design for the Dualling of Mombasa - Mariakani (A109) Road' by AECOM RoA (Pty) Ltd and CAPE consult for Kenya National Highways Authority October 2014 p 63.

<sup>112</sup> Resettlement Action Plan Report - Preliminary and Detailed Engineering Design for the Dualling of Mombasa - Mariakani (A109) Road' by AECOM RoA (Pty) Ltd and CAPE consult for Kenya National Highways Authority October 2014 p 72.

<sup>113</sup> Resettlement Action Plan Report - Preliminary and Detailed Engineering Design for the Dualling of Mombasa - Mariakani (A109) Road' by AECOM RoA (Pty) Ltd and CAPE consult for Kenya National Highways Authority October 2014 p 71.

# LEGAL AND POLICY FRAMEWORK ON EVICTIONS AND RESETTLEMENT

## NATIONAL FRAMEWORK

Kenya's 2010 Constitution recognizes several human rights, including the rights to health, food, water, education and housing. The Constitution has also sought to establish new structures and polices to safeguard those rights.

Article 43 (1b) of the Constitution of Kenya states: "Every person has a right to accessible and adequate housing and to reasonable standards of sanitation". The High Court of Kenya has, in at least three different cases, interpreted this right in Article 43 to include a prohibition on forced evictions. In some instances, the Court has also recommended that national guidelines be developed to ensure that any evictions from settlements do not violate the constitutional rights of the residents.<sup>114</sup> In a recent ruling concerning a case of forced evictions in Nairobi, the High Court of Kenya directed the government to develop an appropriate "legal framework for evictions based on internationally acceptable guidelines".<sup>115</sup> The court also called on the Kenyan parliament to enact legislation following consultation and public participation that would address the issue of forced evictions and security of tenure.<sup>116</sup>

Further, according to Article 21 (2) of the Constitution "The State shall take legislative, policy and other measures, to achieve the progressive realisation of the rights guaranteed under Article 43." Article 2 (6) of the Constitution lays down that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution. As a result, rights contained in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights, among other international treaties that Kenya has ratified form a part of the law in the country.

Article 184 of the Constitution provides for national legislation to be passed which will enable residents to participate in the governance of urban areas and cities. As part of these constitutional obligations, the government has passed a series of laws which outline the duties and responsibilities of the state in relation to housing and urban development, and

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<sup>114</sup> Ibrahim Sangor Osman & 1222 Others v the Minister of State for Provincial Administration and Internal Security and 10 Others (2011) (<http://www.kenyalaw.org/Forum/?p=348>); Susan Waithara and 4 Others v the Town Clerk, Nairobi City Council and 2 Others, 2011 ([http://kenyalaw.org/Downloads\\_FreeCases/80847.pdf](http://kenyalaw.org/Downloads_FreeCases/80847.pdf)) (last accessed 30 September 2013).

<sup>115</sup> Satrose Ayuma and Ors. vs. The Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme and Ors. in the High Court of Kenya at Nairobi, Petition No. 65 of 2010 para 109.

<sup>116</sup> Satrose Ayuma and Ors. vs. The Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme and Ors. in the High Court of Kenya at Nairobi, Petition No. 65 of 2010.

provide for civic participation in county development plans. This includes the County Governments Act 2012, which sets out the functions and powers of the county structures, and provides for citizen participation through, among other things, timely access to information and the right to petition and challenge any matter under the responsibility of the county government.<sup>117</sup>

Evictions and resettlement that may result from the infrastructure development projects mentioned in the previous section, are currently governed as outlined below, by a legal and policy regime at the national level that is varied but, which does not provide adequate protection against forced evictions especially for those without security of tenure.

