

Report No. 149230-KE

THE INSPECTION PANEL

KENYA

TRANSPORT SECTOR SUPPORT PROJECT (P124109) AND ITS ADDITIONAL FINANCING (P146630) - THIRD AND FINAL REPORT AND RECOMMENDATION

JUNE 9, 2020

The Inspection Panel

Third and Final Report and Recommendation on a Request for Inspection

Kenya: Transport Sector Support Project (P124109) and its Additional Financing (P146630)

A. Introduction and Background

1. This is the third and final eligibility report on the Kenya Transport Sector Support Project and its Additional Financing, following two previous deferrals. Based on the concerted effort made by World Bank Management to address the outstanding harm – and the temporary impact of the harm, which has since dissipated – the Panel does not recommend an investigation.

2. On December 17, 2018, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) from three members of the project-affected community (the “Requesters”) raising concerns about potential harm from the activities financed under the Transport Sector Support Project and its Additional Financing (the “Project”) in Kenya. The Requesters alleged harm from the Webuye interchange construction, which is part of the Webuye-Kitale road works financed by the Project.¹ The Requesters asked the Panel to keep their identities confidential.

3. The Transport Sector Support Project was approved on April 21, 2011, in an amount of US\$300 million equivalent. The additional financing was approved on March 26, 2014, in an amount of US\$203.50 million equivalent, and became effective on June 20, 2014.² The Project’s development objective is, among other things, to “*increase the efficiency of road transport along the Northern Corridor and the Tanzania-Kenya-Sudan road corridor.*”³ The Project closed on December 31, 2019.

4. The Requesters’ concerns relate to the impact from the construction of the Webuye interchange. The Request raises concerns about impact on the environment, community health and safety, livelihoods and labor conditions, as well as a lack of consultation and information disclosure.

5. The Panel registered the Request on January 17, 2019, and notified the Board of Executive Directors (the “Board”) and Bank Management. Management submitted its Response on February

¹ On March 19, 2019, the Panel received a list of over 70 community members, with signatures, in support of the Request.

² World Bank, Management Response to Request for Inspection Panel Review of the Kenya: Transport Sector Support Project (P124109) and its Additional Financing (P146630), dated February 19, 2019 (the “Management Response”), pp. 1-2, paras. 5-6.

³ Management Response, p. 2, para. 7.

19, 2019. Management’s Response stated that most issues raised had been resolved since much of the impact was temporary and linked to the construction phase of the Project.⁴

6. The Panel determined in its initial eligibility report that the Request and Requesters met the technical eligibility criteria set forth in the Resolution establishing the Inspection Panel and the 1999 Clarification.⁵ The Panel noted the willingness of Management and the Borrower to address concerns raised by the community.⁶ Concerning livelihood impact, Management informed the Panel that the terms of reference of a Resettlement Action Plan (RAP) audit would be expanded to include identification of mobile traders who were active in the area by the cutoff date, and small business owners who were not appropriately compensated for business disruption due to adverse impact on their livelihoods.⁷ Based on Management’s commitment to expand the RAP audit to include the identification of mobile traders and small business owners who were not appropriately compensated for the temporary impact they suffered during construction,⁸ the Panel deferred for six months its recommendation as to whether an investigation into the Bank’s actions or omissions was necessary. The Board approved the Panel’s recommendation on April 5, 2019.⁹

7. On October 6, 2019, the Panel received Management’s update report (dated September 20, 2019) on progress of the agreed actions. On November 19, 2019, the Panel issued its second eligibility report, in which it recommended another deferral.¹⁰ The September 2019 Management update confirmed that several actions related to infrastructure were completed. It further stated that the RAP audit was completed and described the actions and steps that needed to be undertaken to implement the results of the audit. These were mostly related to the disclosure of the RAP audit and the implementation of compensation measures for mobile traders and small business owners who had not been included in the original RAP. Given that the actions addressing the livelihood concerns had not been fully implemented and required additional time for completion, the Panel recommended a second deferral of four months.¹¹ The Board approved the Panel’s second deferral recommendation on December 6, 2019.

B. Developments since the Panel’s Second Report and Recommendation

8. **Management’s Update.** Management submitted its Second Management Update (the “Update”) on April 26, 2020.¹² Management’s Update is attached to this report as Annex 1. In the

⁴ Management Response, p. vi, paras. vii and viii.

⁵ Report and Recommendation on a Request for Inspection, Kenya: Transport Sector Support Project (P124109) and its Additional Financing (P146630), the Inspection Panel, March 22, 2019 (the “Panel Eligibility Report”).

