

Report No. 138742-KE

THE INSPECTION PANEL

REPORT AND RECOMMENDATION ON A REQUEST FOR INSPECTION

KENYA

NAIROBI METROPOLITAN SERVICES IMPROVEMENT PROJECT (P107314)

JULY 16, 2019



THE WORLD BANK
IBRD • IDA | WORLD BANK GROUP

**The Inspection Panel
Report and Recommendation
on a
Request for Inspection**

Kenya: Nairobi Metropolitan Services Improvement Project (P107314)

A. Introduction

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” or “NaMSIP”) in Kenya. The Request was submitted by three residents from the Muthurwa area (the “Requesters”) in Nairobi, Kenya.¹ The complaint raises concerns about household surveys, public consultation and participation, land use and potential evictions, impact on cultural and historical facilities, and health hazards. The Requesters claim intimidation and threats and asked the Panel to keep their identities confidential.

2. The Panel registered the Request on May 13, 2019, and notified the Board of Executive Directors (the “Board”) and Bank Management. Management submitted its Response on June 12, 2019.

3. In accordance with the Resolution establishing the Panel,² the purpose of this report is to make a recommendation to the Board as to whether an investigation into the matters alleged in the Request is warranted. The Panel’s recommendation is based on its consideration of the technical eligibility of the Request, and its assessment of other factors in the Panel’s Resolution and Operating Procedures as further described in section E.1 on the Determination of Technical Eligibility.

4. This report provides a description of the Project (Section B), a summary of the Request (Section C), a summary of the Management Response (Section D), and the Panel’s observations and review (Section E). The Panel’s recommendation is presented in Section F.

B. The Project

5. 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”). It became effective on December 17, 2012.³

¹ The Panel understands that Muthurwa area is composed of a commercial part, Muthurwa market and a residential side, Muthurwa estate.

² International Development Association (“IDA”), Resolution No. IDA 93-6, The World Bank Inspection Panel, September 22, 1993 (the “Resolution”), para 19. Available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf> (accessed on June 27, 2019).

³ World Bank, Management Response to Request for Inspection Panel Review of the Kenya: Nairobi Metropolitan Services Improvement Project (P107314), dated June 12, 2019 (the “Management Response”), p. 2 para. 8.

6. The Project development objective is to strengthen urban services and infrastructure in the Nairobi metropolitan region.⁴ The Project has four components: (i) institutional reform and planning; (ii) local government infrastructure and services; (iii) metropolitan infrastructure and services; and (iv) project management, and monitoring and evaluation.⁵

7. Component 1 of the Project supports local authorities and agencies within the Nairobi metropolitan region as well as the Ministry of Transport, Infrastructure, Housing and Urban Development (the “MTIHUD”) in capacity enhancement and planning activities.⁶ This component supports a consultancy to design “*urban plans, urban designs, economic/finance and implementation study for redevelopment of the Nairobi Central Railway Station and its surroundings.*” The objective of the consultancy is to prepare a participatory, economically feasible, socially and environmentally sustainable urban plan and design concept to guide the redevelopment of the Nairobi Central Railway Station and surrounding areas for transit-oriented development and mixed-use development over a 15-year planning horizon (the “Study”). The deliverable under the consultancy is a Masterplan—which will include a land use and zoning plan, a transport and infrastructure plan, design guidelines, a Strategic Environmental Assessment (SEA), a business plan and an implementation and financing plan. The Muthurwa market and residential area were added to the planning area at the request of MTIHUD on August 22, 2018.⁷ No physical investments are envisaged for financing by the Bank under the NaMSIP-supported Masterplan.⁸

8. Component 2 supports priority urban infrastructure in five counties—Nairobi, Kiambu, Kajiado, Machakos and Muranga—in the Nairobi metropolitan region. The investments are relatively small-scale local projects and include drainage systems, local streets, bicycle lanes and footpaths, street and security lighting, public markets, firefighting equipment and facilities.⁹

9. Component 3 supports large-scale metropolitan infrastructure in the areas of solid waste, transport and sewerage services. In contrast to the activities financed under Component 2, these are large-scale investments that are crucial for the development and integration of the metropolitan region as a whole. Regarding transport, this component supports (i) preparing land use plans and constructing or upgrading public infrastructure surrounding commuter rail stations, (ii) constructing and rehabilitating strategic roads, and (iii) improving traffic management and flow. The location of the commuter rail stations has been agreed with the Kenya Railways Corporation (KRC).¹⁰

⁴ World Bank, 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, Report No: 66063-KE, dated April 9, 2012 (the “PAD”), p. 8.

⁵ PAD, pp. 9-11.

⁶ Management Response, p. 2 para. 10(i).

⁷ Management Response, p. 3 para. 13.

⁸ Management Response, p. v para. v.

⁹ Management Response, p. 2 para. 10(ii).

¹⁰ Management Response, p. 2 para. 10(iii).

10. The environmental category of the Project is “A”.¹¹ 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).¹²

11. 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 impacts that are “*broadly consistent with Bank Operational Policies*.”¹³

12. The Project’s initial closing date was June 30, 2017. It was restructured twice and the closing date was extended to March 31, 2020.¹⁴ While many of the Project activities were 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).¹⁵

13. At the time of receipt of the Request, on April 12, 2019, the Project was 77 percent disbursed. Management states that as of May 18, 2019, the cumulative disbursement for the Project was US\$216.9 million equivalent, or 80.3 percent.¹⁶

C. Summary of the Request

14. The Request for Inspection was submitted by three members of the project-affected community who asked for confidentiality. The Request is attached to this report as Annex I.

15. The Requesters are concerned with adverse effects of a potential resettlement affecting the Muthurwa area. They believe this may result from a direct investment to upgrade the area or from the downstream consequences of planning activities supported by the Project. In the latter case, the Requesters’ concerns relate to the examination of the broader environmental and social risks, and proposed mitigation measures, for the downstream impact of future plan development and implementation.

16. The Requesters define the Muthurwa affected community as 7,456 people who face evictions and demolitions. They acknowledge these issues are related to a long-standing land

¹¹ PAD, p. v.

¹² PAD, p. vii.

¹³ PAD, p. 23.

¹⁴ Management Response, p. 2 para. 8.

¹⁵ 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.

¹⁶ Management Response, p. 2 para. 11.

dispute between Muthurwa residents and the Kenya Railways Staff Retirement Benefit Scheme (the “Pension Scheme”).

17. They add that in 1998, following a structural program, a “*bigger chunk*” of the KRC workforce was terminated “*without getting any cent.*” Some who had worked for the KRC for over 25 years challenged the job termination. Based on a Collective Bargaining Agreement, the former workers benefited from a reprieve allowing them to continue residing in their houses until finalization of the matter. The Requesters consider that currently the matter is pending in Kenya’s courts and there is a risk this vulnerable sub-community of “*elderly and destitute*” people will have this benefit terminated.

18. The Requesters make several references to a project supported by the Japan International Cooperation Agency (JICA), a viaduct passing near the Muthurwa market (the Nairobi Viaduct and Road Improvement Project – the “Viaduct Road project”¹⁷). They claim that the JICA-project’s consultant, GIBB International (“GIBB”),¹⁸ the same consultant used by NaMSIP, neglected in June 2018 to capture household surveys of some residents. Further, while according to public information the consultant was to survey 5.4 acres of the area, they extended it to “*almost another 25 acres,*” the Requesters state. They consider this to be a ploy for “*land grabbing*” and fear the future surveys will not capture all residents of the Muthurwa area.

19. They add they have raised their concerns with JICA directly but have not received a response. They express their support for the project by stating that “*in no way is Muthurwa estate stopping or interfering with the construction of the viaduct road.*” However, they “*call for the implementing organizations to adhere to the World Bank-CURE (Culture in City Reconstruction and Recovery) Framework.*”¹⁹

20. The Requesters’ concerns more specifically relate to the following issues: (i) the quality of consultation and participation of the affected community; (ii) the quality of household surveys; (iii) land use and the risk of evictions; (iv) the risk of demolition of cultural and historical facilities; and (v) health hazards related to air, water and soil pollution.

¹⁷ More information about this project is available on a dedicated webpage of Japan International Cooperation Agency. See,

https://www.jica.go.jp/english/our_work/social_environmental/id/africa/kenya/c8h0vm00009pqnvo.html (accessed on June 27, 2019).

¹⁸ GIBB officials informed the Panel that GIBB International Ltd. and GIBB Africa are one and the same company. GIBB Africa being the registered and formal name of the consultancy firm and GIBB International Ltd. being its trademark.

¹⁹ The CURE (Culture in City Reconstruction and Recovery) Framework is a joint United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Bank initiative offering a framework and operational guidance for policymakers and practitioners for the planning, financing, and implementation phases of post-crisis interventions for city reconstruction and recovery. Through this joint framework UNESCO and the World Bank state their commitment to place culture at the heart of city reconstruction and recovery processes in the wake of crises. This is done by raising awareness of the value of culture and encouraging the integration of cultural heritage, creativity and diversity of cultural expressions into city reconstruction and recovery strategies and interventions (see, <https://openknowledge.worldbank.org/bitstream/handle/10986/30733/9789231002885.pdf?sequence=11&isAllowed=y>, accessed on June 27, 2019).

21. The Requesters state 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 future consultations would follow suit. They claim that public participation is skewed, as it lacks proper disclosure of information, is not inclusive, and seems to be rubber stamping.

22. The Requesters claim that a 2016 survey identified only 12 households to be compensated in a Muthurwa RAP. They argue the survey is not accurate as, on one hand, the number of registered voters in the Muthurwa Social Hall Polling Centre amounts to 14,340 and, on the other, a 2009 household survey showed Muthurwa had 7,456 residents.

23. 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 that they claim is still pending in Kenya’s courts. They add, however, that land was illegally transferred by the Pension Scheme, an organization they consider to be illegally selling land on behalf of 9,500 KRC pensioners and retirees. The Requesters claim that the Government of Kenya failed to “*regularize community land tenure.*” The Requesters are concerned about the potential for fraud and ask for “*fresh government official household surveys / census, capturing all the residents’ data, structures and working spaces, schooling and recreational amenities*” in the presence of their lawyers.

24. The Requesters are concerned 7,456 people face the threat of an immediate eviction 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 and the loan covenant for the Project.

25. The Requesters are concerned 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 (the “NCCG”). They list the Muthurwa Dallas Social Hall, the Shaffi Mosque and the Muthurwa Clinic as examples of such facilities.

26. They ask for a 25-year period of preservation of these sites which constitute their cultural heritage. They state principles and objectives of the CURE Framework: (i) the city being a “cultural construct” where built structures and open spaces are closely linked to the social fabric; (ii) fostering cultural expressions to offer appropriate ways to deal with post-crisis trauma affected communities; and (iii) prioritizing culture early in the planning process, starting with needs assessments and the implementation of emergency interventions that reflect community priorities. They state an assessment of damages and impact to tangible and intangible cultural heritage, cultural and creative industries, housing stock and land resources, services and infrastructure is needed to evaluate the resulting economic losses from the interruption of such services and use of assets. They state a scoping process should be conducted following this

assessment to include data collection, and asset and stakeholder mapping. They reiterate the emphasis of the CURE Framework on the need to integrate people-centered and place-based strategies and policies with culture as the foundation to achieve sustainable change.

27. Additionally, the Requesters claim that over the past 10 years a feeder road constructed within the area and a power sub-station continue 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.

28. They state community members are at risk of suffering from chronic diseases leading to renal malfunction, liver illnesses, anemia, asthma, impotence in men and lung cancer due to the large concentrations of the emanating pollutants. They add that to date more than 12 residents have died as a result of lung infections. Based on their conclusions, they ask the NCCG to provide 15 years of medical coverage for those exposed.

29. The Requesters note the importance of the following moving forward: (i) the distribution of a disturbance allowance and resettlement compensation; (ii) the preparation of a survey of all residents in the area; (iii) the allocation of part of the land to the residents' housing needs; (iv) the preparation of guidelines to assist vulnerable people; (v) their inclusion in all deliberations related to Muthurwa; (vi) the preservation of cultural sites; (vii) the fast tracking of all railway-pensioners and retirees' judicial cases; (viii) a timeframe for Project implementation in compliance with Bank policies; and (ix) the adoption of the CURE Framework for the Project.

30. The Requesters referred to threats and intimidation they faced. They noted one of them was arrested under "*trumped up charges*." They state they received a stern warning from local administration against holding their usual residents meeting.

D. Summary of the Management Response

31. The Management Response is attached in full as Annex II to this report. Management states it has taken the complaints seriously and carefully reviewed the concerns of the Requesters. According to Management, the claims cited in the Request are unrelated to the Project and have been incorrectly associated with it. As a result, Management considers the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.²⁰

32. Management considers the concerns raised in the Request for Inspection relate to (i) expected resettlement impacts of the Viaduct Road project, which is proposed in the same area and is not Bank-financed, (ii) pending evictions that the KRC has announced following final court decisions subsequent to a lengthy legal dispute, which is not related to the Bank Project, and (iii) a number of environmental and social impacts that are attributed to infrastructure developments that occurred eight to 13 years ago.²¹ Management adds the Requesters' concerns have been

²⁰ Management Response, p. 13, para. 51.