#### ADMINISTRATION OF LAND IN KENYA

As laid down by the 2010 Constitution, land in Kenya is administered both by the county and the national governments. Chapter 5 of the Constitution specifies that all land in Kenya is classified as public, community or private.<sup>118</sup> Authority over public land, including land that is held, owned or used by a state organ is divided between the national and county governments. The National Land Commission administers all public land on behalf of the relevant government.<sup>119</sup> According to the Constitution, community land will be held and managed by communities identified on the basis of criteria including ethnicity and culture. Community land includes land that has been transferred to a community by an act of law as well as ancestral lands and lands traditionally occupied by hunter-gatherer communities.<sup>120</sup> Private land, as per the Constitution, includes land held by any person as freehold or leasehold.<sup>121</sup>

#### THE LAND ACT 2012

The Land Act of 2012 provides for the administration and management of land and land based resources, and applies to public, community and private land.<sup>122</sup> In terms of relevance to evictions and compensation, the Act covers compulsory acquisition of interests in land as well as eviction due to unlawful occupation of land. Part VIII of the Act details the procedures involved in the compulsory acquisition of land including the necessity to demonstrate that the land is required for fulfilling a public purpose.<sup>123</sup> However, while Part VIII of the Land Act lays down the procedure for acquisition including notice, compensation and judicial intervention, the process of compulsory acquisition is restricted to private land

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<sup>117</sup> County Governments Act 2012, No. 17 of 2012.

<sup>118</sup> Article 61 (2) Constitution of Kenya, 2010. For classification of Community and Private Land, see Articles 63 and 54 of the Constitution on Kenya.

<sup>119</sup> Article 62, Constitution of Kenya, 2010. For further information on the powers and functions of the National Land Commission, please see National Land Commission Act 2012.

<sup>120</sup> Article 63, Constitution of Kenya 2010.

<sup>121</sup> Article 64, Constitution of Kenya 2010.

<sup>122</sup> Article 3, Land Act 2012 No. 6 of 2012.

<sup>123</sup> Section 110 of Land Act 2012.



only. The Act lays down that in cases of compulsory acquisition, just compensation, as determined by the National Land Commission, will be paid to all those whose interests in the land have been established which includes owners, and actual occupiers.<sup>124</sup> The protections that the Act guarantees through the process of compulsory acquisition therefore do not apply to people and informal settlements occupying public land.

#### OCCUPATION OF PUBLIC LAND UNDER THE LAND ACT 2012

Section 155 of the Land Act applies to unlawful occupation of public land. According to this section, any person who, without express or implied lawful authority, constructs on, cultivates, grazes animals, ploughs, clears or removes any produce from public land shall be considered an unlawful occupier.<sup>125</sup> Almost all those living in informal settlements on public land and all those covered in this report would therefore qualify as unlawful occupiers.

The section also sets out the procedure for evicting a person occupying public land. At the outset, the National Land Commission is required to provide notice either written or oral to the occupier of the land.<sup>126</sup> In determining the nature and length of the notice, the Commission should consider specific circumstances including the length of time the occupier has been on the land, their age and personal circumstances, dependents that the occupier might have and whether they are employed near the land in question, whether the land was peaceably occupied, whether the occupation is preventing necessary public works and whether it would be reasonable to pay the occupier to vacate the land.<sup>127</sup>

The section provides the occupier with the opportunity to challenge the eviction in the Environment and Land Court, which in turn could, upon considering the circumstances, order a range of remedies including cancellation of the notice of eviction.<sup>128</sup>

Section 157 of the Land Act 2012 lists offences under the Act and punishment for offences, including fraudulent procurement of land, unlawful occupation of public land and obstruction or encroachment on a public right of way. Importantly, it recognises as an offence the unlawful or forceful entry or the unlawful damage to property including buildings or crops by officials authorised under the Act.<sup>129</sup>

#### OCCUPATION OF ROAD RESERVES

Of particular relevance to this report is the Traffic Act 2013. Section 91 of the Act addresses the issue of encroachment on roads. According to section 91 (1) of the Act, it is an offence to encroach onto a road or areas reserved for the road including by erecting a building, constructing a fence or planting a tree. Further, according to section 91 (2) the highway

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<sup>124</sup> See Section 111 and Section 107 (7).

