

KENYA

**TRANSPORT SECTOR SUPPORT PROJECT (P124109) AND ITS ADDITIONAL
FINANCING (P146630)**

SECOND UPDATE ON MANAGEMENT ACTIONS

April 24, 2020

CONTENTS

Abbreviations and Acronyms	iii
A. Introduction.....	1
B. Status of Webuye Action Plan Items.....	1
C. Status of RAP Audit.....	2
D. Other Issues	4
Annex 1. Compensation for Small Business Tenants	5
Annex 2. Disclosure Meeting on RAP Audit	9

ABBREVIATIONS AND ACRONYMS

KeNHA	Kenya National Highways Authority
KES	Kenya Shilling
RAP	Resettlement Action Plan

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TRANSPORT SECTOR SUPPORT PROJECT (P124109) AND ITS ADDITIONAL FINANCING (P146630)

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A. INTRODUCTION

1. Management is providing this second Update to its [Response](#) to the Request for Inspection to inform the Board and the Panel of the most recent developments regarding the actions Management committed to in the Action Plan that accompanied its Response, as well as the actions detailed in the first [Update](#), dated September 30, 2019.

2. Since the last update, Management has continued to supervise implementation of the remaining actions arising from the recommendations of the Webuye Interchange Resettlement Action Plan (RAP) Audit, as agreed with the Borrower. The last mission was undertaken on November 21, 2019. The Kenya Transport Sector Support Project (the Project) closed on December 31, 2019 as scheduled. However, the Task Team, including safeguard team members, continue to follow up on implementation of pending safeguard activities, mainly associated with the construction of the Webuye Interchange.

B. STATUS OF WEBUYE ACTION PLAN ITEMS

3. As noted in the earlier update, most of the impacts raised in the Request ceased with completion of works or were being addressed through the Webuye Interchange Action Plan that was already in place prior to the Request.

4. There are no outstanding items related to the Action Plan presented in the Management Response. The construction of the Webuye Interchange is completed and has been handed over to the Kenya National Highways Authority (KeNHA). Support for continuous stakeholder engagement was initiated as per the Action Plan, and KeNHA will continue to support this engagement.

5. The status of items that were still outstanding at the time of the last update is provided below:

Mobile Traders

- **Completed** – Carrying out of the RAP Audit associated with construction of the Webuye Interchange. The RAP Audit report was completed in August 2019. The report was reviewed and found acceptable by the Bank. The report was also shared with the Inspection Panel, which acknowledged in its review that it was of high quality. Subsequently, the Inspection Panel held a meeting on October 30, 2019 with the Consultant and the Task Team to discuss the findings and recommendations of the RAP Audit. The Inspection Panel sought a clarification on how the amount of compensation to the small business tenants

was calculated. Annex 1 provides information on the process used to arrive at the compensation amounts.

- **Partially Completed** – Implementation of RAP Audit recommendations – see Section C. below for more details.

Stakeholder Engagement

- **Completed** – Stakeholders were engaged during the RAP Audit exercise as well as during the disclosure of the RAP Audit findings and recommendations on February 25, 2020 (see photographs in Annex 2). KeNHA will continue stakeholder engagement with the mobile traders, local leaders, Bungoma County Government and the Government of Kenya through the construction phase of the markets and the relocation of the mobile traders.

C. STATUS OF RAP AUDIT

6. The sole outstanding item in the last update on MAP implementation was the RAP Audit. This is now completed and is discussed in more detail below.

7. **RAP Audit.** The audit identified 52 mobile traders and 13 small business traders (tenants) who were missed in the RAP and thus not compensated during RAP implementation. The Government of Kenya adopted the RAP Audit report and its recommendations on January 21, 2020. The status of actions is presented below.

Table 1 – Status of RAP Audit Recommendations

Issue	Corrective Action and Timeframe As of end-September 2019	Status as of March 9, 2020
1. Relocation of the remaining 52 Mobile Traders from the Webuye Interchange Area	<ul style="list-style-type: none"> • Bungoma County Government to identify a suitable plot close to the Webuye Interchange for the development of appropriate market stalls (closed + open shops). • Suitable plot(s) identified. The land is anticipated to be available by end-September 2019. 	<ul style="list-style-type: none"> • The Bungoma County Government has fully paid for the land and processing of the land title deed was finalized on March 4, 2020.
	<ul style="list-style-type: none"> • KeNHA will provide funds and work with the County Government to design, construct and provide an entrance to the market. • Within 4 months after land is made available. 	<ul style="list-style-type: none"> • Design of the market was expected to commence on March 16, 2020 and would take approximately one month to complete. This would have paved the way for the procurement of a contractor and commencement of works on July 1, 2020. • Due to the current COVID-19 situation, the start of this action will be delayed and the new tentative date for the