²¹ Management Response, p. v, para. i.

erroneously associated with the Bank-supported project, which does not require any land acquisition or resettlement in the Muthurwa area.²²

33. Management states the Project has not supported any activity involving a physical investment or requiring land acquisition, physical or economic displacement, resettlement or payment of compensation in Muthurwa. The Project supported feasibility studies for the rehabilitation and renovation of markets in the Nairobi metropolitan region. The Muthurwa market, one of 15 markets studied, was not selected among the seven market rehabilitation projects. Management considers the Muthurwa market did not fulfill the screening criteria.²³

34. Management adds the selection criteria included: (i) accommodation in market designs of all affected traders as per the entitlements for different categories of traders, confirmed by counties and the Bank safeguards team; (ii) the securing of budgets for the construction and resettlement costs; (iii) confirmation of relocation sites and transition compensation allowances; (iv) confirmation of land ownership of the market sites and completion of the land allotment process; and (v) establishment of the operation and management plan for the property and utility facilities.²⁴ It adds Muthurwa market was not selected for support under the Project as it did not meet the first three criteria.²⁵

35. According to Management, the decision not to invest in the Muthurwa market rehabilitation was taken in December 2017 and all activities associated with the planning for physical investments, including detailed design, RAP and Environmental and Social Impact Assessment (ESIA), were discontinued.²⁶ At that time, the detailed design, RAP and ESIA for Muthurwa market were incomplete and none of these documents have since been publicly disclosed.²⁷

36. Management states the Study to redevelop the Nairobi Central Railway Station and its surroundings that is being undertaken will result in a Masterplan including a land-use and zoning plan, a transport and infrastructure plan, design guidelines, a SEA, a business plan, and an implementation and financing plan.²⁸ Management adds the objective of the Study is to prepare a participatory, economically feasible, socially and environmentally sustainable urban plan and design concept to guide the redevelopment over a 15-year planning horizon.²⁹ Management states after extensive deliberation and consultation, the consultant included the Muthurwa area into the planning boundary on August 22, 2018, given its strategic location between the Nairobi Central Railway Station and the Eastlands development planning areas (both supported by NaMSIP) and the transit-oriented development principle of the Study. The Bank team considered the inclusion of the Muthurwa area in the Study as technically convincing, making the Masterplan more comprehensive, integrated and inclusive.³⁰

²² Management Response, p. 9, para. 30.

²³ Management Response, p. vi, para. viii.

²⁴ Management Response, p. 7, para. 26(i), footnote 7.

²⁵ Management Response, p. 7, para. 26(i), footnote 8.

²⁶ Management Response, p. 7, para. 26(i).

²⁷ Management Response, p. 10, para. 37, footnote 11.

²⁸ Management Response, p. v, para. iv.

²⁹ Management Response, p. 3, para. 13.

³⁰ Management Response, p. 3, para. 13, footnote 1.

37. Management emphasizes no physical investments are envisaged for financing under the Project-supported Masterplan. Any future investments that may take place following completion of the plan are outside the scope of the Project. Management adds the Masterplan will not entail any detailed design of potential future investments, and hence the Project does not support the preparation of specific safeguard documents such as ESIA's or RAPs. However, given the upstream nature of the urban planning, a SEA is under preparation, taking into account relevant provisions of applicable Bank policies (OP 4.01, OP 4.11, OP 4.12).³¹

38. According to Management, the Study, which includes design guidelines for the Muthurwa area, and the SEA are in preparation and are undergoing consultations.³² Any potential social and environmental impacts that may result from implementing the Masterplan are being assessed in the SEA, which will include recommendations for further safeguard instruments to be prepared for future investments.³³ According to Management, the SEA, will take into consideration all social, environmental and legal risks, including the situation resulting from the land-dispute lawsuit and pending evictions.³⁴

39. Management states that the Requesters' concerns relate to the Viaduct Road project, which would require the relocation of the Wakulima market. According to Management, a site in the Muthurwa area had been identified for its relocation and a RAP, consulted upon with the Muthurwa residents, was incorrectly associated with the Bank-supported Project.³⁵ Management emphasizes the Viaduct Road project and NaMSIP are not related. Neither requires the other to achieve their respective objectives.³⁶ Management further emphasizes there is no relationship between the potential relocation of Wakulima market and the NaMSIP-supported feasibility study for the Muthurwa market.³⁷

40. Management notes the JICA-supported Viaduct Road project and the Bank-supported Study use the same consultancy firm, GIBB International.³⁸ Management notes GIBB has been engaged since 2016 to undertake the social and environmental assessments for the Viaduct Road project and in 2018 it developed the ESIA and RAP and undertook surveys and stakeholder consultations in the Muthurwa area for that project. Meanwhile, in 2017 GIBB began preparation of the SEA for NaMSIP. According to Management, the studies under the two projects are substantially different and unrelated and the two assignments are not linked. However, their timing and geographical proximity may have contributed to the impression that the preparation works pertaining to the Viaduct Road project were associated with NaMSIP.³⁹

³¹ Management Response, p. 3, para. 14.

³² Management Response, pp. 3-4, para. 15.

³³ Management Response, p. 4, para. 16.

³⁴ Management Response, pp. 11-12, para. 44.

³⁵ Management Response, p. 9, para. 34.

³⁶ Management Response, p. 9, para. 35.

³⁷ Management Response, p. 10, para. 36.

³⁸ According to management, GIBB International Ltd and associated companies have been involved in development projects in East and Central Africa since the early 1940s. The company has completed over 1,000 consultancy assignments, covering a broad spectrum of sectors and specializations. Management Response, p. 11, para. 42, footnote 12.

³⁹ Management Response, p. 11, para. 42.

41. Management argues that using the same consultancy firm does not establish any responsibility for the Bank regarding activities that the firm is carrying out on behalf of other agencies or projects not supported by the Bank. Management accepts it as a lesson for clearer communication arrangements needing to be put in place with and by the consultancy firm to provide explanations to interested parties, including residents.⁴⁰

42. Management states the consultation referred to in the Request relates to the JICA-supported Viaduct Road project, and not the Bank-supported NaMSIP Project.⁴¹ As it relates to NaMSIP, Management states at least 10 rounds of stakeholder consultations have been undertaken and further consultations are planned.⁴² Management adds after the Muthurwa area was included in the planning, a county-level consultation workshop was conducted on October 24, 2018, and questions and concerns relating to the scope of the plan, its beneficiaries and possible impacts on land and compensation were raised and discussed.⁴³

43. Management states that since the NaMSIP planning process does not entail any detailed design of potential future investments it does not support the preparation of ESIA's or RAPs, and therefore no NaMSIP-related household surveys were conducted.⁴⁴

44. Management states there is no relation between the planned eviction of Muthurwa residents and NaMSIP. Management states the evictions follow a lengthy legal dispute in the Kenyan court system that began in 2010, with court orders delivered in 2013 and 2016 that the landowners have the right to evict the residents.⁴⁵

45. Management provides its understanding of the history behind the legal dispute. It states the land was originally owned by the KRC. The 2005 KRC restructuring process led to the establishment of the Pension Scheme as a separate legal entity to which the land was transferred as an asset to cover staff pensions. In 2010, the Pension Scheme determined to sell land in the Muthurwa area to raise money for the pension benefits. The Pension Scheme gave the residents of the Muthurwa area notice to vacate the premises, which the residents contested in court. In 2013 the High Court ruled in favor of the Pension Scheme. In 2016 following an appeal, the Court of Appeal ruled in favor of the Pension Scheme. In accordance with this and the 2013 ruling from the High Court, evictions could not take place in 2017 due to elections and associated security, financing and other implementation concerns. The attempts to evacuate the residents started in 2018, with an eviction notice issued in April 2019.⁴⁶

46. Management states that according to the Pension Scheme the residents of Muthurwa estate are illegal tenants since they do not pay rent and many do not have valid leases. Additionally, many

⁴⁰ Management Response, p. 12, para. 45.

⁴¹ Management Response, p. 12, para. 46.

⁴² Management Response, pp. 3-4, para. 15.

⁴³ Management Response, p. 12, para. 47. The Management Response includes, in its second Annex, details on the NaMSIP stakeholder consultations.

⁴⁴ Management Response, p. 11, para. 44.

⁴⁵ Management Response, p. 10, para. 38.

⁴⁶ Management Response, p. 10-11, para. 39-40.

illegal structures were built and their owners are collecting rent, also illegally. According to Management, the Pension Scheme is now unable to pay the pensions of 7,900 retirees and their families, leading them to become destitute due to the significant delay in raising funds from the sale of its real estate in Muthurwa.⁴⁷

47. Management states the Project has not led either directly or indirectly to the loss of valuable cultural and historical facilities. Management adds the Study does not provide for detailed planning and design for specific investments, therefore, any demolition, as a result of future investments, would need to be planned and approved under those specific investments. Management notes, however, conservation of tangible and intangible cultural heritage assets and consultation on such assets is a critical element of the Project-supported Study. During a county-level workshop, stakeholders confirmed several heritage assets and one of the houses was identified and recommended to be preserved in situ as a monument to the history of railway housing in Kenya. The modalities for delivery on this item will be presented for stakeholder consultation in the second half of 2019.⁴⁸

48. According to Management, the various infrastructure from which the Requesters claim health-related impact is eight to 13 years old and is unrelated to the Project.⁴⁹

49. Management states it has reached out to government officials to emphasize the need to protect complainants from any form of threat, intimidation or reprisal. Management adds while there was no indication that retaliatory action was carried out by officials or identifiable individuals, it asked the government to remind implementing authorities of the importance of abstaining from any retaliatory actions. This was re-emphasized during recent supervision missions.⁵⁰

E. Panel Review of the Request and the Management Response, and Eligibility Visit

50. Panel Member Ramanie Kunanayagam and Senior Operations Officer Serge Selwan visited Kenya from June 19 to 23, 2019. The Panel team held meetings in Nairobi, where it met with representatives of the World Bank Country Office, as well as officials from the Kenyan National Treasury, KRC, Pension Scheme and NCCG. The Panel also met with officials from JICA and GIBB, and had meetings with the Requesters and other potentially affected community members. The Panel team walked through the Muthurwa area and visited the Shaffi Mosque, Social Hall and Muthurwa Clinic.

51. The Panel wishes to express its appreciation to all those mentioned above for sharing valuable information and perspectives. The Panel wishes to particularly thank the World Bank Country Office staff in Nairobi for their invaluable assistance with logistical arrangements.

⁴⁷ Management Response, p. 11, para. 41.

⁴⁸ Management Response, p. 12, para. 48.

⁴⁹ Management states that the infrastructure is a 2-km feeder road traversing Muthurwa estate, a dump site at the main entrance of Muthurwa market, and a power sub-station. Management Response, pp. 12-13, para. 49.

⁵⁰ Management Response, p. 13, para. 50.

52. The Panel's review is based on information presented in the Request, the Management Response, relevant project documents and information gathered during the site visit. The following review covers the Panel's determination of the technical eligibility of the Request in accordance with the criteria set forth in the 1999 Clarification (subsection E.1), observations on other factors (subsection E.2), and the Panel's review (subsection E.3) supporting the Panel's recommendation.⁵¹

E.1. Determination of Technical Eligibility

53. The Panel is satisfied the Request meets all six technical eligibility criteria of paragraph 9 of the 1999 Clarification. The Panel notes its confirmation of technical eligibility, which is a set of verifiable facts focusing to a large extent on the content of the Request as articulated by the Requesters, does not involve the Panel's assessment of the substance of the claims made in the Request.

- Criterion (a): *"The affected party consists of any two or more persons with common interests or concerns and who are in the borrower's territory."* The Panel has verified the Requesters include two or more persons living in the Muthurwa area. The Panel therefore considers this criterion as met.
- Criterion (b): *"The Request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the Requester."* The Requesters are concerned the Bank-financed Masterplan and SEA may result in harm if they fail to adequately analyze the legacy issues related to land in the Muthurwa area and to assess the potential downstream environmental and social impact from future investments in this area, such as impoverishment and loss of livelihood. They also raise concerns about the lack of consultation with their community under the Masterplan and SEA.

Management claims the Requesters do not cite NaMSIP or reference activities it supports, and their concerns relate to: (i) the JICA-supported Viaduct Road project, (ii) potential evictions stemming from a long-standing dispute between residents and the KRC, and (iii) environmental and social impact attributed to infrastructure pre-dating the Project.⁵² The Panel notes the Requesters list several types of impact and sources of impact. Some of these are related to the Project (as indicated above) and some are not related to Bank activities (e.g., the JICA-supported household survey already undertaken in Muthurwa, the risk of immediate evictions and health hazards). The Panel further notes the Requesters are not expected to cite or reference the exact name of a Bank-supported project for their claims to be admissible. The Panel therefore considers this criterion as met.

⁵¹ The 1999 Clarification of the Board's Second Review of the Inspection Panel, April 1999 (the "1999 Clarification"). Available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1999ClarificationoftheBoard.pdf> (accessed on June 27, 2019).

⁵² Management Response, p. v, para. i, and p. 9, para. 30.

- Criterion (c): “*The Request does assert that its subject matter has been brought to Management’s attention and that, in the Requester’s view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures.*” The Panel has verified the Requesters’ concerns were brought to the Bank’s attention prior to the filing of the Request. The Requesters first contacted Management on May 23, 2018. On May 31, 2018, the Bank responded, referring the Requesters to the NaMSIP project coordinator. On June 7, 2018, the Requesters received a response from the KURA to the various concerns they raised. On April 12, 2019, with the submission of the Request, the Requesters indicated to the Panel their dissatisfaction with the response received. The Panel notes Management acknowledges the Request raises concerns relating to consultations and land.⁵³

Management claims the Bank was not approached by the Requesters directly regarding concerns about imminent evictions and demolitions prior to filing the Request. Management states it informed the Requesters of the project grievance redress mechanism and offered a meeting to further discuss the complaint. However, this offer to meet was not taken up by the complainants, according to Management. The Panel notes that the Requesters did raise concerns directly related to NaMSIP, such as land legacy issues and potential downstream impact. The Panel considers this criterion as met.

- Criterion (d): “*The matter is not related to procurement.*” The Panel is satisfied the claims do not raise issues of procurement and thus this criterion is met.
- Criterion (e): “*The related loan has not been closed or substantially disbursed.*” At the time of receipt of the Request, the Project was 77 percent disbursed. Therefore, this criterion is met.
- Criterion (f): “*The Panel has not previously made a recommendation on the subject matter or, if it has, that the Request does assert that there is new evidence or circumstances not known at the time of the prior Request.*” The Panel has not made a recommendation on the issues raised in this Request and this criterion is thus met.

E.2. Panel Observations Relevant to its Recommendation

54. In making its recommendation to the Board and in line with its Operating Procedures, the Panel considers the following: whether there is a plausible causal link between the harm alleged in the Request and the project; whether the alleged harm and possible non-compliance by the Bank with its operational policies and procedures may be of a serious character; and whether Management has dealt appropriately with the issues, or has acknowledged non-compliance and presented a statement of remedial actions that address the concerns of the Requesters.

55. Below, the Panel records its preliminary observations on the alleged harm and compliance, noting that in doing so, it is neither evaluating the sovereign decisions of the Borrower, nor making

⁵³ Management Response, p. 9, para. 32.

any definitive assessment of the Bank's compliance with its policies and procedures, and any adverse material effect this may have caused.