<sup>125</sup> Section 155 (1) of Land Act 2012 Cap 280.

<sup>126</sup> Section 155 (2) of Land Act 2012 Cap 280.

<sup>127</sup> Section 155 (4) of Land Act 2012 Cap 280.

<sup>128</sup> Section 155 (10) of Land Act 2012 Cap 280.

<sup>129</sup> Section 157 (5) of Land Act 2012 Cap 280.

authority can remove such encroachments from the road or areas reserved for the road.<sup>130</sup>

#### ACQUISITION OF LAND UNDER OTHER LAWS

Laws governing the establishment and functioning of public authorities like Kenya Railways or Kenya Ports Authority also provide for acquisition of land that may be essential to carry out the duties of the particular authority. For example, the Kenya Roads Act 2007 that governs public authorities such as the Kenya National Highways Authority and the Kenya Urban Roads Authority allows for acquisition of land. The Kenya Roads Act 2007 confers on the authorities the power to carry out any works on land vested in the authority or placed at its disposal, such as road reserves. Where the land does not belong to the agency, it can acquire it through a process of agreement and negotiations, in case of private land. Where the land is public, the relevant Ministry or the National Land Commission will make the land available for the agency to carry out its functions, such as the construction of roads.<sup>131</sup>

#### INTERNALLY DISPLACED PERSONS AND AFFECTED COMMUNITIES ACT 2012

In 2012, the Kenyan parliament passed the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act. The Act gives effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons 2006 and the United Nations Guiding Principles on Internal Displacement. According to this Act, "internally displaced person" means a "person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, **large scale development projects** (emphasis added), situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border".<sup>132</sup>

Several sections of the Act address issues of displacement and resettlement. Section 9 sets principles for durable solutions for internally displaced people including enjoyment of an adequate standard of living and access to mechanisms that restore housing, land or property. The Act requires that internally displaced people are consulted in the formulation of durable solutions.<sup>133</sup> Section 21 and 22 focus on displacement resulting from large-scale development projects. The Act states that displacement due to large-scale development projects may be permissible in exceptional cases where there are no feasible alternatives to displacement. In such cases, the government shall minimise displacement and mitigate against its negative impacts. It shall ensure that durable solutions are available to all those affected. The Act also embodies certain requirements that could serve as key safeguards against forced evictions. These include the requirement to: hold public hearings on the planned displacement; demonstrate that all feasible alternatives to displacement have been

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<sup>130</sup> Section 91 of Traffic Act 2013 Cap 403.

<sup>131</sup> Sections 22 and 23 of the Kenya Roads Act 2007 No. 2 of 2007.

<sup>132</sup> Section 2 (1) of Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012 No 56.

<sup>133</sup> Section 9 (2) and (4) of Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012 No 56.

duly considered; provide affected people with sufficient time and opportunities to review decisions and challenge them before an independent body; and provide access to effective remedies. Section 22 also states that displacement should be carried out in a manner that respects human rights especially of those who may be vulnerable to discrimination and marginalization, such as people with disabilities and, in some cases, children and women.

The Act requires the government to provide full information to all those affected and ensure their effective participation in the planning, management of the displacement and in defining suitable durable solutions.

#### NATIONAL POLICIES ON LAND AND HOUSING

The two main policies of relevance vis-à-vis housing, evictions and resettlement in Kenya are the National Housing Policy 2004 and the National Land Policy 2009.

