

IPN REQUEST RQ 19/02

May 13, 2019

Request for Inspection

KENYA: Nairobi Metropolitan Services Improvement Project (P107314)

Notice of Registration

1. On April 12, 2019, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) of the Nairobi Metropolitan Services Improvement Project (P107314) (the “Project”) in Kenya. The Request was submitted by three residents of the Muthurwa area (the “Requesters”) in Nairobi, Kenya. The Requesters asked the Panel to keep their identities confidential. The Requesters claim intimidation and threats.

2. The Requesters’ concerns relate to plans to redevelop the area in which they live. They allege that such plans are being financed under the Project and will result in evictions of community members and the demolition of cultural and historical facilities, which they claim are of “*sentimental value*” to the community members. The Requesters are concerned that a planned household survey may not be adequately conducted since previous ones “*neglected to capture*” all residents. They claim that the earlier land-take in their area was not legal, and based on “*skewed public participation.*”

3. The Panel issued a Notice of Receipt on April 16, 2019, on its website, and informed the Requesters and Bank Management.

The Project

4. The Nairobi Metropolitan Services Improvement Project (P107314) is an investment project approved on May 10, 2012, for a US\$300 million equivalent IDA Credit to the Republic of Kenya (the “Borrower”). The Project’s initial closing date was June 30, 2017. It was restructured twice and the closing date was extended to March 31, 2020. While many of the Project activities are expected to be completed by May 31, 2019, the proposed

restructuring is to, among other things, enable the implementing agency to complete five critical infrastructure works and resettlement action plans (RAPs).¹

5. The Project Development Objective is to strengthen urban services and infrastructure in the Nairobi metropolitan region.² The Project has four components: (1) institutional reform and planning; (2) local government infrastructure and services; (3) metropolitan infrastructure and services; and (4) project management, and monitoring and evaluation.³

6. Component 2 of the Project supports priority urban infrastructure in 13 urban areas of the Nairobi metropolitan region. Such investments are relatively small-scale local projects and can include drainage systems, local streets, bicycle and foot paths, street and security lighting, public parks, public markets, solid waste management and street cleaning, and firefighting equipment and facilities.⁴

7. Component 3 will assist in providing large-scale metropolitan infrastructure in the areas of solid waste, transport, and sewerage services, which are crucial for development within the metropolitan region. In contrast to the activities financed under Component 2, these will serve several local authorities simultaneously and are crucial for the service delivery and development of the metropolitan region.⁵ In terms of transport, this component supports (1) preparation of land-use plans for areas surrounding 13 commuter rail stations, (2) construction or upgrading of public infrastructure surrounding the commuter rail stations and other transport nodes, (3) construction and rehabilitation of strategic roads as identified in the Mass Rapid Transit Study undertaken by Ministry of Transport, and (4) improvement of traffic management and flow. The general location of the stations has been agreed with the Kenya Railways Corporation (KRC), and the exact locations will be identified in a study to be financed under the Project.⁶

8. The environmental category of the Project is “A.” The Project Appraisal Document (PAD) states that land-use planning and infrastructure planning does not, in and of itself, trigger the Bank Policy on Involuntary Resettlement unless the investments are Bank-supported and require the taking of land or result in the loss of livelihoods or assets associated with such land. The PAD adds that “*planning activities may have significant downstream consequences*” and, as a result, planning activities supported by the Project will be embedded within careful and explicit examination of environmental, social and legal impacts. The PAD also notes that the Bank will seek commitments from the Borrower to make a concerted effort to design and put in place appropriate measures to deal with those

¹ Restructuring Paper on a Proposed Project Restructuring of Nairobi Metropolitan Services Improvement Project, Approved on May 10, 2012, to Government of Kenya, Report No.: RES35250, Summary of the Proposed Restructuring.

² Project Appraisal Document on a Proposed Credit in the Amount of SDR 192.8 Million (\$300 Million Equivalent) to the Republic of Kenya for the Nairobi Metropolitan Services Project, dated April 9, 2012 (the “PAD”), p. 8.

³ PAD, pp. 9-11.

⁴ PAD, p. 29.

⁵ PAD, p. 31.

