

AFRICAN DEVELOPMENT BANK GROUP



MANAGEMENT RESPONSE ON THE REQUEST FILED ON THE OUTER RING ROAD IMPROVEMENT PROJECT.

OCTOBER 2015

LIST OF ABBREVIATIONS

AfDB	African Development Bank
CRMU	Compliance Review and Mediation Unit
DG	Director General
ESIA	Environmental and Social Impact Assessment
GRC	Grievance Redress Committee
GRM	Grievance Redress Mechanism
KURA	Kenya Urban Roads Authority
PAPs	Project Affected Persons
RAP	Resettlement Action Plan
RTYP	Reality Tested Youth Programme

TABLE OF CONTENTS

1.0	Introduction	1
2.0	Issues raised in the Request filed with CRMU	2
3.0	Efforts to resolve the concerns of the PAPs.....	2
3.1	Establishment of Grievance Redress Committee.....	3
3.2	Handling of the RTYP Complaints	4
4.0	Way forward	5
5.0	Conclusion	5

1.0 Introduction

The African Development Bank (AfDB) Board of Directors approved a loan of UA 77 million (ADF Loan) and UA 560,000 (ADF Grant) to the Government of Kenya for the improvement of the Outer Ring Road in Nairobi. The Loan was approved and signed on 13th November 2013. The Project completion dates is 31st December 2018, with the current disbursement rate at 13%.

The objective of the project is to improve the road transport network by expanding traffic capacity of the 13 Km Nairobi Outer Ring Road to provide congestion relief, and to provide market stalls for the informal traders (most of whom are women) as a means to fostering inclusive growth. The project scope includes: Construction of the 13 Km dual carriageway together with integrated non-motorized transport facilities; planting of 4500 trees along the corridor; construction of 250 market stalls; construction of one children safety park; and, establishment of 3 wellness centers established along the corridor.

Considering that the project involves large scale road construction in a fairly densely populated urban setting, the implementation of road improvement and upgrading to a dual carriage way was estimated to affect up-to 445 informal traders (Hawkers) who were to be displaced from the road reserve and would require to be compensated. Whereas the Nairobi City County has eight (8) possible locations, mainly existing markets, where some of the traders along the road corridor could be relocated, the existing capacity in the market stalls was reckoned to be fully occupied, although there was possibility of expanding the markets to accommodate the affected persons. Because some of the trading activities (such as garages, metal fabrication, furniture shops, among others) were considered not possible to be accommodated in these alternative markets, the option of compensation at replacement cost and where applicable, disturbance costs incurred through business interruption has been discussed and agreed between KURA and the PAPs in various forums.

On 25 August 2015, Mr. Simon Kokoyo, on behalf of what he referred to as “open air traders” (hereinafter after also referred to as Project Affected Persons) operating between Mathare River and Kariobangi Market wrote to the Director of the Compliance Review and Mediation Unit (CRMU) drawing to his attention a concern that these open air traders had not been compensated despite the Contractor already starting the works in the area they previously occupied before the works. This, the letter argued, is a violation of AfDB’s principles and policies on resettlement and compensation.

The August 2015 complaint was the second request addressed to CRMU from the same group of Project Affected Persons (PAPs) , with the first request received in April 2014 in a form of a petition dated 21s February 2014. The initial petition was submitted to CRMU on behalf of the PAPs, by Mr. Peter Ndorongo, a representative of the Reality Tested Youth Programme (RTYP). However, following discussions facilitated by Management between the Kenya Urban Roads Authority (KURA) and the PAPs, an understanding was reached to the effect that the affected PAPs were to be incorporated into the Grievance Redress Mechanism (GRM), the concerns of the PAPs were to be fully verified and the eligible PAPs compensated. Accordingly, the RTYP wrote to the Director CRMU drawing his attention to these developments.

