



Date: 7 October 2015

Notice of Registration

Request No. : RQ2015/3

Country: Kenya

Project: Outer Ring Road Improvement Project, Nairobi

1. On 14 September, 2015, CRMU received a complaint about the Outer Ring Road Improvement Project from Mr. Peter Ndorongo, Mr. Maina Nguchu, Mr. Simon Kokoyo, and Mrs. Grace Mwendia (“the Requestors”). The Request dated 25 August 2015 is included in Annex 1 of this Notice of Registration. The Requestors are representatives of “Open Air Small Scale Traders, “jua kali” Artisan and Vegetable Venders” who carry out their small businesses between the Mathare River and Kariobangi Market along the Outer Ring Road being rehabilitated with Bank financing.
2. According to the Summary of the Project Environment and Social Assessment Impact (ESIA) (pages 10-17) published on 11 July 2013, the outer ring road is located in different zones in Nairobi North and Nairobi East District of Nairobi County. The road provides connectivity mainly of Nairobi –Thika Highway to among other corridors Eastern Bypass, Kangundo Road, Northern Bypass, Mombasa Road and the all-important Kenyan Gateway, Jomo Kenyatta International Airport. The 13km road stretch covers the following areas: Mlango Kubwa; Kiamaiko; Huruma; Kariobangi; Umoja; Mukuru; and Embakasi. The Project involves large scale road construction in a fairly densely populated urban setting. The proposed Project aims to improve traffic flow in the city of Nairobi by constructing the 13Km Outer Ring Road to a dual carriageway standard and upgrading existing intersections to six grade separated intersections and two underpasses, together with integrated Non-motorized Transport (NMT) facilities for the entire road length. The negative social impacts of the projects among other include:
 - **Loss of Assets:** In the implementation of the road improvement and up-grading to dual carriage-way, it is estimated that 445 informal businesses (Hawkers) will be displaced from the road reserve and will require to be compensated. The Nairobi City County has eight (8) possible locations mainly existing markets where some of the traders along the road corridor could be relocated. Although the existing capacity of the market stalls is reckoned to be fully occupied, the markets can be expanded to accommodate the affected persons. These markets are along the project road at: Kariobangi North, Kariobangi South, Tassia, Kiamaiko, BabaDogo,

Umoja, Tena and a wholesale Market Site (Kangundo Road). Some of the trading activities were considered not possible to be accommodated by the County in the above sites and therefore, these people would be compensated as they too have suggested at various forums. These activities include: garages, furniture shops, building materials and hardware, car sale yards, car wash, metal fabrication. To mitigate the impacts, all affected people who are entitled to compensation will be compensated accordingly before commencement of construction activities.

- **Land Take:** A total of 177 properties will be affected by the road widening to dual carriageway and may entail compulsory acquisition for the road improvement purpose. This is the total number of parcels that have title deeds including those that have encroached on the land reserved for the improvement. The property owners of land that is legitimately in their possession will be compensated at the statutory rates (replacement costs and disturbance including loss of any business, if applicable) inclusive of any other relief applicable.
3. This complaint is the second request received by CRMU from the same group of affected people. Their first request which triggered CRMU involvement in April 2014 was in the form of a petition dated 21 February 2014. The document was submitted by Mr. Peter Ndorongo, the representative of the “Reality Tested Youth Programme” on behalf of the affected traders and vendors. It initially addressed to the Director IACD who forwarded it to CRMU on 14 April 2014 through the referral memo included in Annex 2 of this Notice of Registration.
 4. In their petition, the open air traders reported to have been omitted as Project Affected People (PAP) in both the *Outer Ring Road Environment and Social Impact Assessment and the Appraisal* reports when it was well established that they had been carrying out their businesses in the project area for 7 to 20 years. The complainants claimed that despite being among the people adversely affected by the project, they had not been recognized in the report by the project implementation unit, the Kenya Urban Roads Authority (KURA) deliberately and that the list of PAPS was not prepared in a transparent manner. With their names excluded from the list of PAPS they would therefore not be eligible for compensation, in violation of Bank policies.
 5. Upon conducting a preliminary review of the complaint, CRMU noted that the Complainants had not contacted the Bank Management to resolve their problems as required by the IRM Operating Rules and Procedures. CRMU facilitated dialogue between the complainants, the relevant Bank Operations Department and the Eastern African Regional Resource Centre (EARC) in Nairobi. On 22 April, 2014, the Director of CRMU advised the Complainants to contact the Director EARC as a first step and, in the event no action is taken by Bank management, to raise their complaint with CRMU again.
 6. On 18 June, 2014, the Requestors informed CRMU about their initial contact with EARC and several meetings with the staff of the Bank and KURA. They expressed satisfaction with the outcome, including the decision to assign a seat to their representative in the project Resettlement and Grievance Redress Committees which was established by KURA. In addition, on 23 June, 2014, the complainants confirmed to the Director of CRMU that they were working together with KURA to ensure the implementation of the project.