Issue	Corrective Action and Timeframe As of end-September 2019	Status as of March 9, 2020
	<ul style="list-style-type: none"> • Bungoma County Government to allocate space/stall/kiosk to the eligible mobile traders for at least one to two years at no charge. Thereafter, the respective mobile traders, if interested in continuing with trading at this location, will apply for the space in accordance with procedures of the Bungoma County Government. • Bungoma County Government will be required to enforce bylaws so that no mobile traders will be allowed on the road reserves after the construction of the modern market and relocation of the traders. 	<p>commencement of the design is July 1, 2020. Management will follow up with KeNHA on a monthly basis to evaluate the situation and determine if and what actions can be initiated, and to update the timeline where needed.</p> <ul style="list-style-type: none"> • Allocation of stalls to be made within four months of completing construction of the market. • Enforcement of bylaws to start immediately after allocation of stalls.
<p>2. Compensation of 13 Small Business Tenants</p>	<ul style="list-style-type: none"> • KeNHA to compensate the small business tenants for loss of income and relocation cost (disturbance allowance). An average figure of three months of net income of similar small businesses is recommended. • Within four months from the adoption of the RAP Audit report by the Government of Kenya. 	<ul style="list-style-type: none"> • <i>The compensation process is completed.</i> The National Land Commission provided its no objection for KeNHA to make payments on February 18, 2020. Accordingly, KeNHA organized a stakeholder engagement forum with the community of the Webuye Interchange on February 25, 2020 and disclosed the findings and recommendations of the RAP Audit to the wider Webuye Interchange community (see Annex 2 for photographs). Award letters were then issued to and accepted by all 13 small business tenants. The RAP Audit consultant recommended KES 20,000 for compensation for each tenant. A detailed explanation of how the compensation amounts were determined is provided as Annex 1. • It was expected that the tenants would receive the compensation by March 30, 2020. Delivery of

Issue	Corrective Action and Timeframe As of end-September 2019	Status as of March 9, 2020
		<p>the checks was delayed due to restrictions on travel and on meetings by the Government because of the COVID-19 pandemic.</p> <ul style="list-style-type: none"> • To ensure that payments were made before the end of the current financial year, KeNHA sent the checks by courier to its Kakamega Regional Office in Western Kenya, which covers the Webuye Interchange. Notification and subsequent delivery of the checks to the Project-affected Persons was completed on April 24, 2020.

D. OTHER ISSUES

8. **Restoration of Quarry Site.** With regard to a community concern about the quarry and related road mentioned in Annex 1, Item 3 of the Management Response and paragraph 71 of the Inspection Panel’s Eligibility Report, Management wishes to provide this update. The Contractor who is operating the Nabuyore quarry site has prepared restoration plans and the plans were submitted to KeNHA for review and to the National Environmental Management Authority as per the statutory requirements. Meanwhile, the Contractor has commenced rehabilitation activities at the quarry as was noted during the site visit on November 21, 2019. Management notes that the surface condition of the access road to the Nabuyore quarry is relatively good and motorable. The Contractor has committed to further improve the access road to the quarry once the restoration works at the quarry are complete.

ANNEX 1. COMPENSATION FOR SMALL BUSINESS TENANTS

The RAP Audit Team received grievances from 22 complainants who claimed to be Small Business Tenants and did not receive any support from the Project. The complaints were reviewed and assessed and the complainants were interviewed by the Verification Committee. Thirteen were identified as genuine small business tenants present at Webuye Junction before the cut-off date of January 27, 2011.

In order to establish what this category of Project-affected Persons was entitled to, the RAP Audit Team made reference to the entitlement amounts provided in the RAP Report of 2011, with the Kisumu, Mamboleo, Khayega and Kakamega Towns/Centers along the same road corridor being of key consideration. The Audit Team made the following observations from the review exercise:

1. The above-mentioned small business tenants had since moved their businesses to various parts of Webuye Town. The owners of the land and structures that they were renting had been compensated for the structures and land.
2. The 13 small business tenants were involved in similar small businesses to those in the reviewed entitlement data from the RAP Report of 2011.
3. There was lack of verifiable information due to the nature of the small businesses. There were no financial records being maintained by the small business tenants which could be verified to prove the amount of income as per their claims.
4. The Audit Team further considered the size of the towns/locations along the same road corridor where other Project-affected Persons were carrying out similar businesses. The Webuye Junction is a small business center on the outskirts of Webuye Town, relatively much smaller in size and population as compared to Kisumu, Mamboleo, Khayega and Kakamega Towns/Centers whose RAP Report data was available for comparison.
5. It is the view of the Audit Team that most of the income figures provided by the Project-affected Persons during the verification interviews were exaggerated and were well out of the income range of comparable businesses.

Sample Analysis of Net Income of Similar Small Businesses along the Road Corridor

a) Mpesa Business¹

Some of the persons were quoted saying Mpesa shop owners make approximately KES 40,000 to KES 50,000 per month. However, considering that one Mpesa line can be used to operate several shops/units it would be difficult to prove that the amount of income mentioned was generated from the single Mpesa shop in question, taking into account competition and small size of the customer base (population). There was no verifiable information such as Mpesa statements provided to support the level of income as alleged and the figures provided by the tenants were much higher in comparison to similar businesses in the vicinity.