Following the second complaint on behalf of the PAPs, the CRMU, on 2015 registered the request on 7th October 2015 because of KURA’s alleged failure to fulfill its commitments under the

agreement both parties had earlier reached. In accordance with paragraph 36 of the IRM Rules and procedures, the Bank's Management is required to submit to CRMU within twenty one (21) working days of receipt of the Notice of Registration, a response with written evidence that it has complied, or intends to comply, with the Bank's applicable policies and procedures on the project. Accordingly, Management's response is to be submitted to CRMU by no later than 5th November 2015.

2.0 Issues raised in the Request filed with CRMU

In their petition, the "open air traders" reported to have been omitted as PAPs in both the project Environmental and Social Impact Assessment (ESIA) and 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 deliberately not been recognized in the report by KURA, and that the list of PAPs had not been prepared in a transparent manner. With their names excluded from the list of PAPs, they would therefore not be eligible for compensation, and that this was in violation of Bank policies.

3.0 Efforts to resolve the concerns of the PAPs

Upon receiving the initial complaints and petitions from the RTYP, and as part of the overall RAP implementation, KURA has undertaken a series of consultative and sensitization meetings with the PAPs regarding the RAP implementation process. KURA has been providing feedback on various occasions including through a letter by the KURA Director General (DG) dated 3rd June 2014 (attachment 1) in which he outlined what KURA was doing to address the concerns of the PAPs. In this particular letter to the Chairman RTYP, the DG noted that glaring anomalies and discrepancies had been observed in the petitions, including the fact that some of the persons whose names appeared on the petition were not on the 60 meter road corridor, others did not operate any form of business along the road reserve, while others were not even residing within Nairobi as confirmed through telephone calls. He henceforth cautioned against presenting frivolous claims that would stall and/or delay the project or seek to extract unfair advantage over the genuine PAPs. Indeed for some time, KURA pre-occupied itself with verification of eligible PAPs given the complex environment in which the project was being implemented with potential for falsified claims. In their letter dated 19th May 2014 (Attachment 2) RTYP acknowledged that there could have been some "questionable names" of people presented in their list and agreed that "the two lists presented to KURA be scrutinized afresh to ascertain eligibility".

On its part, Management has played a facilitation role by convening a series of meetings with KURA and the PAPS. Following a series of meetings between KURA and the PAPs, including one on 9th of May 2014 attended by 10 PAPs representatives, the KURA's Project Coordinator, Legal Officer, Sociologist and Environmental Officer, (Minutes attached as Attachment 4), a way forward was agreed to the satisfaction of the PAPs which culminated in the PAPs writing to CRMU on 16th June 2014 (letter attached as Appendix 3) indicating their satisfaction on the consultation outcome, including the decision to nominate their representative on the project GRM.

Among the other steps taken by the implementing agency to ensure smooth RAP implementation are the following:

3.1 Establishment of Grievance Redress Committee

The Grievance Redress Committee (GRC) was constituted and draws membership from key stakeholders including KURA, PAP Representatives, Nairobi City County Government and National Government Administration Officers. It is mandated to hear the complaints and provide solutions, and reduce unnecessary litigation by resolving disputes through mediation. The grievance handling process is as expeditious as possible to avoid delay in the project and delayed compensation. All the PAPs are encouraged to raise any emerging issues to the GRC.

During the implementation of the RAP, KURA has ensured that the PAPs participate in the grievance process, by ensuring that the grievance handling process is shared, discussed and agreed with the PAPs during the census survey and consultations.

In order to facilitate receipt of any grievances, the GRC designed an easy-to-fill questionnaire (Attachment 4) for all claimants to fill as necessary while attaching the requisite documents. The questionnaire/form is freely available from all the PAPs representatives as well as at KURA offices. Once duly filled, the questionnaire is submitted to the respective PAP representatives for onward transmission to the GRC to review the complaint, deliberate on it and issue a prompt verdict.