7. To ascertain progress achieved the Director of CRMU held a follow-up meeting with the representative of the Requestors and ORQR representative in EARC in Kenya on 5 May 2014¹. With further assurances that the requestors' issues were being handled, with the involvement of Bank Management, CRMU did not register the first Request and proceeded to close its file.
8. In light of the new complaint, CRMU is reopening the case because of KURA's reported failure to fulfill its commitments under the agreement both parties had reached as the results of CRMU's earlier initiative. The Requestors' worries that the contractor has started working in their former location without resolution of the issue of their compensation in clear violation of the Bank's policies concerning resettlement and compensation must be addressed.
9. In accordance with **paragraph 36 of the IRM Rules**, the Bank's Management must provide CRMU with written evidence that the Bank has, or intends to comply with the Bank's relevant safeguard policies and procedures applicable to this project within twenty one (21) working days, which shall be by no later than **5 November, 2015**.
10. For any future correspondence about this complaint, the Requestors, the Bank's Management and any other interested parties shall refer to the request number **RQ2015/3** as posted on the IRM Register of Requests.
11. The Requestors are notified that all communications in connection with their Request will be sent to the address indicated in the Request until they send another address to CRMU.
12. **On the basis of the explanation above and the provision of Paragraph 20 of the IRM Rules and Procedures, the request is registered for problem-solving and compliance review.**



Sékou TOURE

Director

Compliance Review and Mediation Unit

Cc: The Principal Requestor
The President, The African Development Bank Group
The Board of Directors, The African Development Bank Group

¹ The meeting was held in Nairobi on 05 May, 2014, in the margins of the Workshop organized by CRMU on successful community engagement around energy and infrastructure projects in Africa Reality

REQUEST

REALITY TESTED YOUTH PROGRAMME

P. O. BOX 69234-00622, NAIROBI.

Tel. 0722991083 / 0728665603

Email: ryp2004@gmail.com

25.08.2015

Sekou Toure
Director,
Compliance Review and Mediation Unit (CRMU)
African Development Bank (AfDB)
Email: s.toure@afdb.org

Dear Sir,

RE: Complaints; Outer Ring Road Open Air Traders

I write in regard to poor open air traders operating between Mathare River and Kariobangi Market who are project affected persons (PAPS) in the Outer Ring Road Improvement Project financed by the African Development Bank.

In 2014 open air traders realized that they were not factored in or mentioned in the *Outer Ring Road Environment and Social Impact Assessment and Appraisal* reports as PAPS yet it is well established that the traders have been there for long and that the road project will adversely impact their livelihoods. From the report, it is clear that open air traders were deliberately not recognized in the report by KURA. Yet, they are among the poorest to be affected by the road improvement project. The development of the list of PAPS did not appear to have been done in a transparent way.

In February 2014, we communicated to your office and KURA headquarters and your office was the first to respond to our petition on 22/4/2014 (Ref: CRMU/ST/LTR/2014/04/0006). KURA responded later through phone call and an official invitation email date:8/5/2014 meeting.

The meeting on 9/5/2014 was attended by 10 PAPS representatives, the KURA Project Co-ordinator, KURA Sociologist, and KURA Environmentalist and KURA Legal Officer. After long discussion, both teams, KURA and PAPS (open air traders), agreed to work together and resolve their differences amicably. The meeting resolved that;

- KURA officials would scrutinize and verify the more inclusive list for eligibility for compensation and inform the team
- Open air traders would form a working committee or representatives for future communication
- Reality Tested Youth Programme would provide details about its organization.

Later KURA organized an Outer Ring Road Consultative forum at Kariobangi Catholic Church, but no PAPs from our more inclusive list were ever invited. I and a few PAPs (open air traders) from the list attended the meeting after hearing about it from some of the affected traders whose names had been collected in 2012. After the consultative meeting, the open air traders were confused, and this caused a lot of anxiety. We decided that open air traders also fill Complaint Forms which we presented to KURA.

Since then, I have been nominated into the Grievance Redress Committee (2014), which has only met once at KURA offices with no any progress so far. It does not appear that KURA is taking these procedures seriously.

I, Peter Ndorongo and Maina Nguchu PAPs representatives (open air traders) have made several calls to KURA officials but it seems the issue of PAPs is being taken lightly and no clear information is being shared as no KURA official ever came to the ground to verify the eligibility of the excluded traders.