The National Housing Policy 2004 includes as its objectives, enabling the poor to access housing and basic services and infrastructure, and encouraging integrated, participatory approaches to slum upgrading, including income-generating activities that effectively combat poverty.<sup>134</sup> Although the policy does not explicitly prohibit forced evictions, it states that in the context of informal settlements, emphasis will be placed on upgrading as opposed to demolitions in unplanned settlements.<sup>135</sup> It also lays down, as one of its basic objective, ensuring access to security of tenure for all socio-economic groups.<sup>136</sup>

The National Land Policy 2009 among other issues addresses the phenomena of informal settlements on public and private land.<sup>137</sup> To resolve these challenges it calls upon the government to undertake several measures including: establishing appropriate mechanisms for the removal of squatters from unsuitable land and their resettlement; facilitating negotiation between private owners and squatters in cases of squatter settlements found on private land; regularizing existing settlements found on public and community land for purposes of upgrading or development; and establishing an appropriate legal framework for eviction based on internationally acceptable guidelines.<sup>138</sup>

The Mombasa County government is currently in the process of drafting a Land Policy at the county level. Its objectives include: addressing historical complexities in the land tenure system; improving management of land use; ensuring adequate housing to residents of the county; and creating a platform for public participation on matters pertaining to land

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<sup>134</sup> Ministry of Housing, Republic of Kenya, 'Sessional Paper No. 3 of 2004 on National Housing Policy for Kenya'.

<sup>135</sup> See paragraph 59 (f) Sessional Paper No. 3 of 2004 on National Housing Policy for Kenya, Ministry of Housing, Republic of Kenya.

<sup>136</sup> See paragraph 2.2 (13) (d) Sessional Paper No. 3 of 2004 on National Housing Policy for Kenya, Ministry of Housing, Republic of Kenya.

<sup>137</sup> Sessional Paper No. 3 of 2009 on National Land Policy, Ministry of Lands, Republic of Kenya.

<sup>138</sup> See 3.6.9 Informal Settlements, paragraph 211, Sessional Paper No. 3 of 2009 on National Land Policy, Ministry of Lands, Republic of Kenya.

alienation, adjudication, planning and surveys. Importantly, the draft policy notes that poor guidelines on evictions procedures have led to loss of property, informal settlements and in some cases exploitation of tenants.<sup>139</sup>

## INTERNATIONAL FRAMEWORK

The Government of Kenya is obligated under a range of regional and international human rights treaties which it has ratified, to respect, protect and fulfil the right to adequate housing.<sup>140</sup> The human rights treaties include the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantees among others, the rights to health, education, water, sanitation and housing. The right to adequate housing is guaranteed under Article 11(1) of the ICESCR. The obligations to respect, protect and fulfil these and other human rights extends to all levels of government from the national to the local, as well as to state agencies.

The UN Committee on Economic, Social and Cultural Rights (CESCR), a body of experts that provides authoritative guidance on the implementation of the ICESCR, has clarified the obligations of states parties vis-à-vis the right to adequate housing.<sup>141</sup> The Committee states that the government should respect the right to adequate housing including by refraining from forced evictions, protecting people from interference with their rights by third parties such as landlords, and adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing. Governments must prioritize the realization of minimum essential levels of housing for everyone whilst prioritizing the most disadvantaged groups in all programmes when allocating resources. The Committee also calls upon states parties to guarantee the right of people to participate in and be consulted over decisions that will affect them, and to provide an effective remedy if any of these rights are violated.<sup>142</sup>

The CESCR, in General Comment 7, has emphasized that where evictions are considered to be justified they should be carried out in strict compliance with principles of international law and due process requirements.<sup>143</sup>

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<sup>139</sup> The draft policy was obtained by Amnesty International researchers from the Mombasa County Department of Lands, Housing and Planning.

<sup>140</sup> Article 11 (1) of the International Covenant on Economic Social and Cultural Rights acceded to by Kenya on 1 May 1972; Article 27(3) of the Convention on the Rights of the Child ratified by Kenya on 30 July 1990; Article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination acceded to by Kenya on 13 September 2001; and Article 17 of the International Covenant on Civil and Political Rights (ICCPR) acceded to by Kenya on 1 May 1972.

<sup>141</sup> UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comments No. 4 and 7.

<sup>142</sup> Committee on Economic, Social and Cultural Rights, General Comment 4, paragraph 9 and General Comment 7, paragraph 13.

<sup>143</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 7, paragraph 14.