Background

56. **Pension Scheme and Muthurwa Area.** On January 24, 2006, the Bank supported the improvement of the freight trade environment between Kenya, Uganda, Tanzania and Rwanda. The East Africa Trade and Transport Facilitation Project (the "EATTF project") aimed at supporting the Kenya-Uganda Joint Railways Concession through the retrenchment and social mitigation of staff in Kenya and the establishment of a Pension Scheme, on June 30, 2006, for the staff of the KRC.⁵⁴ The EATTF project closed on September 30, 2015.⁵⁵ In meetings with the Panel, KRC and Pension Scheme officials stated various assets, including the residential area of Muthurwa, were transferred to the Pension Scheme in 2006.

57. In 2010, the Pension Scheme endorsed the NCCG's redevelopment plan of Muthurwa estate into multistory mixed-use residences. Subsequently, the Pension Scheme issued an eviction notice to the residents. The residents contested the eviction notice and filed a lawsuit in the High Court. On August 26, 2013, the High Court decided in favor of the Pension Scheme. The residents appealed the judgment. The Court of Appeal ruled on May 13, 2016, in favor of the Pension Scheme and the tenants were ordered to peacefully give possession of the land to its owners. The Pension Scheme issued an eviction notice in 2016 and again on April 15, 2019, to individual households, with the intention of evicting tenants on April 17, 2019. However, these evictions have not yet taken place.⁵⁶

Activities in Muthurwa

58. **Japan International Cooperation Agency.** JICA provided technical support for the development of the Nairobi Integrated Urban Development Master Plan (NIUPLAN), which was completed in December 2014.⁵⁷ The NIUPLAN is a high-level, city-wide master plan for Nairobi. A SEA was prepared by GIBB as part of this process. The NIUPLAN has listed the area covered by the NaMSIP Study as one of the specially planned areas and the Railway City Development is

⁵⁴ World Bank, Project Appraisal Document on Proposed Credits to the Republic of Kenya in the amount of SDR 83.3 Million (US\$120.62 Million Equivalent), to the United Republic of Tanzania in the amount of SDR 25.5 Million (US\$37 Million Equivalent), to the Republic of Uganda in the amount of SDR 18.2 Million (US\$26.4 Million Equivalent), Proposed Grant to the Republic of Rwanda in the amount of SDR 10.4 Million (US\$15 Million Equivalent), a Proposed IDA Partial Risk Guarantee in the amount of up to US\$45 Million for the Kenyan Subsidiary of Rift Valley Railway Holdings Ltd., a Proposed IDA Partial Risk Guarantee in the amount of up to US\$15 Million for the Ugandan Subsidiary of Rift Valley Railway Holdings Ltd., for the East Africa Trade and Transport Facilitation Project, Report No: 34178-AFR, dated December 27, 2005 (the "EATTF PAD"). Available at:

<http://documents.worldbank.org/curated/en/373451468009299854/pdf/341780AFRICA0c10Box303481B01PUBLI C1.pdf> (accessed on June 27, 2019). The project appraisal document for the EATTF states that "*though it was not initially planned, the project agreed to facilitate the setting up of the scheme by funding pension arrears (mostly commuted pension) agreed for a cut off date of December 2005, and to support upgrading of part of the assets transfer to the pension scheme.*" See, EATTF PAD, p. 36.

⁵⁵ World Bank project number P079734, the East Africa Trade and Transport Facilitation Project. Available at: <http://projects.worldbank.org/P079734/east-africa-trade-transport-facilitation-project?lang=en&tab=overview> (accessed on June 27, 2019).

⁵⁶ Management Response, pp. 5-6, paras. 19-21.

⁵⁷ Management Response, p. 19, Annex 1 Claims and Response Item 24.

listed as its first key sub-project. The terms of reference for the NaMSIP Masterplan states this is the first effort in implementation of the NIUPLAN.

59. JICA also supported a design to build a viaduct road. This project started in 2014 and is still in the planning and design phase.⁵⁸ The Viaduct Road project requires the relocation of the Wakulima market. The proposed relocation site, as confirmed by JICA and GIBB, is 5.4 acres of land in the Muthurwa area, which the Pension Scheme transferred to the NCCG in 2018. The residents in the proposed host site in Muthurwa will, in turn, require relocation to accommodate the Wakulima market.

60. In meeting with the Panel, JICA noted it has agreed with the NCCG there would be no evictions in the area allocated for the relocation of the Wakulima market in Muthurwa. According to JICA and GIBB, some affected residents in the Muthurwa residential area will be relocated elsewhere within the Muthurwa area. JICA noted they have completed all the safeguard studies critical for the Viaduct Road project and were waiting for the NCCG's plan to manage the resettlement aspect and internal approval prior to taking a decision on whether to commit to finance the construction activities.

61. **World Bank.** Under NaMSIP, the Bank is supporting a consultancy to prepare a land use and zoning plan, a transport and infrastructure plan, design guidelines, a SEA, a business plan and an implementation and financing plan for the Nairobi Central Railway Station and its surroundings. The terms of reference for this consultancy include a high-level implementation plan. Management informed the Panel that a SEA is currently being prepared by GIBB.⁵⁹ The Management Response states the SEA will take into account relevant provisions of applicable Bank policies (OP 4.01, OP 4.11, and OP 4.12). In meetings with the Panel, Management asserted that the SEA would be the mechanism to identify and capture high-level risks and associated mitigation measures.

62. While the Muthurwa market and the Muthurwa residential areas were not covered initially in the Study, they were added to the planning area at the request of MTIHUD on August 22, 2018. GIBB has conducted several workshops and consultations in relation to the Study.⁶⁰ However, none of these consultations have yet been conducted to specifically target the Muthurwa community. The Management Response states that the next consultation, which is planned for the second half of 2019, will include the Muthurwa community.⁶¹

63. GIBB informed the Panel that the National Environment Management Authority (NEMA) does not expect a separate SEA for NaMSIP for permitting purposes. The consultant explained the Masterplan is considered a sub-plan of the NIUPLAN by NEMA. As the NIUPLAN already has a NEMA-approved SEA, the Masterplan's SEA will be submitted to NEMA as an annexure to the NIUPLAN's SEA. GIBB informed the Panel for Bank purposes they will be preparing a document that is equivalent to a SEA in terms of content and will include World Bank environmental and

⁵⁸ Management Response, p. 6, paras. 23-24.

⁵⁹ This consultancy is jointly being undertaken by GIBB International Ltd and DOHWA with GIBB taking the lead on the environmental and social studies.

⁶⁰ Management Response, pp. 26-27, Annex 2(ii) Timeline of stakeholder consultations for NaMSIP planning.

⁶¹ Management Response, p. 8, para. 27.

social requirements. According to GIBB, for NEMA purposes this document will be considered an Environmental Management Plan and will not need to go through the formal NEMA disclosure and approval process.

64. The Panel notes GIBB is independently contracted by NaMSIP and the JICA project to conduct the respective social and environmental studies and, in the case of JICA, the RAP for the Viaduct Road project. In this context, GIBB has conducted a number of workshops and consultations including in Muthurwa for JICA on the Wakulima market relocation. GIBB explained to the Panel that some of their key team members working for the Viaduct Road project are also the same team members working on NaMSIP. The Muthurwa community informed the Panel they were not informed of any distinction between the work of JICA and that of the Bank. They saw all this work as one and the same.

65. **The Pension Scheme.** The Pension Scheme informed the Panel that pensioners had not received a pension for more than five months. It added it urgently needed to sell the remainder of the Muthurwa estate to pay for pension arrears. It noted the delay in selling Muthurwa land had already cost the equivalent of US\$100 million in lost income. The Pension Scheme further noted that tenants in Muthurwa stopped paying rent in 2010 and are defaulting on their obligations as tenants. Running water and electricity were cut off in 2010 when the tenants ceased paying rent. The Pension Scheme also noted some tenants were sub-leasing illegally built property.

Muthurwa area population

66. **Traders.** The Panel notes the Muthurwa market is a 24-hour operation and densely crowded with traders. Both the government and the Muthurwa community informed the Panel that very few, if any, traders reside in Muthurwa. The Panel was informed the traders commute daily to the market.

67. **Community.** The Muthurwa residential area is a low-income area, made up of previous KRC housing (the majority of which is dilapidated) and small tin shacks typical of an urban slum environment. The Panel noted multistory blocks of flats which, it was told, were occupied by members of the police force and their families. According to the Pension Scheme, most houses in the residential area are of 10 square meters of surface. The Panel was told that the Muthurwa residential area was mainly populated by young itinerant men and has a high incidence of crime and theft. The Panel notes the Muthurwa community's perception of itself is that of a peaceful community. Members of the Muthurwa community spoke of several prominent Kenyan sports icons who grew up there.

68. During the walkthrough, the Panel noted the presence of families, including women and small children among the community. All parties agreed there are very few pensioners currently residing in Muthurwa. The Panel observes that some members of the community fall under the category of vulnerable people. The Panel met with elderly community members, single women heading households and many poor people. Based on the court order, the community is seen to be composed of people with no land rights in Muthurwa, most of whom would be considered landless. The Panel also met with members of the community suffering from mobility disabilities.

E.3. The Panel's Review

69. From its review, the Panel observes there is a history of Bank involvement with the KRC, including the restructuring of the company, the retrenchment of railway staff and the establishment of the Pension Scheme. In this context, the transfer of land from the KRC to the Pension Scheme was supported by Bank activities.⁶² The Muthurwa residents perceive the Bank as having a continuous involvement affecting Muthurwa and do not distinguish between the different Bank projects and their objectives.

70. The Panel notes the JICA-supported NIUPLAN serves as the overall high-level development master plan to which NaMSIP and the Viaduct Road project are sub-plans. The fact that no formal SEA is required by NEMA for the NaMSIP Study, for the reasons as stated above, illustrates the Panel's view that these projects can be perceived to be linked. Not only are these projects contemporaneous and overlap geographically, stem from the same high-level master plan and use the same consultant, they also have the potential to have an impact on the same community in similar ways. The Panel agrees with Management's statement it is reasonable for the Muthurwa community to be confused and associate all these projects and impacts together.

71. **Land rights and evictions.** The Panel agrees with Management that the risk of immediate potential evictions is not related to NaMSIP and stem from a long-standing dispute over land ownership between the Muthurwa residents, the KRC and the Pension Scheme.

72. **Cultural and historical facilities.** The Panel notes, according to Management, conservation of tangible and intangible cultural heritage assets and consultation on such assets as part of the urban planning process is a critical element of the NaMSIP-supported Study. The Panel understands that the Shaffi Mosque is considered a monument under the National Museums and Heritage Act, which was established through a legal notice in September 2008 and provides the facility with the relevant protection under Kenyan law.⁶³

73. The Panel further notes the importance of the two other sites mentioned in the Request, namely the Social Hall and the Muthurwa Clinic. The Panel understands they have cultural meaning for the residents. However, the buildings are not of historical value even though they served and still serve important functions for the community.

74. **Health hazards.** The Panel agrees with Management that the environment and health concerns raised in the complaint, including the concerns about the power sub-station, feeder road and dump site, pre-date the Project.

75. **SEA, public consultation and participation.** In discussions with the Panel, the Requesters understood the evictions are not related to the Bank-supported NaMSIP. They realize the Muthurwa market resettlement was excluded from Bank financing, and the Wakulima resettlement is JICA-supported. The community is still concerned with the impact the Masterplan

⁶² EATTF PAD, Section i.3 Kenya Railways Staff Retirement Benefit Scheme (project contribution US\$12 million), p. 76.

⁶³ The National Museums and Heritage Act, Act No. 6 of 2006, September 8, 2006. Available at: <http://www.kenyalaw.org/lex/actview.xhtml?actid=No.%206%20of%202006> (accessed: June 27, 2019).

would cause, the changes the Study could result in, and the overall lack of direct consultation with them.

76. The Panel notes the issues raised by the Requesters relating to Muthurwa are serious and deserve attention. The Panel further notes the Requesters and the members of the Muthurwa community are justified, as also acknowledged by Management, in being confused about the way activities are taking place in Muthurwa and have yet to receive clarifying information on the distinctions between the different ongoing activities.

77. In its Response, Management notes that a SEA is being prepared assessing any potential social and environmental impact that may result from implementing the Masterplan, taking into consideration all social, environmental and legal risks. The Panel acknowledges Management's commitment to support and review the SEA. However, the Panel notes the following concerns regarding inconsistent information received from Management and the consultant on the nature, scope and type of SEA to be conducted. First, the Panel was not presented with specific terms of reference for a SEA. Second, the Panel was told variously by Management and the consultant that the Borrower will be conducting a stand-alone SEA, an update to the NIUPLAN SEA, an Environmental and Social Management Plan, and/or an environmental assessment report. Each of these tools have different implications in terms of analysis, standing and approval. The Panel also has not seen any strategy, plan or methodology to conduct consultations with the Muthurwa community.

78. Following the Panel's eligibility visit, Management clarified that the Borrower is preparing a SEA assessing any potential social and environmental impact that may result from implementing the Masterplan, taking into consideration all social, environmental and legal risks, including those that may result from the land-dispute lawsuit and pending evictions. The SEA will be reviewed by the Bank and approved by NEMA as an annex that updates the SEA for the NIUPLAN. The Panel understands from Management the consultant is clear about the need to align the social and environmental assessment with Bank policies and to review the policy and legal framework affecting environmental and social management, as well as highlighting the participatory approaches throughout the planning process.

79. Management also informed the Panel that the Borrower and GIBB are planning stakeholder consultations to provide an opportunity for as many community members as possible to participate. These community consultations are expected to inform recommendations for further safeguard instruments to be prepared for future investments. Management states it will supervise the process and participate as observers in these consultations. The consultations are currently scheduled to take place during September 2019.

80. **Intimidation and retaliation.** 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. Management informed the Panel it had 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 such retaliatory actions were carried out by officials or identifiable individuals, it had asked the government to send a reminder – in particular to the implementing authorities – underlining the

importance of abstaining from any retaliatory actions. During its visit, the Requesters and several other community members expressed their ongoing concern regarding their safety. The Panel appreciates Management's proactive approach on this issue.

F. Recommendation

81. The Panel concludes that the Requesters and the Request for Inspection meet the technical eligibility criteria set forth in the Resolution establishing the Inspection Panel and the 1999 Clarification.