⁶ Panel Eligibility Report, p. 11, para. 50, and p. 16, para. 80.

⁷ Panel Eligibility Report, pp. 16-17, para. 80, and Management Response, Annex III.

⁸ Panel Eligibility Report, pp. 16-17, para. 80, and Management Response, Annex III.

⁹ Panel Eligibility Report, p. 17, para. 84.

¹⁰ World Bank, Kenya Transport Sector Support Project (P124109) and its Additional Financing (P146630), Update on Management Actions, dated September 30, 2019 (“Management’s Update”).

¹¹ By the time this period elapse, the COVID-19 pandemic had been declared. Due to travel and social distancing constraints, neither was Management able to update the Panel on progress in the implementation of the actions, nor was the Panel able to issue its report within the four-month timeframe it had earlier suggested.

¹² World Bank, Kenya Transport Sector Support Project (P124109) and its Additional Financing (P146630), Second Update on Management Actions, dated April 26, 2020 (“Second Management Update”).

Update, Management stated there were no outstanding items related to the Action Plan.¹³ The sole outstanding item in the September 2019 update was the completion and disclosure of the RAP audit, which has since been completed.¹⁴ Management further stated that it continued to supervise the implementation of some of the remaining actions arising from the recommendations of the RAP audit. It added that even though the Project closed on December 31, 2019, as scheduled, Management continued to follow up on implementation of pending safeguard activities, mainly those associated with the construction of the Webuye interchange.¹⁵

9. **Implementation of Actions.** Management reiterated that most of the impact raised in the Request was resolved with the completion of works or was being addressed through the Webuye Interchange Action Plan that was already in place prior to the Request.¹⁶

10. **Completion and Disclosure of the RAP Audit.** Management confirmed that the RAP audit report was completed in August 2019.¹⁷ The Government of Kenya adopted its recommendations on January 21, 2020.¹⁸ Management added that all relevant stakeholders were engaged during the RAP audit exercise and subsequent disclosure of its findings and recommendations on February 25, 2020.¹⁹ This audit, according to Management, identified 52 mobile traders and 13 small businesses that had been excluded in the original RAP and were therefore not compensated during the implementation of the RAP.²⁰

11. **Mobile Traders.** Regarding the relocation of the 52 mobile traders from the Webuye interchange area, Management had stated earlier that the Bungoma County Government would acquire a parcel of land close to the Webuye interchange where a market would be built and stalls and kiosks assigned to mobile traders to ply their trade. In the Update, Management stated that the Bungoma County Government identified a suitable plot, which it has fully paid for, and had finalized the land title deed on March 4, 2020. However, due to the current COVID-19 situation, work on the design of the market was delayed and is now expected to commence on July 1, 2020. This task is expected to take approximately one month. According to Management, the allocation of stalls would be completed within four months of the construction being finished. Management committed to follow up with the Kenya National Highways Authority (KeNHA) on a monthly basis to evaluate the situation and determine if further actions needed to be initiated, and to update the timeline.²¹

12. **Small Business Owners.** In regard to the small business owners, Management's Update stated that the RAP audit team received grievances from 22 complainants who claimed to own

¹³ Second Management Update, p. 1, para. 4.

¹⁴ Second Management Update, p. 2, para. 6.

¹⁵ Second Management Update, p. 1, para. 2.

¹⁶ Second Management Update, p. 1, para. 3.

¹⁷ Second Management Update, p. 1, para. 5.

¹⁸ Second Management Update, p. 2, para. 7.

¹⁹ Second Management Update, p. 2, para. 5.

²⁰ Second Management Update, p. 2, para. 7. Management and the Requesters confirmed in separate meetings that there was a duplication between the number of mobile traders and small business owners and that the accurate count was 52 mobile traders and 11 small business owners.

²¹ Second Management Update, pp. 2-3, Table 1 – Status of RAP Audit Recommendations, Issue 1.

small businesses and who had not received any support from the Project. However, only 13 were verified as genuine small business owners present at the Webuye junction before the cutoff date of January 27, 2011.²²

13. The Update stated that these small business owners did not have verifiable financial records to prove the amount of income lost. Therefore, the audit undertook a comparison with similar businesses along the same road corridor and determined that most of the income figures provided by the affected small business owners were exaggerated and well out of the income range of the comparable businesses. The Update provided two sample analyses of net income; one of a Mpesa business²³ and one which had consolidated data from grocery, hotel, tailoring, posho mill,²⁴ and butchery businesses. Both analyses demonstrated the difficulty of establishing an appropriate net income for these types of businesses.