According to international human rights standards, relocation sites must fulfil the criteria for adequacy of housing under international human rights law. The CESCR has identified the following aspects which are crucial to determine whether any particular form of housing can be considered to constitute adequate housing under Article 11 (1) of the ICESCR: legal security of tenure; availability of services, materials, facilities and infrastructure; location; habitability; affordability; accessibility; and cultural adequacy.<sup>144</sup>

In 2007 the UN Special Rapporteur on adequate housing, an independent expert mandated to report, advise and provide technical assistance to governments on the right to adequate housing, developed the Basic Principles and Guidelines on Development-based Evictions and Displacement. The guidelines reflect existing standards and jurisprudence on the issue of evictions.<sup>145</sup> They describe in detail the steps that should be taken before, during and after evictions, in order to ensure compliance with international human rights law.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR), to which Kenya is also a State party, provides protection against arbitrary and unlawful interference with privacy, family and home. The Human Rights Committee established to oversee implementation of the Covenant by states parties has held that forced evictions contravene Article 17 of the ICCPR.<sup>146</sup>

According to international human rights law and standards including human treaties to which Kenya is a state party, the protection against forced evictions applies to all regardless of whether they have a legally recognised right to live in the home or land where they currently reside. As a result, squatters and those without a regular title must also be protected from forced evictions.

The African Commission on Human and Peoples' Rights, a body charged with overseeing the implementation of the African Charter on Human and Peoples' Rights, has affirmed - in the case of *SERAC and the Centre for Economic and Social Rights v. Nigeria* - that forced evictions contravene the African Charter, in particular Articles 14 and 16 on the right to property and the right to health, and Article 18(1) on the state's duty to protect the family. In that case, the African Commission stressed that "although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. The combined effect of Articles 14, 16 and 18(1) reads into the [African] Charter a right to shelter or housing."<sup>147</sup>

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<sup>144</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 4, paragraph 8.

<sup>145</sup> Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles), Annex 1 to UN.Doc, A/HRC/4/18, 2007.

<sup>146</sup> See Concluding Observations of the Human Rights Committee: Kenya, UN Human Rights Committee, CCPR/CO/83/KEN 29 April 2005, paragraph 22.

<sup>147</sup> Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights

Despite clear international legal obligations and a robust constitutional framework, forced evictions are commonplace in Kenya.<sup>148</sup> While the Land Act 2012 provides some protection to those occupying public land, it does not provide the same level of protection as international human rights law and standards. For instance, it does not protect people who are living without security of tenure on private land. Nor does it adequately protect against homelessness. The need for a law that explicitly prohibits forced evictions in all circumstances and which is in line with international human rights standards has been recognized in meetings that Amnesty International has had with government authorities.<sup>149</sup> In 2012 the Ministry for Lands, Housing and Urban Development set up a National Task Force comprising of representatives from key ministries, members of the academia, the National Land Commission and civil society organizations. Following consultations, the task force prepared draft submissions to be taken up by the Ministry for Lands, Housing and Urban Development to be prepared into bills and tabled in parliament. Amnesty International's discussions with the CEO of the National Land Commission revealed that the draft bill on evictions and resettlement is currently with the office of the Attorney General, to be finalized before placing it before the cabinet.<sup>150</sup> In a context where forced evictions are a common phenomenon, the slow progress of enacting a law on evictions and resettlement remains a cause for concern.

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(CESR) v. Nigeria, Communication No. 155/96, paragraph 60.

<sup>148</sup> See Amnesty International, 'State of the World's Human Rights', 2012, 2013 and 2014, 'The Unseen Majority: Nairobi's Two Million Slum-Dwellers' June 2009 (Index: AFR 32/005/2009) and 'We Are Like Rubbish In This Country: Forced Evictions in Nairobi, Kenya' 2013 (index: AFR 32/005/2013).

<sup>149</sup> For example, meeting with the CEO of the National Land Commission on 29 May 2015 and meeting with Assistant County Commissioner for Mombasa on 8 June 2015.