⁶ PAD, p. 32.

impacts that are “*broadly consistent with Bank Operational Policies.*”⁷ The Project was 77 percent disbursed at the time of receipt of the Request. The Project triggers the following policies: Environmental Assessment (OP/BP 4.01); Natural Habitats (OP/BP 4.04); Physical Cultural Resources (OP/BP 4.11); and Involuntary Resettlement (OP/BP 4.12).

The Request

9. The Request raises concerns about: (1) the quality of household surveys; (2) poor public consultation and participation; (3) potential evictions; (4) demolition of cultural and historical facilities; and (5) health hazards related to air, water and soil pollution.

10. **Household surveys.** The Requesters claim that a previously compiled Muthurwa RAP identified only 12 households to be compensated. However, a 2009 household survey showed that Muthurwa had 7,456 residents. The Requesters complain about surveys undertaken without due diligence of land ownership. They acknowledge the existence of a long-standing land dispute related to Muthurwa. The Requesters claim that the Government of Kenya failed to “*regularize community land tenure.*” They claim that the matter is still pending in Kenya’s courts.

11. **Public consultation and participation.** The Requesters state that previous consultations conducted by the consultant hired under the Project lacked proper notification “*as enshrined in the Public Participation Act*” and ended prematurely. The Requesters are concerned that future consultations would follow suit.

12. **Potential evictions.** The Requesters are concerned that they could be evicted from the Muthurwa area. They claim that last year a “*similar World Bank Funded project- Ngong Road expansion process, left over 10,000 people destitute and homeless due to the demolition exercise undertaken by Kenya [Urban] Roads Authority (KURA) National Youth Service (NYS) and line ministries.*” They also claim that previously, as part of a 2005 Muthurwa market development initiative, the residents of Muthurwa bore the brunt of evictions and “*didn’t get any opportunity or stalls.*” They allege the existence of a program of forced evictions affecting their area, in “*flagrant violation*” of the Bank’s Involuntary Resettlement Policy.

13. **Cultural and historical facilities.** The Requesters are concerned that the Project will lead to the loss of valuable cultural and historical facilities, which are of “*sentimental value*” to the community. In this regard, they ask for a “*meaningful engagement*” with the KRC, Muthurwa resident representatives and the Nairobi City County Government. They list the Muthurwa Dallas Social Hall, the Shaffie Mosque and the Muthurwa Clinic as examples of such facilities.

14. **Health hazard.** Additionally, the Requesters claim that over the past 10 years a feeder road constructed within the area continues to expose residents to grave health hazards. They mention that a dump site at the main entrance of the market next to Muthurwa Mosque School has led to the contamination of the surrounding air, water and soil.

⁷ PAD, p. 23.

15. The Requesters note the importance of the following moving forward: (1) the distribution of a disturbance allowance and resettlement compensation; (2) the preparation of a survey of all residents in the area; (3) the allocation of part of the land to the residents' housing needs; (4) the preparation of guidelines to assist vulnerable persons; (5) the inclusion in all deliberations related to Muthurwa; (6) the preservation of cultural sites; (7) the fast tracking of all railway-pensioners and retirees' judicial cases; (9) a timeframe for Project implementation in compliance with Bank policies; and (10) the adoption of the Bank/UNESCO CURE (Culture in City Reconstruction and Recovery) framework for the Project.

Initial Due Diligence

16. After receipt of the Request, the Panel conducted its initial due diligence and verified that the Request meets the admissibility criteria for registration.

17. The Panel communicated with the Requesters over email and conducted a phone call with them to better understand their concerns. The Panel confirmed that the Request is not frivolous, absurd or anonymous, and was submitted by two or more members of the community affected by the Project. The Requesters provided a copy of their correspondence with Bank Management, dated May 31, 2018, in which they raised their concerns. The Panel verified that the subject matter in the Request does not concern issues of procurement. At the time of the receipt of the Request, the Project was 77 percent disbursed and its closing date was extended to March 31, 2020. Further, the Panel has not made a recommendation on the issues raised in this Request.