82. In making its recommendation, the Panel considered paragraph 5 of the 1999 Clarification, which provides that "*the Inspection Panel will satisfy itself as to whether the Bank's compliance or evidence of intention to comply is adequate and reflect this assessment in its reporting to the Board.*"⁶⁴ The Panel notes Management's commitment to have the SEA prepared for the Muthurwa area under the Project together with the planned community consultations.

83. In light of the above, notwithstanding the concerns stated in paragraphs 76 and 79, the Panel is not recommending an investigation as to whether the Bank has complied with its operational policies and procedures. The Panel notes that this recommendation does not preclude the possibility of a future Request for Inspection based on new evidence or circumstances not known at the time of the current Request.

84. If the Board of Executive Directors concurs with this recommendation, the Inspection Panel will inform the Requesters accordingly.

⁶⁴ 1999 Clarification, para. 5.

Annex I

Request for Inspection

Muthurwa Residents Submission/Invite to World Bank International Panel

WORLD BANK COMPLAINT DATED 10/4/2019

On behalf of Muthurwa residents, we hereby state that we are not in any way have consented to activities held by GIBB International Ltd Vis a Vis GIBB Africa Ltd, Kenya Urban Roads Authority -KURA and Local Administration Officers due to certain key aspects that have not been satisfactory addressed, beginning with the 1st Public Participation events which ended prematurely on 12th April, 2018 venue Muthurwa Clinic Grounds. The event which lacked proper notification as enshrined in Public Participation Act

-The reportedly GIBB International Ltd in collaboration with GIBB Africa Ltd legality was questioned during follow up residents Public Participation event the community was informed that GIBB Africa Ltd is consultant firm registered as consultants under the NEMA-National Environmental Management Authority.

That by 2016 both KURA & GIBB Africa Ltd had submitted to NEMA a ghost ESIA-Survey report dated 20th/09/2016 - 14/09/2016 respectively, compiled by [REDACTED] for KURA and [REDACTED]

Environmental Dept on behalf of GIBB Africa Ltd, detailing ESIA- Muthurwa Resettlement) Action Plan (PAPs) Studies, where a partly 12 Households were to be compensated.

We hope through World Bank intervention, we will be able to have an appointment with the President Republic Of Kenya and deliberate on a Win-Win situation.

1. Household Census of 2009/Land Ownership.

Muthurwa estate is a 72 Acre land, initially owned by East Africa Railways & Harbors up to 1977, when the formation of Kenya Railways Cooperative (KRC) , the land is located in Land No.209/6502, Nairobi City County within Starehe Constituency (Voters 133,400)- Central Ward (65,504)-Muthurwa Social Hall Polling Centre(Registered voters 14,340, an estate within Nairobi Central Business

District.2009 Household survey indicates that Muthurwa estate had 7,456 people whom faces immediate evictions and demolitions.

2. Muthurwa Community / Social Fabric and a harmonious livelihood

The Muthurwa residents have lived harmoniously since time immemorial granted that the estate was built in around First World War. In 1998 following the State structural Program, a bigger chunk of Kenya Railways Cooperation- workforce was illegally terminated some having worked for the KRC over 25 years challenged their job termination without getting any cent despite the United Kingdom having granted the East Africa Community and Kenya government about Pound 21,841,427/- To cater for the KRC workforce.(Hansard Dated 5th August 2009/19th September 2012) Currently we are hitting 21 years later, matter pending in Kenya Courts and automatic interference and influencing of judges to terminating an Interlocutory Orders based on a Collective Bargaining Agreement(CBA) granting reprieve for those workers(Now elderly and destitute) to reside in their respective houses till finalization of their matter.

3. Ngong Road Expansion and eviction by KURA

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.

4. Formation and Composure of KRSBRS

That composure and operations of the said KRSRBS scheme in 2006 was an illegality and a scheme to circumvent justice, that the Muthurwa Land and 23 Other parcel of land s and Deed lease was illegally transferred, ownership of Muthurwa Land by the Kenya Railways Staff Retirement Benefit Scheme (KRSRBS) is questionable.(View Retirement Benefit Authority Letter Ref: RBA /COMP 200/01032 Dated 28th Sep 2011.Ref:Disposal & Or Appropriation of immovable Assets of the KRSBRS .Inspection report)

5. Cultural Historical Facilities

That if the project commerce without our inputs we tend to loss valuable cultural and historical facilities which has sentimental values to a majority of our community members ,we demand that the meaningful engagement established

as stipulated by the Attorney General between the Kenya Railways Corporation (KRC) Muthurwa Resident representatives and Nairobi City County Government (NCCG)

6. What the total Acreage for Viaduct Roads and the earmarked redevelopments
The Parliament Hansard Dated 12/Nov/2014 Pg 12-29 (Assistant Minister Roads and Infrastructure Hon Maina Kamanda currently nominated Member Of Parliament-Starehe Constituency) he state that the earmarked area had already been sold so out of the 56 Acres the remaining land is 36 Acres. Thus GIBBS International Ltd undertook the household surveys areas already (illegally) sold. This is a ploy to open the land for an already illegal sold 20 Acres as indicated Standard Newspaper Dated July 11, 2010 (Home and Away ,Pg 6 and 7 Pullout Pages)

7. Taxation and Confiscation of Kenya Railways Land by NCCG.

The Print media in around February 2018 claimed that the Nairobi City County Government has confiscated the Muthurwa land due to accrued 8 Billion Tax owed to County Government. The Deed Lease specification states the amount of tax to be paid for land rates to be equal to a peppermint.

8. Skewed Public Participation: Free Prior & Informed Consents.

That the initial plan as noted in the Public Participation was targeting a 5.4 Acre Muthurwa Land three (3) months later during the purported GIBB International Household Survey they earmarked an extra 24 Acres area within the same location where the Viaduct Road passes. View Hansard Report 12/Nov/2014. That the ongoing process to hive off 5.4 Acres then extension of almost another 25 Acres will pave way for land grabbing as a cartel operating in the scheme had illegally sold part of the estate via Standard Newspaper dated; August 17, 2014 Titled: Pensioners Plight on Kenya Railways Pg 4 & 5.

9. Market development over Housing Rights whom informs and designs so.

What informed the relocation of Wakulima Market Traders over the Muthurwa residents Right To Housing, why not relocate traders to the already fully completed market located at Embakassi North Constituency- Umoja Ward as was initially planned. This is a ploy to open the land for an already illegal sold 20 Acres as indicated Standard Newspaper Dated July 11 ,2010 (Home and Away ,Pg 6 and 7 Pullout Pages)

10 History of Muthurwa Market Development.

About 25 Blocks of 24 houses each were demolished on a three days' notice the experiences of demolitions and Evictions are very vivid.

The community petitioned then President MwaiKibaki on sparing "Muthurwa Dallas Social Hall" located within the Muthurwa Market. To date the community which owned the facility has been denied access and use freely.

11. 2005 Muthurwa Market Development within 16 Acres later 19 Acre and Historically in reference to the Muthurwa Market a multimillion four storey market that was to be constructed therein ended up being a scam, change of design and inflated costs arose, a facility that could have accommodated and created direct job opportunities to over 8,000 small scale traders ended up accommodating a partly less than 1,000 hawkers. Residents of Muthurwa whom born the blunt of evictions didn't get any opportunity or stalls despite themselves having been affected by the project. For reference into illegal sale of Kenya Railway Cooperation (KRC) land-Sunday Standard Aug 17,2014 (Page 5).Public Notice in Sunday Nation 20th April 2008 (Page 7)

<https://www.standardmedia.co.ke/article/2000131704/pensioners-plaint-how-kenya-railways-retirees-billions-were-plundered>

12. Muthurwa Residents Right To Housing and the Right To City

That the intended program is being undertaken without due diligence of land ownership being placed in considerations, thus our quest for realization of Right to Housing and accessible sanitation cannot be realized nor the universal quest of Right To City be achieved.

13 .Muthurwa Right To Housing Case Verdict

In line with Justice Musinga Ruling on Muthurwa matter and the verdict of Hon. Justice Isaac Leonora in petition No.65 of 2010 especially orders granted in page 72,73 and 74.

<https://www.standardmedia.co.ke/article/2000093629/how-judge-brokered-truce-in-muthurwa-estate-row>

14. KRSRBS Formation Vide Legal Notice No.209/6502

By December 2005 Muthurwa land was among several others which were controversially allocated to Kenya Railways Staff Retirement Benefits Scheme (KRSRBS) vide legal notice 169 of 2006 to cater for Pensioners needs, by early March 2006 the KRSRBS had hived off 15 Acres and an extra 4 Acres of the said land which paved way for construction of Muthurwa Market via Nairobi City Council (NCC), and an extra 2 Acres sold to Kenya Power & Lightning Company (KPLC) for the existing 16.11 Kv Power Substation to date residents ailing complications related to radiation

15.KRSRBS -Scheme Membership

That through this process some members of our organization tend to greatly suffer irreparable damage, since they are residents and former workers of Kenya Railway Cooperation (KRC) which formed the Kenya Railways Staff Retirement Benefit Scheme(KRSRBS) to cater for the welfare of about 9400 members in essence the KRSRBS since its formation in 2006 has had only 5 Annual General Meetings with a partly less than 1,000 members attendance, thus it's a scam in making purporting to be selling the assets on behalf of 9500 Pensioners and Retirees.

16. Recent Recarpetting of 1.10 Km –Muthurwa Market Exit /Jogoo Road

Public tend to loss about Ksh. 107,000,000 (US \$ 1,038,835.23) for a 1.1Km exit road recently constructed by RESJOS Ltd under supervision and stewardship of KURA ,the road which serves as an access to Muthurwa Market connects at Joogo Road/Lusaka Road Landhies- Roundabout (S 01° 17'030.134"),(E056°50'26.266") and ends at (S 01°17'17.780", E 036°50'266") its noteworthy to notice the Enterprise Road viaduct roads passes parallel or simultaneous to the stated road.

17. Legal Entities representing Muthurwa Residents

The residents appointed [REDACTED]
Muthurwa residents have two outstanding registered entities that is [REDACTED]
[REDACTED] registered under Society Rules of 1968 on 6th June.
2012 Registration [REDACTED]
[REDACTED] registered under the Cooperative Society Act, registration No

██████████ Currently with a membership of ██████████. The grouping being members of Habitat International Coalition.

18. Intimidation and Threats

On 30th May, 2018 as residents representatives we disputed the purported GIBBS International Ltd, JICA and KURA and local Administration Officer (Chiefs) household surveys process, ██████████ were arrested and implicated with trumped up charges (Operating an Illegal Video and Obstruction) at City Court a bail of Ksh 100,000, each 50,000 (US\$ 1052.63) issued or its equivalent. Our ██████████ has severally arrested and charged in two others trumped up charges at City Court, to date a warrant of Arrest was issued against ██████████ due to mixture of court files.

19. Regal Representation involvement in feasibility Study and process

On 3rd/4th June, 2018 an event which somehow neglected to capture house hold surveys of some residents. Our concern and fear is that in all the community engagement we have held, we have consistently informed the proponent (GIBB, JICA & KURA) to engage our Legal counsel ██████████ to guide the process, which they seem unable to consider, if by when they tend to engage our counsel initiating this process in turn could greatly contribute and set preamble terms and conditions for our acknowledging the purported Preparatory survey on Nairobi Viaduct & Road Construction Project (Environmental & Impact Assessment – ESIA-resettlement) Action Plan (PAPs) Studies.

20. NEMA /NIUPLAN The purported GIBB International Ltd in collaboration with GIBB Africa Ltd a shell registered companies come consultant firms purporting to have been registered under the NEMA.

21. NEMA: National Environmental Management Authority

We tend to suffer irreparable damage, harm, suffering or are likely to suffer from the project or program as it has come to our attention that NEMA issued a letter to KRC dated 22/8/2017 Issued (Mid-Presidential Repeat Election) indicating/advising that there was no need to conduct a separate SEA for the above projects, considering the projects was assessed in NIUPLAN, a plan that the residents were not involved and if they were, the event lacked full disclosure and residents refused to consent or recognize the process, coupled with that the

purported event was held within the middle of the Muthurwa market, where community Social hall is located, given that there was no proper notifications nor prior engagements .

22.Existing Health Implication to residents, Muthurwa Market traders and passerby. Over the past 10 years a feeder road constructed traversing within the estate for eastlands commuters vehicles continue to expose the residents to grave health implications, the market waste dump site present at the main entrance of the market next to Muthurwa Mosque School, is a health hazardous, agricultural waste and domestic waste. The presence of this waste at the site has led to contamination of surrounding air, water and soil. These pollutants in large concentrations have been shown to cause chronic damage to renal malfunction, liver damage, aneamia, ashma, impotence in men and lung cancer.

23.Ndungu State Corporation Land Report

The very real losses suffered by citizens through illegal dealings in state land scams.

Its augmented that by abusing control of state corporations, a practice highlighted by the Ndung'u Commission: Report provided critical details about what happens in the aftermath of illegal or irregular land allocations. Ndung'u showed how those allocated land would move quickly to sell it, in many cases, to state corporations at hugely inflated prices. Pressured into making illegal purchases of public property, these institutions become "captive buyers of land from politically connected allottees" State corporations has been the victims and not just the conduits for realizing the profits of land grabbing – a further injustice. The economic and social costs of widespread land corruption... will be borne by Kenyans for many years to come.

24. The Government of Kenya (GoK) has failed to do what was intended (regularize community land tenure) but also, as a result of this failure and through a program of forced evictions, the borrowers (GoK) are in flagrant violation of the World Bank's operational policies i.e on Environmental Social Standards - Safeguard policies on Involuntary Resettlement the Government of Kenya - is in violation of the loan covenant under which the project is to be agreed upon. This means that not only should the loan to the Government of Kenya be suspended but also all payments already made to the Government of Kenya should be

returned to the Bank until a commission of Inquiry has been established and resolutions agreed upon by the entire East Africa Community.

25. Due Diligence Procedures.

That the ongoing program being undertaken without due diligence of land ownership being placed in considerations, thus our quest for realization of Right to Housing and accessible sanitation cannot be realized nor the universal quest of Right to the City be achieved.