<sup>150</sup> Meeting with the CEO of the National Land Commission on 29 May 2015.

# CONCLUSION AND RECOMMENDATIONS

KENHA forcibly evicted over a hundred of people from Jomvu informal settlement in Mombasa in May 2015. Women, men and children were subjected to a frightening ordeal - driven from their beds in the middle of the night, without warning, by armed police. A bulldozer razed their homes and small business, leaving many homeless and destroying their means of livelihood. Forced evictions violate international human rights law. Four months later – at the time of printing this report – the government of Kenya through KENHA, has made some commitments but is still to take concrete action to remedy the human rights violations. People have not been compensated and many remain without a place to live.

Hundreds more people in Jomvu and Bangladesh informal settlement are at risk of forced evictions. They have been told by KENHA that they will be evicted to make way for the highway expansion. They do not know where, or even if, they will be relocated. Although they have been promised compensation they have not been told how much they will get. KENHA has not adhered to essential safeguards, set down in international human rights law and standards, to prevent an eviction from being a forced eviction. People in Jomvu and Bangladesh now live in fear of being driven from their homes without warning in the same manner as the May forced evictions. Some have dismantled parts of their buildings in order to try and save valuable construction materials from demolition and are living or working in structures without roofs or doors.

The forced evictions at Jomvu were carried out to make way for a highway expansion project. The project is being financed by a number of international development banks, an EU infrastructure fund and the Kenya government. The development banks – including the AfDB, KfW and the EIB - and the EU infrastructure fund have failed to ensure that their own standards with regard to human rights and the displacement of people are adhered to. Project-affected people have not received adequate information on the highway expansion and its implications for them.

The AfDB and EIB were unaware of the May forced evictions until Amnesty International told them about the case in June. Both banks knew that people were living and working on the land that would be needed for the highway expansion. It was inevitable that the people would have to be moved. Forced evictions are commonplace in Kenya. Despite this, the banks did not monitor the situation and had no effective means in place to receive information on the project-affected people.

Although Amnesty International made clear that the people had been subjected to a serious violation of their human rights, and remained in a precarious position, without homes or livelihoods, the project's funders only visited the area in mid-September, four months after the evictions and three months after they learned of them. Moreover, the EIB approved its loan to Kenya in July, *after* the bank had learned that people were forcible evicted and *before* KENHA had publicly acknowledged its responsibility and committed to remedy the human rights violation.

While the primary responsibility for the human rights violations lies with the government of Kenya, funders and donors have a responsibility to respect human rights when funding projects. Both the government of Kenya and the funding institutions have failed to act in accordance with human rights law and standards.

Beyond the situation in Jomvu and Bangladesh, this report also highlights how the current legal and policy framework in Kenya does not adequately protect those without land titles from forced evictions. In a context where Kenya plans a number of major infrastructure developments in line with its Vision 2030, tens of thousands of people living in informal settlements around the country face the risk of forced eviction. Therefore a number of recommendations are made with regard to the wider legal framework in Kenya.

## RECOMMENDATIONS ON THE MMRDP

### TO KENHA AS AN AGENCY OF THE NATIONAL GOVERNMENT:

- As a matter of priority, publicly and in writing inform MMRDP-affected people that KENHA will not engage in forced evictions in the future.
- Publish a schedule clearly indicating the steps that KENHA and the National Lands Commission will take to assess damage and provide effective remedies to all those forcibly evicted in Jomvu.
- Ensure that those who demolished their own homes and businesses following KENHA's instructions are also counted among the forcibly evicted.
- Ensure that the process of evaluation of losses incurred as a result of the forced eviction and the determination of compensation is carried out in a manner that is transparent and participatory.
- Ensure that, as committed to Amnesty International, KENHA's consultants engage in a wider renewed enumeration of people living and working in the project-affected area in Jomvu and Bangladesh informal settlements. It is important that structure owners and tenants are counted in the enumeration and that the census is made public so that people can check if they have been counted.
- Publicise the process for enumeration, clarifying how and when affected people will be able to verify the census and propose amendments.
- Ensure that all people to be affected by the MMRDP, regardless of their tenure status, are provided with timely and full information, in a form that is accessible to them, on the project, its impacts, timelines, number of people affected in each informal settlement, resettlement and compensation measures and available avenues for participation and providing inputs during the planning and implementation process. It is also important that project-affected people are informed about the policies and complaints mechanisms of the project's funders.