The open air traders feel cheated since the contractor has started working in their former location while issue of compensation has not been dealt with. This appears both unconstitutional and also a violation of African Development Bank principles on resettlement and compensation.

The open air traders feel that accepting jobs and vocational training skills opportunities before the issue of compensation is sorted out will be like betrayal to other traders since such opportunities are limited to only a few chances and there is no clear criteria for how to select beneficiaries.

We are kindly requesting your office to urgently consider the plight of the PAPs (open air traders) since they peacefully vacated the road corridor in the hope that their issues will be sorted according to AfDB policies when such projects are being undertaken.

I look forward to your response. Thank you.

Simon Kokoyo

RYP Representative: Simon Kokoyo – 0728665603

Paps Representatives: Peter Ndorogo – 0718510508
Maina Nguchu – 0723079917
Grace Mwendia - 0728847675



AFRICAN DEVELOPMENT BANK GROUP

INTER-OFFICE MEMORANDUM
Ref: IACD/M/42/04/2014/AB
Date: 14 April 2014

TO : **Mr. Seku TOURE**
Director, CRMU

FROM : **Ms Anna BOSSMAN** *Anna Bossman*
Director, IACD

SUBJECT : **PETITION BY AFFECTED PERSONS: OUTERING ROAD NAIROBI
UPGRADE - KENYA**

We are in receipt of the attached self-explanatory petition from Mr Fancis Irungu, Chairman of the Reality Tested Programme, a community based group which specializes in human rights and social justice issues in wider Mathare Constituency, Kenya.

The petition is forwarded for your necessary action and we thank you for your cooperation.

Cc:
File

REALITY TESTED YOUTH PROGRAMME

P. O. BOX 69234-00622, NAIROBI.

TEL. 0722 99 10 83 / 0728665603

Email: ryp2004@gmail.com

21/2/2014

Director General,
Kenya Urban Road Authority
Nairobi

RE: PETITION BY PROJECT AFFECTED PERSONS, OUTERING ROAD NAIROBI UPGRADE

Reality Tested Youth Programme is a community based group located in Klamaiiko off Outering Road which specializes on human rights and social justice issues in wider Mathare Constituency.

It is against this background that we have been approached by open air small scale traders, jua kali artisan, mama mbonga operating next to Kariobangi Market who have worked in their current space for between 7 yrs to 20 yrs. The above members operate between Mathare River and Kariobangi Market. The group fully supports and acknowledges government efforts in upgrading the Outering Road into a dual carriage.

The main concerns of the above mention traders are;

- It has come to their notice that there is a list of 445 hawkers or project affected persons which they have never seen or consulted in writing it
- Several meetings have taken place and none of their representatives has ever been invited to participate in such meetings

Group leaders have read Environment and Social Impact Assessment and Appraisal reports from the African Development which allows for involvement and participation of the people whose business are located ALONG Outering Road corridor as PROJECT AFFECTED PERSONS.

They are requesting that they be informed on how they can be included as part of PROJECT AFFECTED PERSONS and be enlisted for compensation according to African Development Bank policy whenever this kind project are undertaken.

-Please find attached signed petition.

Thank you In advance for your support on this matter.

Yours sincerely,

Francis Irungu
RYP, Chairman

Traders' representative
Peter Ndorogo
Tel. 0718-510508

cc.
County Director, African Development Bank
Governor, Nairobi City Council.

No.	Name	ID. Number	Contact	Sector	Signature
1	ZAINABU MUTIBALI KIKKAZUJI	24134640	0714811304	TRADER	
2	HELEN MUMSI KIKKAZUJI	27274146	0714140899	TRADER	
3	SIMON KASIRU KINYORO	20971766	0738524146	TRADER	
4	DAVID TEMO	24951098	0724482897	TRADER	
5	PETER MADRONGO	14420275	0718510508	Open Market	
6	SUSAN MUKHAYI WANJIKU	21362076	0723699853	Open Market	
7	MARY NDUJA	22791558	0724928643	Open Market	
8	MARGARET WANGUI WAKABA	22368278	0721772807	TRADER	
9	GEOFFREY KIKKAZUJI	12954868	0714669912	TRADER	
10	GEORGE GIKENYO	11878327	0720727247	TRADER	
11	PETER SAKALA	21625656	0723360020	Open Market	
12	MARGARET KIKKAZUJI CHEGE	21345489	0726845060	Open Market	
13	JOSEPH KING'ANGA	20511589	070011153	Open Market	
14	THOMAS MACHARIA	23660421	0719238667	Open Market	