II. What is the name of the World Bank project? (if known)

III. Where is the World Bank project located?

Nairobi, Kenya within Starehe, Kamukunji and Makadara Constituencies.

IV. Do you live in the project area? Yes, living and working for the past 18 Years.

V. We previously reported your concerns to World Bank management? If yes, please provide the detail.

Due diligence was it followed to award GIBB International Ltd tender.

The World Bank's Core Procurement Principles (value for money, economy, integrity, fit for purpose, efficiency, transparency and fairness) as set out were they followed and adhered to the later.

We did complain to World Bank staff on the following occasions IPetition Dated [REDACTED] official email [REDACTED] to kenyaalert@worldbank.org

Complaint submitted to Japan International Cooperation Agency (JICA): Complaint letter dated [REDACTED]

Response received directed for a follow up meeting with officials concerned, in essence this was not agreeable. For we believed that the response received is not satisfactory as it does not answer or solve our problems for the following reasons

VI Five World Bank's operational procedures we believe may apply to Muthurwa Redevelopment Process and will end up being violated.

Environmental Assessment OP/BP 4.01 (Letter from NEMA to KRC consenting to previous engagement, hence the community was not party to it)

Physical Cultural Resources OP/BP 4. (Muthurwa Social Hall use and management have been denied since 2008)

Indigenous Peoples/Elderly OP/BP 4.10 (The majority of residents is elders and has court cases pending in court awaiting their lumpsum monies and packages)

Involuntary Resettlement OP/BP 4.12 (There was NONE Free Prior and Informed Consent from the entire affected residents)

Projects in Disputed Areas OP/BP 7.60 (Pending Court cases and interference of Judicial Process coupled with Collective Bargaining Agreement submitted to court with Interlocutory Orders)

A proper Social Assessment (SA) must be undertaken under the parent project and this informs the development of a Vulnerable and Marginalized Group Framework (VMGF).

The Framework includes provisions on grievance redress and accountability. A Bank-supported project will include a number of mechanisms for addressing concerns and grievances arising in connection with a project and Project-affected parties.

VII. Do you expect any form of retaliation or threats for filing this complaint to the Inspection Panel? [REDACTED] has been arrested and sued on trumped up charges in City Court.

Given the urgency of the matter, we anticipate more sinister threats and injuries granted that evictions and demolitions have been listed to be undertaken during this Easter Festivals period.

We have stern warning from local administration against holding our usual residents meeting, so as to intimidate the residents.

Through World Bank Inspection Panel. We request for a direct appointment with the President Republic Of Kenya in line with the concerned ministries

We needed prior information and detailed breakdown of:-

- 1.**-Ksh 6 Billion (US \$ 58,252,427.20) Breakdown of Project Cost (Disturbance Allowance Per Household) for Project Affected Persons (PAPs) (Household resettlement, relocation or compensation) .
- 2.**We demand for fresh government official household surveys/census, capturing all the residents' data, structures and working spaces, schooling and recreational amenities in the presence of our lawyers.
- 3.** We request that half the 72 Acre land be allocated to cater for the residents Right to Housing units-Undertaken by the both the Muthurwa Residents Welfare Association and Muthurwa Housing Cooperative Society in partnership with Cooperative Bank Of Kenya.
- 3.**We request Ksh 3.6 Billion to cater for disturbance allowances channeled to residents Muthurwa Residents Cooperative Society to cater for all residents, structures and projects, we emphasize for a clear guidelines on how to address Vulnerable Persons, Elders, and foreigners, traders working and residing within the affected area.
- 4.**We demand representation of our regal counsel in all the deliberations related to Muthurwa estate, that is [REDACTED]
- 5.**Due to sentimental value and for prosperity we demand for 25 Years management and preservation of our Cultural Heritage Site. Muthurwa Hall, Shaffie Mosque, Muthurwa Clinic.

6.We point out that following the 9 Years exposures of Muthurwa residents to Kenya Power & Lightning Company a(66.11Kv Power Substation) we demand for better financial distribution of Benefits, to cater for damages now and there after due to exposure. We emphasize for government of Kenya and the KPLC Company to cater for 15 yrs medical cover for those already exposed.

8.We point out that 10 Years ago a feeder road measuring 2 Km was constructed traversing within the Muthurwa estate to cater for over 4000 vehicles plying Eastland exposed residents to gravious health hazards, to date over 12 resident have died as a result of lungs infections related deaths, granted that the road was constructed via mixture of cement and fine sand. We therefore demand the Nairobi County Government to cater for a 15 Years Medical cover for those initially exposed.

9.That if Muthurwa estate is to be demolished the Muthurwa Housing Cooperative Society will be granted rights to demolish and cater away all earmarked areas /materials, that is stones, iron roofs,pipings and trees.

10.We demand that if the Wakulima Market will be relocated and redeveloped that the Muthurwa residents through their registered grouping will be granted 100 Stalls, manage sanitation facilities and manage the market for a 25 Years period in collaboration with NCCG.

11.We demand for judicial Fas tracking and settlement of all Kenya Railways Pensioners and Retirees cases,we hope through the recent petition to Chief Justice for formation of a three bench judge to settle the cases-Which has lasted in court for the past 21 Years.

12.That a Binding Agreement will be accomplished to cater for the above requests and demands as espoused by the Attorney General correspondence of 2017 directing Kenya Railways Corporation Managing Director to liaise with Muthurwa Residents and Nairobi City County Government (NCCG)

13.We request for proper agreed time frames for project commencement and developments. We also demand WB Environmental Safeguards Standards to be followed to the latter.

14. We demand for Involvement of agreed International Observers.

Although we recognize that you face constraining time frames, we will not be coerced into submission.

That in no way is Muthurwa estate stopping or interfering with the construction of the viaduct road. We call for the implementing organizations to adhere to the World Bank- CURE Framework

Principle 1. Acknowledging the city as a “cultural construct” where built structures and open spaces are closely linked to the social fabric.

Principle 3. Fostering cultural expressions to offer appropriate ways to deal with post-crisis trauma affected communities.

Principle 4. Prioritizing culture early in the planning process, starting with needs assessments and the implementation of emergency interventions that reflect community priorities.

Principle 6. Using finance models that balance immediate/ short-term needs with the medium/long-term development timeframe and plans.

Principle 7. Ensuring effective management of the reconstruction process by striking a balance between people’s needs

We strongly advocate for implementation of Viaduct Road through CURE World Bank Framework

The operationalization of the CURE Framework which was adapted from the Disaster Recovery Framework (DRF) and involves Three phases:

1. Damage and Needs Assessment and Scoping.

This phase includes the assessment of damages and impacts to tangible and intangible cultural heritage, Cultural and creative industries, housing stock and land resources, services and infrastructure. The resulting economic losses to the affected population from the interruption of services and use of assets. Building on the damage and needs assessments, a scoping process is conducted, which Includes data collection, asset mapping, stakeholder mapping.

2. Policy and Strategy. This phase involves designing the policies, strategies and planning processes that translate the damage and needs assessments and vision into plans and planning regulations, through participatory approaches where stakeholders and communities are fully engaged.

3. Implementation. This phase, which is critical to the success and sustainability of relocation, reconstruction and recovery efforts, includes setting up effective institutional and governance structures, a risk management strategy, and a communication and engagement strategy.

CURE Framework, which emphasizes the need to integrate people-centered and place based Strategies and policies with culture as the foundation to achieve sustainable change. Building on the People, Places and Policies framework developed in the UNESCO Global Report 'Culture: Urban Future',

How will those involved meet this Standard?

- Residents and Partners are involved at the start of the process in identifying and defining the focus that the engagement will explore.
- A clear and agreed engagement plan is in place.
- All available information which can affect the engagement process has been shared and used to develop the community engagement plan.
- Partners agree what the outcomes of the engagement process should be, what Indicators will be used to measure success, and what evidence will be gathered.
- The timescales for the engagement process are realistic.
- There are sufficient resources to support an effective engagement process

Section 2: Contact Information

VIII. Are you complainants or a representative of complainants?

We are complainants, since we are residents and earn a livelihood in Muthurwa area. We are representing Muthurwa community: ☐

IX. Would you like your name and contact details to be kept confidential? (The Inspection Panel will not disclose your identities to anyone without your prior consent.) We are Okay and consent to our names be used on behalf of the entire Muthurwa residents.

X. Complainants' Names

XI We, the undersigned, request the World Bank Inspection Panel to investigate the issues described above.

1.

Identity No. [REDACTED]

Phone No. [REDACTED]

Email..... [REDACTED]

Sign [REDACTED]

2.

Identity No. [REDACTED]

Phone No.. [REDACTED]

Email... [REDACTED]

Sign [REDACTED]

3.

Identity No. [REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

Sign..... [REDACTED]

Annex II

Management Response

**MANAGEMENT RESPONSE TO THE
REQUEST FOR INSPECTION OF THE
KENYA: NAIROBI METROPOLITAN SERVICES
IMPROVEMENT PROJECT (P107314)**

Management has reviewed the Request for Inspection of the Kenya: Nairobi Metropolitan Services Improvement Project (P107314), received by the Inspection Panel on April 12, 2019 and registered on May 13, 2019 (RQ19/02). Management has prepared the following response.

June 11, 2019

CONTENTS

Abbreviations and Acronyms	iv
Executive Summary	v
I. INTRODUCTION.....	1
II. THE REQUEST	1
III. PROJECT BACKGROUND.....	2
IV. SPECIAL ISSUES	4
V. MANAGEMENT’S RESPONSE.....	9

Map

Map 1. IBRD No. 44464

Annex

- Annex 1. Claims and Responses
- Annex 2. Timelines of NaMSIP Planning and Stakeholder Consultation

ABBREVIATIONS AND ACRONYMS

CURE	Culture in City Reconstruction and Recovery
EAC	East Africa Community
ESIA	Environmental and Social Impact Assessment
FS	Feasibility Study
GoK	Government of Kenya
IDA	International Development Association
IPN	Inspection Panel
JICA	Japan International Cooperation Agency
KPLC	Kenya Power and Lighting Company
KRC	Kenya Railways Corporation
KRSRBS	Kenya Railways Staff Retirement Benefit Scheme
KURA	Kenya Urban Roads Authority
MTIHUD	Ministry of Transport, Infrastructure, Housing and Urban Development
NaMATA	Nairobi Metropolitan Area Transport Authority
NaMSIP	Nairobi Metropolitan Services Improvement Project
NCCG	Nairobi City County Government
NEMA	National Environment Management Authority
NIUPLAN	Nairobi Integrated Urban Plan
PDO	Project Development Objective
RAP	Resettlement Action Plan
SEA	Strategic Environmental Assessment

Currency Unit

(Exchange Rate Effective June 11, 2019)

Kenyan Shilling (KES)

US\$1.00 = KES 101.20

KES 1.00 = US\$0.009

EXECUTIVE SUMMARY

- i. ***Management has carefully reviewed the matter and concluded that the concerns raised in the Request for Inspection are not related to the Nairobi Metropolitan Services Improvement Project (NaMSIP).*** The Request does not cite NaMSIP or any activities supported by NaMSIP. Management understands from the Request that the matters of concern stem from (i) expected resettlement impacts of the Viaduct-Road project proposed in the same area and which is not financed by the Bank, (ii) pending evictions that Kenya Railways Corporation (KRC) has announced following final court decisions subsequent to a lengthy legal dispute, again which are not financed by or connected to NaMSIP, and (iii) a number of environmental and social impacts that are attributed to infrastructure developments that occurred eight to thirteen years ago.
- ii. The Request for Inspection concerns the *Kenya: Nairobi Metropolitan Services Improvement Project (NaMSIP)*, an IDA Credit for US\$300 million approved in 2012 to strengthen urban services and infrastructure in the Nairobi metropolitan region. The four components of the Project cover (i) institutional reform and planning; (ii) local government infrastructure and services; (iii) metropolitan infrastructure and services; and (iv) project management.
- iii. The Request, submitted by three individuals from the Muthurwa area of Nairobi, raises concerns about (i) the quality of household surveys; (ii) poor public consultation and participation; (iii) potential evictions; (iv) potential demolition of cultural and historical facilities; and (v) legacy health concerns related to air, water and soil pollution. All these claims are unrelated to NaMSIP.
- iv. Under Component 1, a study for redevelopment of the Nairobi Central Railway Station and its surroundings is being undertaken, which will result in a masterplan including land use and zoning plan; transport and infrastructure plan; design guidelines; strategic environmental assessment (SEA); business plan; and implementation and financing plan. The Muthurwa Market and residential area, to which the Request pertains, were added to the planning area in August 2018.
- v. No physical investments have been or will be undertaken under Component 1. None of the specific investments that are supported under Components 2 and 3, which involve physical works, are being considered or implemented in the Muthurwa area. Any future investments that may take place following completion of the plan supported under Component 1 are outside the scope of NaMSIP. Given the upstream nature of the urban planning that NaMSIP supports, an SEA is under preparation, taking into account relevant provisions of applicable Bank policies.
- vi. The ***Viaduct-Road project*** is an infrastructure development project of the Government of Kenya (GoK), supported by the Japan International Cooperation Agency (JICA). It aims to design and build a viaduct and roads in order to relieve traffic congestion surrounding the Nairobi Central Railway Station. The project, which requires relocation of the Wakulima Market, is still in the planning stages, and consultations have been undertaken. The project is not financed by the Bank.