14. The audit, based on the consideration of comparable businesses, the town size and the available client base, concluded that an all-inclusive amount of Kenyan Shillings (KES) 20,000, would be paid to each small business owner to mitigate temporary loss of income. This amount includes three months of the lost income (at KES 3,000 per month – rounded to KES 10,000) and a disturbance allowance for dismantling, transporting and setting up of the business at the new location – at KES 5,000 for the dismantling and another KES 5, 000 for the transportation and set up.²⁵

15. Management added that the National Land Commission provided a no-objection for KeNHA to make the compensation payments on February 18, 2020. It added that letters were issued to the small business owners stating that a compensation payment of KES 20,000 would be paid to each of them. It also added that the payment had been made by check on April 24, 2020.

16. **Quarry Road.** Regarding the community’s concern about a quarry and related road, Management stated that restoration plans were prepared and submitted to KeNHA for review. It noted that the surface condition of the access road is relatively good and motorable. It added that the Contractor committed to further improve the access road to the quarry once the restoration works had been completed.²⁶

17. During its review, the Panel engaged with Management to ask about some of the concerns raised by the Requesters. The Panel inquired whether any instructions had been given to the RAP audit team to consider a ceiling amount when calculating the compensation. The Panel also inquired as to the appropriateness of a parcel of land distant from the Webuye interchange to be the site of the new market.

²² Second Management Update, p. 5, Annex 1 – Compensation for Small Business Tenants.

²³ 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.

²⁴ 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.

²⁵ Second Management Update, pp. 5-8, Annex 1 – Compensation for Small Business Tenants.

²⁶ Second Management Update, p. 4, para. 8.

18. On the calculation of compensation, Management informed the Panel that the methodology used by the RAP audit team is clear and, as mentioned above, stems mainly from the fact that small business owners do not have verifiable records to demonstrate their income levels. Hence, the RAP audit team sampled comparable businesses along the same road corridor to estimate the income that small businesses generate. The amount was then averaged over three months and adjusted to the size of the town and population density, and a disturbance amount was added (which included dismantling and relocation).

19. Concerning the location of the new parcel of land, Management informed the Panel that all efforts had been exercised to find a parcel of land in Webuye. However, there were no willing sellers. Management added that the land that was initially sought for the new market was no longer available for sale. Management also added that the land acquired, about 2.5 kilometers away, was the only land available for the Bungoma County to buy.

20. **Requesters' Update.** In the period following the Panel's Second Report and Recommendation, the Panel received several correspondence from the Requesters, summarized below. Additionally, following the receipt of Management's Second Update the Panel directly contacted and spoke to a few members of the Webuye community who are either listed in the RAP audit as project-affected persons (PAPs) or claim that they should have been included in the RAP audit. Among those contacted by the Panel were three mobile traders, three small business owners and an employee of one of the affected businesses. The Panel received feedback from these PAPs on the proposed compensation strategies during these one-on-one conversations.

21. **Drainage and Safe Crossing.** In their correspondence and during the phone discussions, the Requesters complained about what they perceive to be a faulty drainage system. Additionally, the Requesters maintained their concerns about the pedestrian crossing and the lack of access to some businesses and homes.

22. **RAP Audit.** The Requesters added that the RAP audit did not identify all the affected mobile traders and small business owners. The Requesters stated that their organization, Emony Yefwe International, was not involved in the verification and validation of the names of the complainants and was only invited to attend the three-day exercise "*for cross examination of the mobile traders.*" They considered that the RAP audit was too narrowly focused to cover the livelihood impact on mobile traders and a few business owners.

23. The Requesters view was that the RAP audit did not focus on the structural aspects of the Project such as the lack of access to homes and businesses, the overflows in the drainage system during heavy rains, the lack of drop-off points along the service roads, and the reduction in business mostly on the western side of the interchange, attributed to lack of easy access. They also claimed that the impact from dust during construction was not addressed.

24. They claimed that these failures constitute human rights violations and did not help achieve the Project's objective to increase efficiency of road transport along the Northern Corridor. They proposed a redesign to provide two-way direction slip roads on both sides of the interchange as opposed to the current one-way direction slip roads. They also proposed to have a U-turn or a

roundabout at both ends of the interchange. They stated they have witnessed, on several occasions, vehicles driving on the wrong side of the road.