- Publicise and provide all affected people in the project area including those in Jomvu and Bangladesh informal settlements with a schedule for genuine consultations on evictions and resettlement.
- Ensure that before finalising, the Resettlement Action Plan is shared with affected people as a matter of priority to seek their meaningful participation in formulating specific resettlement measures.
- Ensure that all affected people, without discrimination, are able and encouraged to participate in consultations around the project, its timelines and resettlement and compensation measures.
- Update the Environmental and Social Impact Assessment with a view to provide complete and detailed information, by area, on the impacts and measures for mitigation.
- Publicly guarantee that there will be no demolitions until genuine consultations have taken place with affected communities and that resettlement and compensation measures have been fully implemented.
- Ensure that resettlement and compensation measures comply with Kenya's domestic and international human rights obligations, in particular the obligations on the right to adequate housing.
- Ensure that the project and its related activities do not lead or contribute to human rights violations.

**TO THE NATIONAL LAND COMMISSION:**

- Ensure that the process for enumerating and compensating of those forcibly evicted in Jomvu is conducted in a timely, transparent and participatory manner.
- Ensure that all those forcibly evicted, including those who demolished their own structures on KENHA's instructions, are enumerated and adequately compensated without discrimination.
- Ensure victims of the forced eviction Jomvu are kept informed about the process of enumeration and compensation and are given opportunities to provide their inputs or raise their concerns about the process and its implementation.
- Ensure that the human rights, in particular the right to adequate housing of those without legal title to the land they occupy, are guaranteed during the course of preparing their resettlement and compensation packages throughout the project area.
- Ensure that targeted resettlement assistance is finalised after detailed assessment of assets and needs carried out through a process of genuine consultation with project-affected people, including those who are traditionally or otherwise excluded from community processes.

- Take concrete steps to facilitate the participation of youth, women regardless of marital status, older persons, persons belonging to minority groups, persons with disabilities and other excluded groups.

#### TO THE COUNTY GOVERNMENT:

- Take steps to ensure that the practice of conducting evictions at night in order to avoid resistance is stopped and take all necessary steps to ensure that all evictions are carried out in a manner that is compliant with Kenya's national and international human rights obligations.
- Ensure that resettlement measures made available to project-affected persons are appropriate and comply with provisions of the right to adequate housing.
- Ensure that resettlement measures are finalized after a process of genuine consultations with all affected persons without discrimination.
- Take concrete steps to facilitate the participation of youth, women regardless of marital status, older persons, persons belonging to minority groups, persons with disabilities and other excluded groups.
- Ensure that there is an effective grievance redress mechanism to address complaints concerning resettlement.

#### TO THE PROJECT FINANCERS: AFDB, EIB, GERMANY (FOR KFW) AND EU-AITF.

- Promote a process that will ensure that those whose homes and commercial structures were destroyed in Jomvu on the 17 May 2015, are provided with effective remedies. Appropriate remedies should also be made available to those who demolished their own structures due to threats of demolition the following day.
- Closely monitor and independently verify remedial measures undertaken by KENHA for victims of the forced evictions in Jomvu.
- Take concrete steps to support KENHA in ensuring that the process of providing effective remedies is clearly communicated to victims of forced evictions in Jomvu and the process is implemented in a manner that respects international human rights standards.
- Promote a process that will ensure that measures are put in place to guarantee that all persons to be affected by the MMRDP are provided with full information, in a form that is accessible to them, on the project, its impacts, timelines, number of people affected by area, methods of engagement and measures for resettlement and compensation.
- Monitor and independently verify the renewed enumeration of project-affected people that KENHA has committed to undertake in Jomvu and Bangladesh with a view to ensuring that it is carried out in a manner that includes all affected structure owners and tenants, is transparent and participatory.