- vii. ***KRC Legal Process and Evictions.*** The Muthurwa area is located east of Nairobi Central Railway Station and was built a century ago to house railway workers. It consists of Muthurwa Market and a residential area. The ownership of land and housing and the right of tenants to residences in the area have long been disputed in relation to KRC's historical restructuring programs and associated staff retrenchment, staff retirement scheme, and land transactions to pay pension arrears. NaMSIP is not linked to any of these transactions. A lengthy legal case has resulted in court orders for evictions in the area.
- viii. ***NaMSIP has supported three activities that have a connection to the Muthurwa area, none of which involve any physical investment or require any land acquisition, physical or economic displacement, resettlement, or payment of compensation:*** (i) Muthurwa Market Feasibility Study, which was one of a number of feasibility studies undertaken for rehabilitation and renovation of markets in the Nairobi metropolitan region. Seven out of 15 markets studied were selected, but since Muthurwa Market did not fulfill the criteria, it was not one of those selected; (ii) Feasibility Study for Selected Roads surrounding the railway station, of which only one was selected and is outside the Muthurwa area; and (iii) Railway City planning, which involves the masterplan noted above, but no physical investments under NaMSIP. These activities are being implemented in accordance with applicable Bank policies and monitored by the Bank.
- ix. With regard to the other claims, the NaMSIP-supported study has not led either directly or indirectly to the loss of valuable cultural and historical facilities, as claimed in the Request, as there is no physical investment taking place under the Project. Similarly, NaMSIP has no connection to the alleged health impacts that the Requesters believe stem from (i) the 2-km feeder road traversing Muthurwa estate, (ii) the dump site at the main entrance of Muthurwa Market, or (iii) exposure to a power sub-station. The infrastructure in all three instances was built from eight to thirteen years ago and is unrelated to NaMSIP.
- x. Management understands that the Requesters allege that they face retaliation. Management has asked the Government to remind the implementing authorities of the importance of abstaining from any retaliatory actions. Management has reemphasized this message to government counterparts during recent missions.
- xi. ***In Management's view, the claims cited in the Request are unrelated to NaMSIP and have been erroneously associated with the Bank-supported project.*** NaMSIP does not require any land acquisition or resettlement in the Muthurwa area. As a result, Management considers that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures. Neither does the Request demonstrate a causal link between NaMSIP and the alleged harm or risk of harm that the Requesters have asserted. Management also notes that the Requesters have not raised with Bank Management their concerns about the pending evictions, prior to filing the Request for Inspection.

I. INTRODUCTION

1. On May 13, 2019, the Inspection Panel registered a Request for Inspection, IPN Request RQ 19/02 (hereafter referred to as “the Request”), concerning the Kenya: Nairobi Metropolitan Services Improvement Project (P107314) (the Project, or NaMSIP) financed by the International Development Association (the Bank).

2. ***Structure of the Text.*** The document contains the following sections: Section II describes the Request; Section III presents information on the Project; Section IV discusses specific issues pertinent to the Request; and Section V presents Management’s response. Annex 1 contains the Requesters’ claims, together with Management’s detailed responses, in table format. Annex 2 provides timelines of Project planning and stakeholder consultation.

II. THE REQUEST

3. The Request for Inspection was submitted by three residents of the Muthurwa area in Nairobi, Kenya, who have requested confidentiality (hereafter referred to as the “Requesters”).

4. The Request raises concerns about (i) the quality of household surveys carried out for an unrelated project; (ii) poor public consultation and participation for that same unrelated project; (iii) potential evictions; (iv) potential demolition of cultural and historical facilities; and (v) legacy health concerns related to air, water and soil pollution.

5. Many of the issues raised in the Request concern events that began or took place before the development or implementation of NaMSIP, such as (i) establishment of the Kenya Railways Staff Retirement Benefit Scheme (KRSRBS or “KRS Retirement Scheme”) in 2006, (ii) development of Muthurwa Market in 2006, (iii) health impacts from traffic in the area over the past decade, and (iv) impacts from exposure to a power substation for the past nine years.

6. The Requesters ask the Bank to facilitate a meeting with the President of the Republic of Kenya. They also demand payment of KES 3.6 billion (US\$35 million) as a “disturbance allowance” to be channeled through their residents’ society.

7. No further materials were received by Management in support of the Request.

III. PROJECT BACKGROUND

8. **The Project.** NaMSIP is an investment project approved on May 10, 2012, for a US\$300 million equivalent IDA Credit (Credit No. 5102-KE) to the Republic of Kenya (the “Borrower”). It became effective on December 17, 2012. The Project’s initial closing date was June 30, 2017. It was restructured twice, and the closing date was extended to March 31, 2020.

9. **Project Development Objective (PDO).** The PDO is to strengthen urban services and infrastructure in the Nairobi metropolitan region.

10. **Project Components.** NaMSIP has the following four components:

- (i) *Component 1. Institutional reform and planning* supports local authorities and agencies within the Nairobi metropolitan region as well as the Ministry of Transport, Infrastructure, Housing and Urban Development (MTIHU) in capacity enhancement and planning activities.
- (ii) *Component 2. Local government infrastructure and services* supports priority urban infrastructure in five counties—Nairobi, Kiambu, Kajiado, Machakos and Muranga—in the Nairobi metropolitan region. The investments are relatively small-scale local projects and include drainage systems, local streets, bicycle and footpaths, street and security lighting, public markets, firefighting equipment and facilities.
- (iii) *Component 3. Metropolitan infrastructure and services* supports large-scale metropolitan infrastructure in the areas of solid waste, transport, and sewerage services. In contrast to the activities financed under Component 2, these are large-scale investments that are crucial for the development and integration of the metropolitan region as a whole. Regarding transport, this component supports (a) preparing land use plans and constructing or upgrading public infrastructure surrounding commuter rail stations; (b) constructing and rehabilitating strategic roads; and (c) improving traffic management and flow. The location of the commuter rail stations has been agreed with the Kenya Railways Corporation (KRC).
- (iv) *Component 4. Project management, monitoring and evaluation.*

11. **Project implementation status.** The Project is rated moderately satisfactory for overall implementation progress and for progress towards the PDO. The PDO is likely to be achieved by the revised closing date of March 31, 2020. As of May 18, 2019, the cumulative disbursements are US\$216.9 million equivalent, or 80.3 percent. Overall Project implementation has improved over the past two years; most of the infrastructure works have been completed and have provided significant benefits with positive social impact and beneficiary satisfaction. The direct beneficiaries have significantly increased, exceeding the original target of 2.2 million, as major infrastructure works progress. Construction works for some local infrastructure and landfill are ongoing. The Project-supported strategic metropolitan planning, which integrates land use, transport,

environment, economic activities, social services, and municipal finance, is yielding sound planning documents and revenue enhancement tools to support sustainable growth in the Nairobi metropolitan region.

12. ***Only activities under Component 1 (Institutional reform and planning) relate to the Muthurwa area. None of the specific investments that are supported under Components 2 and 3 are being considered for or being implemented in the Muthurwa area, to which the Request pertains.***

13. Under Component 1, NaMSIP is supporting a consultancy to prepare “***Urban plans, urban designs, economic/finance and implementation study for redevelopment of the Nairobi Central Railway Station and its surroundings***” (“*the Study*”). The objective of the Study is to prepare a participatory, economically feasible, socially and environmentally sustainable urban plan and design concept to guide the redevelopment of the Nairobi Central Railway Station and surrounding areas for transit-oriented development and mixed-use development, over a 15-year planning horizon. The deliverable under the Study is a masterplan—which will include a land use and zoning plan; transport and infrastructure plan; design guidelines; Strategic Environmental Assessment (SEA); business plan; and implementation and financing plan. While the Muthurwa Market and residential area (the area that is the subject of the Request) were initially not covered in the Study, they were added to the planning area at the request of MTIHUD on August 22, 2018.¹

14. ***No physical investments are envisaged for financing under the NaMSIP-supported masterplan, as confirmed in the Restructuring Paper of February 2019.*** Any future investments that may take place following completion of the plan are outside the scope of NaMSIP. Furthermore, the NaMSIP planning process does not entail any detailed design of potential future investments, and hence the Project does not support the preparation of Environmental and Social Impact Assessments (ESIAs) or Resettlement Action Plans (RAPs). Instead, given the upstream nature of the urban planning that NaMSIP supports under Component 1, an SEA is under preparation, taking into account relevant provisions of applicable Bank policies (OP4.01, OP4.11, OP4.12).

15. The Study has been ongoing since March 2017: a draft land use and zoning plan, an infrastructure plan and design guidelines for the initial planning area (not including the Muthurwa area) are being prepared after an options analysis; and a preliminary land use and zoning plan, infrastructure plan and design guidelines for the Muthurwa area are being formulated. In addition, business, implementation and financing plans for the whole

¹ The inclusion of the Muthurwa area in the NaMSIP planning study was raised during a County-Level Stakeholder Workshop held on March 23, 2018. The Bank team noted the need for careful analysis and comprehensive consultations with all stakeholders. After extensive deliberation and consultation, the consultant included the Muthurwa area into the planning boundary on August 22, 2018. Given (i) the strategic location of the Muthurwa area, situated between the Nairobi Central Railway Station and the Eastlands development planning areas (both of which are supported by NaMSIP); and (ii) the transit-oriented development principle of the Study, which incorporates integrated land use and transport planning for Nairobi’s central business district. The Bank team considered the inclusion of the Muthurwa area in the Study technically convincing as it would make the masterplan more comprehensive, integrated and inclusive.

planning area and the SEA are being prepared. At least ten rounds of stakeholder consultations have been undertaken at different stages of preparation (inception and interim) and with various stakeholders (central and local authorities, stakeholder institutions, expert groups, and local communities, including the Muthurwa community). Further consultations are planned, the next one of which will be in the second half of-2019.

16. The plans produced under the Study will also go through a validation process including stakeholder consultations and statutory approval by the Nairobi county assembly, prior to which the plans have no legal standing and cannot be implemented. Any potential social and environmental impacts that may result from implementing the masterplan are being assessed in the SEA, which will include recommendations for further safeguard instruments to be prepared for future investments. Land use planning and infrastructure planning do not in and of themselves mean that OP4.12 is applicable, unless such activities involve Bank-assisted investments that require the taking of land, or the loss of livelihoods or assets associated with such land.²

IV. SPECIAL ISSUES

Muthurwa Area

17. The Muthurwa area is located east of Nairobi Central Railway Station. It was built around 1910 to house railway workers and now consists of a commercial area (Muthurwa Market) to the northwest and a residential area (residences of retired families from KRC and other tenants) to the southeast. The ownership of land and housing and the right of tenants to residences have long been disputed in relation to KRC's historical restructuring programs and associated staff retrenchment, staff retirement scheme, and land transactions to pay pension arrears.³ NaMSIP is not linked to any of these transactions.

18. ***Land transactions in Muthurwa area.*** In 2006, KRC transferred its property in Muthurwa estate measuring approximately 56 acres (covering the current Muthurwa commercial and residential areas) to the KRS Retirement Scheme to generate revenues to pay pension arrears to over 10,000 KRC pensioners. Since then, the KRS Retirement Scheme has carried out the following land transactions in Muthurwa estate:

² Policy clarification regarding application of OP/BP4.12 (Footnote 8) to Land Use Planning Projects.

³ In 1977 when the East Africa Community (EAC) collapsed, the British Government paid Pounds 21,841,427 for terminal dues for Kenyan employees who were working for the defunct EAC (which included East African Railways, as the KRC was previously known). There has been a dispute as to how the benefits were paid out to the beneficiaries. In 2004-2005, staff retrenchment was undertaken in relation to the concession of railway operation to the Rift Valley Railways Consortium. Following the concession discussions, the KRS Retirement Scheme was established in 2006 to manage the affairs of retiring KRC staff members. However, KRC was experiencing financial constraints at the time the KRS Retirement Scheme was established and transferred members' liability in the form of property through Legal Notice No. 169 dated September 2006 amounting to KES 12 billion to generate revenues to pay pension arrears to over 10,000 pensioners. Among the properties transferred was Muthurwa estate, which was a residential estate for KRC employees. Muthurwa estate was therefore one of the sources of revenue for the KRS Retirement Scheme, generating about KES 36 million per year.

- (i) *15 acres of land* was sold in 2006 to the then Ministry of Local Government (following devolution, the land now belongs to Nairobi City County Government (NCCG)). The Ministry of Local Government and Nairobi City Council (now NCCG) constructed Muthurwa Market in 2006 on this land. *Another 4 acres of land* was sold later in 2011 to expand the access road to Muthurwa Market;
- (ii) *1 acre of land* was sold in 2009 to the Kenya Power and Lighting Company (KPLC). KPLC constructed a 16.11Kv power substation in the same year on this land; and
- (iii) *5.4 acres of land* was transferred to NCCG in 2018 (although the land transaction was not legally completed). The KRS Retirement Scheme owed property tax to NCCG and transferred the 5.4 acres land to offset the taxes owed.⁴ The concerned land is now owned by NCCG and has been designated for the relocation of Wakulima Market, which is affected by the Nairobi Viaduct and Road Improvement Project (“Viaduct-Road project”) financed by the Japan International Cooperation Agency (JICA) (see details below in paragraphs 22-25).

19. ***Pending Muthurwa Estate Evictions.*** In 2010, the KRS Retirement Scheme endorsed the NCCG’s redevelopment plan of Muthurwa estate aimed at rehabilitating the dilapidated houses that dated from the colonial period to multi-story mixed-use residences. Subsequently, the KRS Retirement Scheme issued an eviction notice to the residents with 3 months’ notice to vacate the property to pave the way for the proposed redevelopment of the area, which would in turn make the land available for sale or lease to help pay the pensions to KRC retirees. The residents contested the eviction notice and filed a lawsuit. The Court rulings are as follows:

- (i) With respect to Petition No. 65 of 2010, the High Court of Kenya ruled on August 26, 2013 in favor of the KRS Retirement Scheme and the tenants were ordered to vacate the residences, but with several conditions designed to protect their rights and in accordance with international good practice.⁵ The applicants were ordered to vacate the premises on or before April 30, 2016 as per the terms set out in the judgment of the High Court. The petitioners were not satisfied with the Court Order and the imminent eviction. Several mediation meetings to develop a program of eviction did not yield positive results. Therefore, the petitioners appealed the judgment to the Court of Appeal.

⁴ Tenants in Muthurwa area had stopped paying rent following the 2010 eviction notice, which negatively affected the finances of the KRS Retirement Scheme, thereby triggering the need to sell the 5.4 acres of land to settle the real estate taxes.

⁵ For example, the evictions must not take place at night, in bad weather, during festivals or holidays, prior to any election, during or prior to school exams and preferably at the end of school term or during school holidays. The Court also ordered the concerned parties to submit eviction program within 60 days of the judgment. No agreement was reached between the two parties on eviction program.

- (ii) With respect to Civil Application No. NAI 97 of 2016, the Court of Appeal ruled on May 13, 2016 in favor of the KRS Retirement Scheme and the tenants were ordered to peacefully give vacant possession of the land to its owners.

20. ***The KRS Retirement Scheme issued an eviction notice in 2016 after the Court Orders but the tenants did not vacate.*** The KRS Retirement Scheme requested the assistance of KRC to enforce the Court Order but relevant processes to evict tenants were delayed by the election period in 2017-2018 because of security, financing and other implementation concerns.