18. During their email and phone communications with the Panel, the Requesters elaborated on the harm stated in their Request. The Requesters noted that they were aware of different projects under implementation in the area, including a project supported by the Japanese International Cooperation Agency (JICA). They noted that the consultant hired under the Bank-supported Project to design land-use plans, including for the Muthurwa area, was also hired under the JICA project. They sent the Panel a presentation by the consultant concerning the land-use plans. The Requesters expressed concerns about potential resettlement affecting Muthurwa market.

19. The Panel met with Bank Management on April 29, 2019, to discuss the issues raised in the Request. Management informed the Panel that they had not heard about the possibility of evictions in the area before and that any potential evictions in the area are not linked to the Project. They noted two factors they believe are relevant to the Request – the existence of a JICA-supported project to build a viaduct over the Muthurwa area, and a long-standing land dispute in the area.

20. Management stated that the Project supports the preparation of the “*Urban Plans, Urban Designs, Economic/Finance and Implementation Study for Redevelopment of the Nairobi Central Railway Station and its Surroundings.*” Management added that the Project is also supporting the preparation of a Strategic Environmental and Social Assessment, which is expected to be finalized in June 2019. Management stated that, while

the geographical scope of these plans includes the Muthurwa area, they are high-level plans that do not include any infrastructure financing. Management noted that the JICA-financed project was distinct from the Bank Project and that both projects share the same consultant conducting different activities.

21. Management clarified that the rehabilitation of Muthurwa market had been considered under the Project and a feasibility study had been conducted. However, the Project did not finance this sub-project as it did not meet some of five criteria for financing. Management noted their understanding that the potential evictions are a result of a Supreme Court decision issued in 2016 on the land dispute between residents of Muthurwa and the KRC. Management shared documentation in support of this information, including excerpts of an Aide Memoire from a December 2017 mission.

22. The Panel reviewed documents related to the Project and information shared by the Requesters and Management, including public Project documents referring to the preparation of a RAP for the Muthurwa market.⁸ The Panel considers that that claims raised by the Requesters may be plausibly linked to the Project.

Risk of Retaliation

23. The Requesters referred to threats and intimidation they faced. They noted that one of them was arrested under “*trumped up charges.*” On April 23, 2019, the Requesters informed the Panel of plans for the “*removal and hiding*” of an outspoken community member. The Panel informed Management of these events.

24. Management informed the Panel that it reached out to the government officials to emphasize the absolute necessity of protecting complainants from any form of threat, intimidation or reprisal. Management indicated that, while it has no indication that such retaliatory actions were carried out by officials or identifiable individuals, it asked the government to send a reminder – in particular to the implementing authorities – underlining the importance of abstaining from any retaliatory actions.

Registration of the Request

25. As provided in paragraph 17 of the IDA Resolution (“the Resolution”) that established the Panel, “*the Chairperson of the Panel shall inform the Executive Directors and the President of the Bank promptly upon receiving a request for inspection.*”⁹ With this notice, I am notifying you that I have, on May 13, 2019, registered this Request.

26. The Panel’s registration implies no judgment whatsoever concerning the merits of a Request for Inspection. As provided in paragraph 18 of the Resolution, and paragraphs 2 and 8 of the “*Conclusions of the Board’s Second Review of the Inspection Panel*” (the “1999 Clarification”), Bank Management must provide the Panel within 21 business days

⁸ Kenya State Department of Housing and Urban Development, NAMSIP Monthly Progress Report as at March 2019, pp. 14-16 (available at http://www.namsip.go.ke/?page_id=618).

⁹ Resolution Establishing the Panel (September 22, 1993), Resolution No. IDA 93-6, <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/Resolution1993.pdf>.

(by June 12, 2019) a response to the issues raised in the Request. The subject matter that Management must deal with in this response is set out in paragraphs 3 and 4 of the 1999 Clarification.

27. After receiving the Management's response, the Panel will, as outlined in the 1999 Clarification and as provided by paragraph 19 of the Resolution, "*determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and shall make a recommendation to the Executive Directors as to whether the matter should be investigated.*"¹⁰ This Request has been assigned IPN Request Number RQ 19/02.

Yours sincerely,



Imrana Jalal
Chair

Attachments

Mr. David Malpass, President
International Development Association

The Executive Directors and Alternates
International Development Association

¹⁰ Ibid.