- Ensure that ESIA and RAPs commissioned by KENHA are thoroughly and independently evaluated to ensure that they do not underestimate the potential impact of the project on human rights.
- Review the ESIA and the RAPs to ensure that they comply with the funders' safeguards policies and international human rights standards. Ensure that provisions from the safeguards policies that provide the greatest protection against human rights violations are applied to this project.
- Ensure that the RAP is shared with affected persons as a matter of priority with a view to seeking their meaningful participation in the formulation of resettlement measures in line with the safeguards policies of all the funders.
- Promote and facilitate a process to ensure that all affected persons, without discrimination, are able and encouraged to participate in consultations around the project, its timelines and resettlement and compensation measures.
- Promote a process that will ensure that affected communities can easily access all necessary documents related to the project and that the documents are presented in a form and language that they can understand.
- Ensure that the rights of all project-affected persons and in particular the most vulnerable to human rights violations, including persons without a legal title to the land they occupy are respected.
- Ensure that mechanisms for grievance redress as mentioned in the current RAP are set up as a matter of urgency.
- Ensure that the ESIA and RAP is updated with a view to provide complete and detailed information, by area, on the impacts and measures for mitigation.
- Undertake robust human rights due diligence for all proposed development projects to avoid contributing to, or exacerbating, human rights violations. This should also include analysing the incidence of forced evictions in Kenya. Where national legislation is not in compliance with the country's human rights obligations, the project's financiers should assess the commitment of the borrower to ensure the project complies with international human rights standards.
- Ensure affected individuals and communities are aware and can easily access the accountability mechanisms of the project financiers in order to have their complaints with regard to project implementation considered and have access to effective remedies.

**TO MEMBER STATES OF THE EUROPEAN UNION AND AFDB AND THE GERMAN FEDERAL MINISTRY FOR ECONOMIC COOPERATION AND DEVELOPMENT (FOR KFW):**

- Ensure that these institutions act in conformity with human rights standards, including as highlighted in the above recommendations.

## RECOMMENDATIONS ON THE BANGLADESH-MIKINDANI-RUNYU ROAD PROJECT

### TO THE COUNTY GOVERNMENT:

- Initiate a process for genuine consultation for all project-affected persons, making sure that all relevant information including on design, timeline and impact of the project is provided to the affected people in a manner that facilitates their meaningful participation.
- Ensure that all feasible alternatives to evictions are explored in genuine consultation with affected people before a road route and design is finalized.
- If evictions are not avoidable, ensure that they are carried out in full compliance with Kenya's domestic and international human rights obligations.
- Publicly commit to guaranteeing compensation for losses and resettlement where necessary in line with Kenya's human rights obligations.

### RECOMMENDATIONS TO THE CABINET SECRETARY FOR LAND, HOUSING AND URBAN DEVELOPMENT

- Publicly condemn the practice of forced evictions.
- Prohibit the practice of conducting evictions at night to avoid resistance from affected people. This practice is contrary to international human rights standards.
- Adopt a national-level moratorium on mass evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international human rights standards and national laws.
- Introduce a bill in Parliament that explicitly prohibits forced evictions and sets out safeguards that must be followed before any eviction is carried out. This law should be in strict compliance with Kenya's Constitution and its international human rights commitments including the provision of effective remedies and reparation. Such reparation should include adequate alternative housing for all those who cannot provide for themselves, rehabilitation, compensation for all losses and guarantees of non-repetition.
- Develop comprehensive guidelines based on the UN Basic Principles and Guidelines on Development-based Evictions and Displacement and other international human rights standards for officials in charge of carrying out evictions.