21. ***The KRS Retirement Scheme issued another eviction notice on April 15, 2019 to individual households, with the intention of evicting tenants on April 17, 2019.*** However, these evictions did not take place. Bank Management sent a letter on April 26, 2019 to the Borrower and MTIHUD, copying KRC and the KRS Retirement Scheme, emphasizing the necessity of protecting complainants, victims and witnesses from any form of threat, intimidation or reprisal, despite the fact that these issues are unrelated to NaMSIP, since the Project is not financing any investment that requires land acquisition or resettlement in the Muthurwa area.

Nairobi Viaduct and Road Improvement Project

22. ***The Nairobi Viaduct and Road Improvement Project (“the Viaduct-Road project”)*** is an infrastructure development project of the Government of Kenya (GoK), managed through the Kenya Urban Roads Authority (KURA) and supported by JICA to design and build a viaduct and roads with an objective of relieving traffic congestion surrounding Nairobi Central Railway Station.⁶ The Viaduct-Road project is not financed or co-financed by the Bank. Public information about the project can be found here: https://www.jica.go.jp/english/our_work/social_environmental/id/africa/kenya/c8h0vm00009pqnv0.html

23. The Viaduct-Road project started in 2014, three years before the NaMSIP-supported Study described in paragraphs 13–16. It is still at a planning and design phase and implementation has not started.

24. The Viaduct-Road project includes the construction of a 750-meter viaduct that would traverse the KRC area (see map) and require the relocation of the Wakulima Market. The 5.4 acres of land mentioned in paragraph 18 (iii) in the Muthurwa area was designated for this purpose. ***The Muthurwa estate parcels subject to the pending evictions are not located on this land.***

25. MTIHUD and KRC (the owner of the land over which the proposed viaduct would pass) viewed that the construction of a viaduct could devalue the surrounding area and that an alternative way of relieving traffic congestion could be explored. The Bank, therefore, highlighted the need for coordination among key stakeholders, including MTIHUD,

⁶ Management understands that there is no decision yet by JICA to finance the proposed *viaduct*-component of the project.

KURA, KRC, and NCCG. To facilitate coordination and exchange of information on the projects, MTIHUD has invited key stakeholders, including KURA, to stakeholder workshops. Technical-level coordination and information sharing meetings among relevant transport agencies are held monthly.

NaMSIP

26. *NaMSIP has supported the following three activities that have a connection to the Muthurwa area, none of which involve any physical investment or requires any land acquisition, physical or economic displacement, resettlement, or payment of compensation:*

- (i) *Muthurwa Market Feasibility Study (Activity 1).* NaMSIP supports consultancies (separate from the masterplan study) to prepare feasibility studies (FS), RAPs, and ESIA for the in-situ rehabilitation and renovation for a number of markets in the Nairobi metropolitan region. The FS included the Muthurwa Market within the Muthurwa area. Of the 15 markets studied, only seven were finally selected for support under NaMSIP financing according to screening criteria.⁷ Muthurwa Market was among those that did not meet these criteria, and hence was not selected for support under NaMSIP.⁸ For the eight markets that did not meet the criteria, all the activities naturally associated with planning for physical investments under Bank-financed projects, including detailed design, RAP, and ESIA, were discontinued once the decision was made in December 2017 that they did not qualify.
- (ii) *Feasibility Study for Selected Roads surrounding Nairobi Central Railway Station (Activity 2).* NaMSIP supports a consultancy (separate from the masterplan study) to prepare FS for four selected roads surrounding Nairobi Central Railway Station (so called “Green Mall”).⁹ The preliminary FS found that out of the four proposed roads, three were not feasible, which included the one that would have affected Muthurwa Market.¹⁰ The only FS that was completed was for the road connecting Dunga Road to Kapiti Road, outside the Muthurwa area. No physical investments have been or will be made under NaMSIP financing.
- (iii) *Railway City Planning (Activity 3).* This is the activity referred to in paragraphs 13-16 above, to which the Muthurwa area was added at the request of MTIHUD.

⁷ The criteria included: (i) the market designs should accommodate all affected traders as per the entitlements for different categories of traders that will be confirmed by the counties and the Bank safeguards team reflecting counties’ market policy and the Bank’s safeguard policy; (ii) budgets for the construction and resettlement costs are secured; (iii) relocation sites and transition compensation allowances are confirmed; (iv) land ownership of the market sites is confirmed and the land allotment process is complete; and (v) operation and management plan for the property and utility facilities is established.

⁸ Specifically, Muthurwa Market did not meet criteria (i), (ii) and (iii).

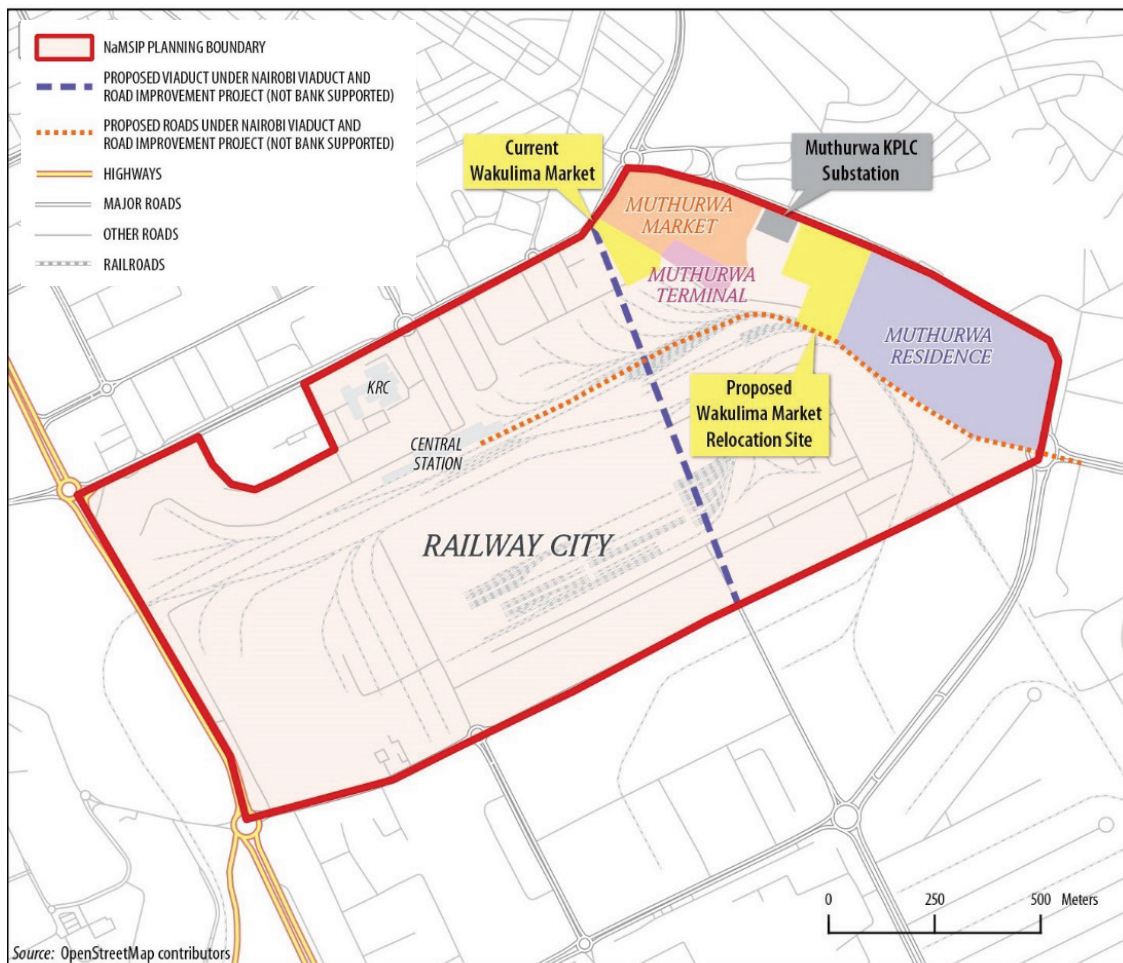
⁹ All four roads included sections for rehabilitation within a right-of-way, expansion, and new construction.

¹⁰ The pre-feasibility study found the three roads not feasible for technical (traffic modeling results), social (heavy resettlement requirements) and planning purposes.

27. ***The planning process includes stakeholder engagement and public consultations.***

As part of the planning process, at least ten rounds of stakeholder consultations have been undertaken at different stages of preparation (inception and interim) and with various stakeholders (central and local authorities, stakeholder institutions, expert groups, and local communities including the Muthurwa community). The planning process is ongoing, and the next consultation is planned for the second half of 2019 with all stakeholders, including the Muthurwa community.

28. ***The Viaduct-Road project has no immediate impact on the implementation of NaMSIP.*** The 5.4 acres of land which has been designated within the Muthurwa area for the relocation of Wakulima Market was already transferred to Nairobi county. The NaMSIP-supported masterplan will take into account this change in land ownership and Nairobi county's plans for this land.



Map: NaMSIP planning boundary and proposed Viaduct-Road project (not Bank-supported)

V. MANAGEMENT'S RESPONSE

29. The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1.

30. ***Management has carefully looked into the issues raised in the Request and concluded that the concerns are not related to NaMSIP.*** Management understands from the Request that the matters of concern stem from (i) expected resettlement impacts of the Viaduct-Road project in the same area, (ii) pending evictions that KRC has announced will be carried out following final decision on a lawsuit, and (iii) a number of environmental and social impacts that are attributed to infrastructure developments that occurred eight to thirteen years ago. ***Those issues are unrelated to NaMSIP but have been erroneously associated in the Request with the Bank-supported project.*** NaMSIP does not require any land acquisition or resettlement in the Muthurwa area.

31. ***The Request does not raise any impacts that can be attributed to NaMSIP, nor does the Request cite NaMSIP or activities supported by NaMSIP.*** The Request contains a number of allegations and demands, some of which are related to events that took place or began more than a decade ago, well before NaMSIP was developed or implemented. At the same time, the Request alleges that the cited events would violate Bank policies, thereby incorrectly implying that these issues are governed by such policies, which they are not.

32. ***Management also notes that the Bank has not been approached by the Requesters directly regarding concerns about imminent evictions and demolitions in the Muthurwa area prior to their filing the Request for Inspection.*** In May 2018, the Bank received a written complaint, but the concerns expressed therein focused on consultations, grievances related to land transactions in the past, and request for clarifications on the Viaduct-Road project. In response to this complaint in May 2018, the Bank informed the project grievance redress mechanism and offered a meeting to further discuss the complaint. However, this offer to meet was not taken up by the complainant.

33. ***The relevant issues are clarified below in more detail.*** Management is not able to respond to a number of specific allegations raised in the Request, as they lack a connection to NaMSIP.

Viaduct-Road Project

34. ***Management understands from the Request that the Requesters are specifically concerned about the resettlement planned under a separate project, which is not supported by the Bank*** (see paragraphs 22-25 above). The Viaduct-Road project would require the relocation of the Wakulima Market and a site in the Muthurwa area has been identified for the market relocation. In this context, the Viaduct-Road project has developed a RAP that has been consulted upon with local residents and which the Requesters have incorrectly associated with NaMSIP.

35. ***The Viaduct-Road project and NaMSIP are not related.*** NaMSIP does not require the Viaduct-Road project to achieve its objectives. The Viaduct-Road project was prepared

based on the Nairobi Integrated Urban Plan (NIUPLAN), a JICA-supported city-wide masterplan for Nairobi, which includes a proposal for the future road network.

Feasibility Studies under NaMSIP

36. The Request also appears to be confusing the Viaduct-Road project with NaMSIP's support for consultancies to prepare a feasibility study for the *in-situ* rehabilitation and renovation of a number of markets in Nairobi. As noted earlier, the Muthurwa Market within the Muthurwa area was among the markets initially considered in the feasibility study but was not selected since it did not meet the screening criteria. Under the Viaduct-Road project, a different market, the Wakulima Market, is planned to be relocated to the Muthurwa area. There is no relationship between the NaMSIP-supported feasibility study for the Muthurwa Market and the potential relocation of Wakulima Market to the area, or the pending evictions.

37. The Panel's Notice of Registration notes that public documents refer to a RAP for the consultancy covering four markets, without specifying which one. This was part of the safeguards instruments that had to be prepared for the 15 markets initially identified, to help decide which ones would qualify for financing. Given the decision not to finance Muthurwa Market or seven other markets that did not meet the criteria, all activities associated with planning for physical investments under a Bank-financed project, including detailed design, RAP, and ESIA were discontinued once the decision was made in December 2017 that these were not qualifying investments under NaMSIP.¹¹

Kenya Railways Lawsuit and Pending Evictions

38. ***There is no relation between the planned eviction of Muthurwa residents and NaMSIP.*** NaMSIP does not support or require physical investments, land acquisition or resettlement in the Muthurwa area. Management understands that the evictions are subsequent to a lengthy legal dispute examined and arbitrated through the Kenyan court system since 2010, with court orders delivered in 2013 and 2016 that the landowners had the right to evict the residents.

39. ***The land concerned by the evictions was originally owned by the KRC.*** As part of the KRC restructuring process in 2005, the KRS Retirement Scheme was established as a separate legal entity to which KRC land was transferred as an asset to cover staff pensions. In 2010, the KRS Retirement Scheme determined that land in the Muthurwa area should be sold off to raise money to be able to pay the pension benefits. The KRS Retirement Scheme gave the residents of the Muthurwa estate notice to vacate the premises, which the residents contested in court.

40. ***The two court rulings (in 2013 by the High Court and in 2016 by the Court of Appeal) were made in favor of the KRS Retirement Scheme.*** The Courts also introduced requirements for undertaking the evictions and prescribed the periods when evictions could not take place. In accordance with the rulings, evictions could not take place in 2017 due

¹¹ The detailed design, RAP and ESIA for Muthurwa Market were incomplete at the time of such decision and none of these documents have since been publicly disclosed.

to the elections and associated security, financing and other implementation concerns. The attempts to evacuate the residents started in 2018, with the eviction notice issued in April 2019.