25. The small business owners interviewed by the Panel stated that customers traveling from the other side of the road were no longer accessing their businesses, which has resulted in a reduction in income. One of the business owners said that he was not included in the RAP audit. He added that his hotel/bar restaurant lost 50 percent of its income. Another small business owner stated that the KES 20,000 amount was insufficient as it did not cover a quarter of the losses she incurred and, as a result, she was unable to restart her business. A third business owner said that the valuation and compensation were unfair. He acknowledged that most businesses do not have verifiable documentation to measure their income. However, he stated that he has stock receipts that demonstrate the volume of business he generates. He added that in the list of small businesses only four were businesses and the rest were either mobile traders or roadside businesses. Categorizing the owners of the latter two as small businesses had hurt the other four business owners since the average calculated lowered the compensation amounts. He also stated that the RAP consultant indicated that all compensation amounts had to be averaged at KES 3,000 per month as income, regardless of the real income of the small business.

26. Panel interviews with mobile traders also indicated dissatisfaction among them, mainly due to the new location of the market. One of the mobile traders recounted that at first they were told they would receive cash compensation; then they were promised stalls in a nearby market; and now they were being told that they have to walk several kilometers to a different site where a market would be established and where they would get a stall. Another mobile trader said that the new market is in a different community and this will create problems in terms of acceptance by the host community, which might inhibit their ability to trade. She asked that mobile traders be paid cash compensation instead. A third mobile trader reiterated that the land assigned for the new market was too far away.

C. Panel Observations

27. As noted above, the Panel's observations and conclusion are based on discussions with some of the affected community members as well as Management.

28. **RAP Audit.** The Panel notes the inconsistencies and differences between the views of the affected community members and those of Management. The Panel also notes the difficulty in verifying some of these matters and the potential for changes, especially given that the Project closed in December 2019. Additionally, the Panel agrees with Management that most of the impact was temporary in nature and that most of it has since dissipated. The Panel focused its review on any residual harm.

29. **Safe Crossing and Road Safety.** The Panel notes the Requesters' suggestions, which include a two-way slip road and roundabouts before and after the interchange. The Panel also notes that the Project is now closed. Any redesign needs to be suggested to KeNHA. The Panel considers that with the current design, efforts need to be made by pedestrians to cross at safe crossing points

and not at the closest point. Likewise, the Panel considers that the same principle applies to safe driving and efforts need to be made by drivers not to drive the wrong way.

30. **Access Points and Drainage.** The Panel reiterates its earlier statement that 18 access points were built beyond the agreed scope. The Panel could not verify whether all houses and businesses now have road access either from the front of the house or from other sides. On the drainage aspect, the Panel notes Management's earlier statement about the existence of structural problems with the drainage system and the need to verify this.²⁷

31. **Small Business Owners.** The Panel has reviewed the progress achieved in the disclosure and implementation of the RAP audit. The Panel is satisfied that a serious, although not an exact, attempt was made to estimate the income lost by the small businesses. The Panel notes that while the lack of verifiable records makes the task difficult, this cannot be attributed to an omission by Bank Management. The Panel recognizes the effort made by Management and KeNHA to ensure small business owners received their compensation checks in April, despite logistical and bureaucratic difficulties caused by the restrictions put in place as a result of COVID-19. The Panel believes that had these businesses been identified earlier when the Project was redesigned, there would have been a better opportunity to calculate and rationalize a compensation package that would have been more satisfactory to all those affected.

32. **Mobile Traders.** The Panel also understands that due to the absence of willing sellers near the Webuye interchange, land that the mobile traders would consider appropriate could not be acquired. While the Panel agrees with the mobile traders that the new market will be further away from the current interchange point, the Panel is of the view that a 2.5 kilometers distance is reasonable and viable for mobile traders to access. The Panel further notes the allocation of this new location in which to trade provides an opportunity for the mobile traders to have a stall or a kiosk where they could ply their trade and generate income. These stalls and kiosks come at no cost to the mobile traders.

D. Recommendation

33. The Panel reiterates its earlier observation that much of the impact of the Project was temporary in nature and has since dissipated. In conclusion, notwithstanding the opposing views of Management and the Requesters, and considering the efforts made to value the losses to the small business owners and to acquire land in close proximity to the Webuye interchange to build a market for the mobile traders, the Panel is not recommending an investigation.

34. If the Board of Executive Directors concurs with the foregoing, the Inspection Panel will advise the Requesters and Management accordingly.

²⁷ Second Report and Recommendation on a Request for Inspection, Kenya: Transport Sector Support Project (P124109) and its Additional Financing (P146630), the Inspection Panel, November 19, 2019, p. 6, para. 24.

ANNEX 1

KENYA

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

SECOND UPDATE ON MANAGEMENT ACTIONS

April 24, 2020

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ABBREVIATIONS AND ACRONYMS

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

KENYA

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

SECOND UPDATE ON MANAGEMENT ACTIONS

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>