¹ Mpesa (M for mobile + pesa, which is Swahili for money) is a mobile phone-based money transfer, financing and microfinancing service, launched in 2007 by a mobile network operator in Kenya and Tanzania. Mpesa allows users to deposit, withdraw, and transfer money and pay for goods and services easily with a mobile device.

One owner further alleged that the shop had to be closed due to the road construction. The Audit Team finds it hard to prove that the closure of the business was directly related to the road construction. It is the Audit Team’s opinion that this type of business would be the least affected by the road construction, and conversely would be likely to be boosted due to the influx of construction workers with more disposable income. The closure of the Mpesa business could have been due to fierce competition, which is the case with similar Mpesa businesses in Kenya.

To establish what would be reasonable compensation, the Audit Team referred to a compensation matrix from the approved RAP Report of 2011 for Kaburengo Junction, which is much closer to Webuye Junction, with a slightly higher population and level of economic activity. This is shown in Table A.1 below.

Table A.1: Mpesa Shop at Kaburengo Interchange

Name	Sex	ID No.	Status	Business	Net Monthly Income (KES)	Rate - 3 Months (KES)
<i>Removed</i>	<i>Removed</i>	<i>Removed</i>	<i>Removed</i>	Shop & Mpesa	6,000.00	18,000.00

Source: RAP Report (2011)

The Audit Team also took cognizance of the fact that the above Project-affected Person had both an Mpesa and a General Shop in the same premises and generated a combined total net income of KES 6,000 per month.

b) Grocery/Hotel/Tailoring/Posho Mill²/Butchery

The average entitlements (net incomes) for similar small businesses (grocery/hotel/tailoring/posho mill/butchery, etc.) along the same road corridor was reviewed from the RAP Report (2011).

The Audit Team came up with the following analysis as provided in Table A.2.

² A posho mill is a mill that grinds wheat or maize into flour. Most Kenyans grow their own maize and take it to the posho mill to be ground.

Table A.2: Average Entitlements (Average Net Income for 90 days) and Population Data

No	Town/ Center	Average Entitlements – Average Net Income for 90 Days (KES)				Total Pop. (2009)
		General Shop / Grocery	Hotel/ Food Kiosk	Tailoring	Posho Mill	
1	Kisumu	23,310.00	33,840.00	20,700.00		259,258
2	Mamboleo	27,300.00	18,113.00	20,700.00		
3	Khayega	23,524.00		29,100.00	31,500.00	-
4	Kakamega	23,425.00				91,768
5	Webuye ³					23,318

Further, the Audit Team also interviewed other small businesses in similar small centers along the road corridor. The estimated gross income of these small businesses ranged between KES 7,500.00 – 15,000.00 with an average net monthly income of KES 3,000.00.

The Team thus estimated approximate entitlement for similar small businesses as follows:

- a) Similar businesses in the Project area have an average net income of approximately KES 3,000.00 per month. This was considered over a period of three months, making a total of KES 9,000.00. This figure was rounded up to KES 10,000.00.

$$\text{KES } 3,000.00 \text{ per month} \times 3 \text{ months} = \text{KES } 9,000.00 \text{ rounded up to KES } 10,000.00$$

- b) The amount required to be able to move the business to a new location within Webuye would cost approximately KES 5,000.00. Considering that some businesses like the posho mill would require dismantling and installation while other businesses might also have varying quantities of business items, the Team considered an additional KES 5,000.00. This would provide a cushion for other minor expenses as the business tenants relocate.

$$\text{KES } 5,000.00 + \text{KES } 5,000.00 = \text{KES } 10,000.00$$

- c) Total compensation was calculated for loss of income plus disturbance allowance.

$$\text{KES } 10,000.00 + \text{KES } 10,000.00 = \text{KES } 20,000.00$$

Conclusion

The Audit Team, having considered the above factors and time value of money for the case of Webuye Town (with about a quarter of the population of Kakamega Town about 45 km away), considered that the income from such businesses would be much lower than in bigger towns like Kakamega.

The Audit Team therefore concluded an all-inclusive reward of KES 20,000.00 calculated based on loss of income from business as well as the disturbance allowance (dismantling, transporting and setting up of the business at the new location) would be appropriate for small business tenants in Webuye.

This figure was compared further to the average entitlement of KES 23,000.00 in the RAP Report for Kisumu City (about 95 km away from Webuye Town) with a population of over 250,000.

³ Webuye Junction is a small section on the outskirts of Webuye Town with a population of 23,318. Hence, the customer base was very small, especially because most businesses dealt in similar goods and services.

ANNEX 2. DISCLOSURE MEETING ON RAP AUDIT

Over 150 people attended the meeting. A list of participants was made available to the Panel.

Photo	Date	Description
	<p>February 25, 2020</p>	<p>Disclosure of RAP Audit findings and recommendations</p>
	<p>February 25, 2020</p>	<p>Disclosure of RAP Audit findings and recommendations</p>