To date, the GRC has received over 1,000 (One thousand) complaints from aggrieved PAPs along the road corridor, including from the PAPS represented by the RTYP. Presently, KURA has been able to verify a majority of them as shown in Table 1 below, with the only remaining section whose verification is ongoing being from Mathare River to Kangundo Road junction.

Table 1: Summary of Grievances Determined for Outer Ring Road

S/No	Date	Road Section	Number of Grievances Received	Grievances Accepted	Grievances Rejected
1.	3 RD JUNE 2015	RUARAKA TO NATIONAL CONCRETE	328	32	296
2.	12 TH OCTOBER 2015	KARIOBANGI ROUND ABOUT TO CALTEX	137	37	100
3.	25 th JUNE 2015	CALTEX (KANGUNDO ROAD) TO TENA MARKET	37	8	29
4.	21 ST AUGUST 2015	DONHOLM ROUND ABOUT TO NGONG RIVER	107	104	3
5.	15 th OCTOBER 2015	KARIOBANGI ROUND ABOUT TO MATHARE RIVER	49	37	12
TOTAL			658	218	440

The majority of the grievances rejected were on account of being found not to be operating within the affected road corridor.

3.2 Handling of the RTYP Complaints

Upon receipt of the two petitions from RTYP dated 21st February 2014 and 31st March 2014 containing 60 and 28 PAPs respectively, KURA initiated a thorough verification of both lists and noted that a majority of the PAPs on the lists were not operating along the Outer Ring Road corridor. KURA duly contacted RTYP and gave them feedback regarding the verification exercise and other concerns raised by the said petitions as already noted in section 3.0 above.

Following a series of meetings, including one with the Director CRMU in May 2014, the parties agreed to work together and resolve all matters amicably. KURA and RYP had a follow up meeting at KURA offices on 9th May 2014 to further discuss the petition (Minutes included as Attachment 5).

Following this meeting RYP wrote a letter to withdraw the petition on 16th June 2014 as noted above. In addition, Mr. Simon Kokoyo was incorporated into the GRC to represent the interests of the PAPs affiliated to his organization and operating between Mathare River and Kariobangi Roundabout.

While these efforts were ongoing to address the concerns of the PAPs, RTYP submitted another petition to CRMU on 25th August 2015 (Attachment 6) and which led to the registration of the

complaint by CRMU. In addition to this petition, RTYP, on 25th September 2015, submitted a revised list of 49 (forty nine) PAPs which was subsequently subjected to further verification on 15th October 2015 by KURA and representatives of the PAPs which determined that 37 PAPs were eligible while 12 were not (Eligibility list attached as attachment 7). All were informal traders.

Subsequently the AfDB facilitated a meeting between KURA and the PAPs on 2nd October 2015 (Minutes included as attachment 8) to address the issues raised therein and come up with an amicable solution. It was resolved that the outstanding verification of PAPs should be finalized by 16th October 2015.

Currently, this verification exercise is underway and KURA aims to meet its target as agreed during the meeting. The claimants shall be notified individually of the outcome of their complaints within the stipulated time frame.

4.0 Way Forward

- i. The list of eligible PAPs is to be forwarded to the GRC for review, deliberation and determination of the entitlements for each PAP.
- ii. Once the entitlements have been determined and agreed upon by the parties (KURA and PAPs), KURA will take the necessary steps to compensate the eligible PAPs. This is planned to be finalized by 31st December 2015.

5.0 Conclusion

Management acknowledges that RAP implementation in a densely populated urban setting is bound to present a number of challenges as exhibited by this case. As indicated above, this complexity, including some challenges in determining the eligible PAPs have caused unnecessary delays in the identification and compensation of the eligible PAPs. It is important to recognize, however, that the Government, through the Implementing Agency, is taking appropriate measures to address the concerns of the PAPs as can be indicated by the series of consultations that have taken place.

Management reiterates its commitment to continue working with KURA to ensure the concerns of the PAPs are addressed within their eligibility limits and entitlements so that the issues are amicably resolved to the satisfaction of all parties.