41. ***Management understands that the KRS Retirement Scheme considers the residents of Muthurwa estate to be illegal tenants since they do not pay rent and many do not have valid leases.*** Moreover, reportedly many illegal structures have been built on the premises whose owners are now collecting rent, also illegally. The KRS Retirement Scheme has advised Management that it is now unable to pay the pensions of 7,900 retirees and their families, who are becoming destitute, due to the significant delay in raising funds from the sale of its real estate in Muthurwa. The KRS Retirement Scheme also stated that it is under tremendous pressure to mobilize financing from the sale of its land to honor the pension payment obligations it has, and which are accruing.

Use of Same Consultancy Firm

42. ***NaMSIP and the Viaduct-Road project are using the same consultancy firm, GIBB International Ltd,¹² to help develop, under separate consultancy contracts with separate terms of reference, the respective safeguard instruments for the two projects.*** GIBB has been engaged since 2016 to undertake the social and environmental assessments for the Viaduct-Road project and in 2018 it developed the ESIA and RAP and undertook surveys and stakeholder consultations in the Muthurwa area for that project. GIBB began preparation of the SEA for NaMSIP in 2017. The studies under the two projects are substantially different and unrelated. While the two assignments are not linked, their timing and geographical proximity may have contributed to the impression that the preparation works pertaining to the Viaduct-Road project were associated with NaMSIP.

43. To prepare the ESIA and RAP for the Viaduct-Road project, GIBB carried out household surveys and stakeholder consultations regarding the resettlement that would arise from constructing the planned viaduct. As this would include the relocation of the Wakulima Market, the 5.4-acre parcel within the Muthurwa area was identified for such relocation (see paragraph 18 (iii) above) and household surveys in the identified relocation site within Muthurwa area were conducted in 2018. GIBB also organized public consultations on April 12, 2018 in Muthurwa Clinic Grounds (referenced in the Request) as part of its assignment for the Viaduct-Road project.

44. For NaMSIP, GIBB is carrying out the SEA, which assesses broader social and environmental risks and proposes mitigation measures for downstream impacts of future plan implementation. As the NaMSIP planning process does not entail any detailed design of potential future investments, it does not support the preparation of ESIA's or RAPs, and hence GIBB is not required to undertake any household surveys. GIBB also confirmed that it has not undertaken any Muthurwa-specific household surveys or consultations for the NaMSIP SEA. The SEA is still under preparation and will take into consideration all social,

¹² GIBB International Ltd and associated companies have been involved in development projects in East and Central Africa since the early 1940s. The company has ca. 250 staff and has completed over 1,000 consultancy assignments, covering a broad spectrum of sectors and specializations.

environmental and legal risks, which will of course include the situation resulting from the lawsuit and pending evictions.

45. Management strongly argues that using the same consultancy firm does not establish any responsibility for the Bank with regard to activities that the firm is carrying out on behalf of other agencies, projects or donors, and which are not supported by the Bank. However, Management accepts as a lesson that in cases where this situation could occur in future, clearer communication arrangements should be put in place with and by the consultancy firm to provide explanations to interested parties, including residents.

Stakeholder Consultations

46. *The alleged lack of meaningful stakeholder consultation referred to in the Request concerns consultations carried out on April 12, 2018 in Muthurwa Clinic Grounds for the Viaduct-Road project, and not for NaMSIP.* GIBB has been engaged since 2016 to undertake the social and environmental assessments for the Viaduct-Road project. In this process it identified that Wakulima Market would need to be relocated in order to make place for the viaduct road and earmarked a portion of Muthurwa estate as the resettlement site for Wakulima Market.

47. With regard to the NaMSIP-supported Study, as noted earlier, at least ten rounds of stakeholder consultations have been undertaken and further consultations are planned. After the Muthurwa area was added to the planning area, MTIHU held a county-level consultation workshop on October 24, 2018, where some questions and concerns on the scope of the plan and its beneficiaries, possible impacts on land and compensation were raised and discussed. See Annex 2 for details on the NaMSIP stakeholder consultations.

Cultural and Historical Facilities

48. *The NaMSIP-supported Study has not led either directly or indirectly to the loss of “valuable cultural and historical facilities” as claimed in the Request.* The Study does not provide for detailed planning and design for specific investments. Hence, any demolition that might occur as a result of future investments would need to be planned and approved under those specific investments. However, it is noteworthy that conservation of tangible and intangible cultural heritage assets and consultation on such assets as part of the urban planning process is a critical element of the NaMSIP-supported Study. For example, during the county-level workshop held on October 24, 2018, stakeholders confirmed several heritage assets identified by the NaMSIP planning team and recommended one of the houses in the planning area be preserved in-situ as a monument to the history of railway housing in Kenya. This recommendation was taken into consideration and the modalities for delivery on this item will be presented for stakeholder consultation in the second half of 2019.

Alleged Health Hazards

49. *NaMSIP has no connection to the alleged health impacts* that the Requesters believe stem from (i) the 2-km feeder road traversing Muthurwa estate, (ii) the dump site at the main entrance of Muthurwa Market, or (iii) exposure to the KPLC power sub-station.

As the Request states, the infrastructure from which the claimed impacts stem is eight to thirteen years old and is unrelated to NaMSIP.

Alleged Retaliation

50. Management understands from the Panel that the Requesters allege that they face retaliation. Management has reached out to government officials to emphasize the need to protect complainants from any form of threat, intimidation or reprisal. While there was no indication that such retaliatory actions were carried out by officials or identifiable individuals, Management asked the Government to remind the implementing authorities of the importance of abstaining from any retaliatory actions. The Bank's Practice Manager and Practice Director have reemphasized this message during their missions recently.

Conclusion

51. In Management's view, the claims cited in the Request are unrelated to NaMSIP and have been incorrectly associated with the Bank-supported project. As a result, Management considers that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.

Annex 1. Claims and Responses

No.	Claim	Response
1.	<p>On behalf of Muthurwa residents, we hereby state that we are not in any way have consented to activities held by Gibb International Ltd Vis a Vis GIBB Africa Ltd, Kenya Urban Roads Authority -KURA and local Administration Officers due to certain key aspects that have not been satisfactory addressed, beginning with the 1st Public Participation events which ended prematurely on 12th April, 2018 venue Muthurwa Clinic Grounds. The event which lacked proper notification as enshrined in Public Participation Act</p> <p><i>The reportedly GIBB International Ltd in collaboration with GIBB Africa ltd legality was questioned during follow up residents Public Participation event the community was informed that GIBB Africa Ltd is consultant firm registered as consultants under the NEMA-National Environmental Management Authority.</i></p>	<p>This is unrelated to NaMSIP.</p> <p>The stated activities are related to the Viaduct-Road project supported by JICA. GIBB International was hired by the Viaduct-Road project to develop the ESIA and RAP for that project. To prepare the ESIA and RAP for the Viaduct-Road project, GIBB carried out household surveys and stakeholder consultations regarding the resettlement that would arise from constructing the planned viaduct. As this would include the relocation of the Wakulima Market, the 5.4-acre parcel within the Muthurwa area was identified for such relocation (see paragraph 18 (iii) above), this included household surveys in the identified relocation site within Muthurwa area in 2018. GIBB also organized public consultations on April 12, 2018 in Muthurwa Clinic Grounds (referenced in the Request) as part of its assignment for the Viaduct-Road project.</p>
2.	<p>That by 2016 both KURA & GIBB Africa Ltd had submitted to NEMA a ghost ESIA-Survey report dated 20th/09/2016 – 14/09/2016 respectively, compiled by REDACTED for KURA and REDACTED Environmental Dept on behalf of GIBB Africa Ltd, detailing ESIA- Muthurwa Resettlement Action Plan (PAPs) Studies, where a partly 12 Households were to be compensated.</p>	<p>This is unrelated to NaMSIP.</p> <p>See above response to Item 1. This refers to the ESIA and RAP prepared by GIBB for the Viaduct-Road project.</p>
3.	<p><i>We hope through World Bank intervention, we will be able to have an appointment with the President Republic Of Kenya and deliberate on a Win-Win situation.</i></p>	<p><i>The Bank is not in a position to facilitate such requests.</i></p>
4.	<p>Household Census of 2009/ Land Ownership.</p> <p>Muthurwa estate is a 72 Acre land, initially owned by East Africa Railways & Harbors up to 1977, when the formation of Kenya Railways Cooperative (KRC), the land is located in Land No.209/6502, Nairobi City County within Starehe Constituency (Voters 133,400)- Central Ward (65,504)-Muthurwa Social Hall Polling Centre (Registered voters 14,340, an estate within Nairobi Central Business District. 2009 Household survey indicates that Muthurwa estate had 7,456 people whom faces immediate evictions and demolitions.</p>	<p>Only activities under Component 1 (Institutional reform and planning) are applying to the Muthurwa area. None of the specific investments that are supported under Components 2 and 3 are being considered for or being implemented in the Muthurwa area, to which the Request pertains.</p>
5.	<p>Muthurwa Community / Social Fabric and a harmonious livelihood</p> <p>The Muthurwa residents have lived harmoniously since time immemorial granted that the estate was built in around First World War. In 1998 following the State structural Program, a bigger chunk of Kenya Railways Cooperation- workforce was</p>	<p>This is unrelated to NaMSIP.</p> <p>The subject issue relates to historical events relating to KRC restructuring, KRC staff retrenchment, and associated grievances, all of which took place in 1977-1998, long</p>

No.	Claim	Response
	<p>illegally terminated some having worked far the KRC over 25 years challenged their job termination without getting any cent despite the United Kingdom having granted the East Africa Community and Kenya government about Pound 21,841,427/- To cater for the KRC workforce. (Hansard Dated 5th August 2009/19th September 2012) Currently we are hitting 21 years later, matter pending in Kenya Courts and automatic interference and influencing of judges to terminating an Interlocutory Orders based on a Collective Bargaining Agreement (CBA) granting reprieve for those workers (now elderly and destitute) to reside in their respective houses till finalization of their matter.</p>	<p>predating NaMSIP.</p>
6.	<p>Ngong Road Expansion and eviction by KURA</p> <p>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.</p>	<p>This is unrelated to NaMSIP.</p> <p>Ngong road is not located in Muthurwa area and its expansion is not financed by the Bank.</p>
7.	<p>Formation and Composure of KRSB</p> <p>That composure and operations of the said KRSRBS scheme in 2006 was an illegality and a scheme to circumvent justice, that the Muthurwa land and 23 Other parcel of lands and Deed lease was illegally transferred, ownership of Muthurwa Land by the Kenya Railways Staff Retirement Benefit Scheme (KRSRBS) is questionable. (View Retirement Benefit Authority Letter Ref: RBA /COMP 200/01032 Dated 28th Sep 2011. Ref:Disposal & Or Appropriation of immovable Assets of the KRSBRS Inspection report).</p>	<p>This is unrelated to NaMSIP.</p> <p>The stated transactions relate to the formation of the KRS Retirement Scheme, which took place in 2006, predating NaMSIP.</p>
8.	<p>Cultural Historical Facilities</p> <p>That if the project commerce without our inputs we tend to loss valuable cultural and historical facilities which has sentimental values to a majority of our community members, we demand that the meaningful engagement established as stipulated by the Attorney General between the Kenya Railways Corporation (KRC) Muthurwa Resident representatives and Nairobi City County Government (NCCG)</p>	<p>NaMSIP has not financed any investments in Muthurwa area that led either directly or indirectly to the loss of any “valuable cultural and historical facilities,” nor are any such investments planned. In terms of the planning process supported by NaMSIP, conservation of tangible and intangible cultural heritage assets and consultation on such assets is a critical element of the NaMSIP-supported Study.</p>
9.	<p>What the total Acreage for Viaduct-Roads and the earmarked redevelopments The Parliament Hansard Dated 12/Nov/2014 Pg 12-29 (Assistant Minister Roads and Infrastructure Hon Maina Kamanda currently nominated Member Of Parliament-Starehe Constituency) he state that the earmarked area had already been sold so out of the 56 Acres the remaining land is 36 Acres. Thus GIBBS International Ltd undertook the household surveys areas already (illegally) sold. This is a ploy to open the land for an already illegal sold 20 Acres as indicated Standard Newspaper Dated July 11, 2010 (Home and Away, Pg 6 and 7 Pullout Pages)</p>	<p>This is unrelated to NaMSIP.</p> <p>The stated land transactions took place between 2006 and 2011, predating NaMSIP, and intended to raise revenues to pay for pension arrears in the KRS Retirement Scheme. Reference to GIBB is related to the surveys taken for the Viaduct-Road project.</p>
10.	<p>Taxation and Confiscation of Kenya Railways land by NCCG.</p>	<p>This is unrelated to NaMSIP.</p>

No.	Claim	Response
	<p>The Print media in around February 2018 claimed that the Nairobi City County Government has confiscated the Muthurwa land due to accrued 8 Billion Tax owed to County Government. The Deed Lease specification states the amount of tax to be paid for land rates to be equal to a peppermint.</p>	<p>The KRS Retirement Scheme owed property tax to Nairobi County and transferred the 5.4 acres of land to offset the taxes owed. This parcel is the designated site to relocate Wakulima Market affected by the Viaduct-Road project.</p>
11.	<p>Skewed Public Participation: Free Prior & Informed Consents.</p> <p>That the initial plan as noted in the Public Participation was targeting a 5.4 Acre Muthurwa Land three (3) months later during the purported GIBB International Household Survey they earmarked an extra 24 Acres area within the same location where the Viaduct-Road passes. View Hansard Report 12/Nov/2014. That the ongoing process to hive off 5.4 Acres then extension of almost another 25 Acres will pave way for land grabbing as a cartel operating in the scheme had illegally sold part of the estate via Standard Newspaper dated August 17, 2014 Titled: Pensioners Plight on Kenya Railways Pg 4&5.</p>	<p>This is unrelated to NaMSIP.</p> <p>This relates entirely to the Viaduct-Road project, specifically the relocation of Wakulima Market to the site designated within the Muthurwa area.</p>
12.	<p>Market development over Housing Rights whom informs and designs so.</p> <p>What informed the relocation of Wakulima Market Traders over the Muthurwa residents Right To Housing, why not relocate traders to the already fully completed market located at Embakassi North Constituency- Umoja Ward as was initially planned. This is a ploy to open the land for an already illegal sold 20 Acres as indicated Standard Newspaper Dated July 11, 2010 (Home and Away, Pg 6 and 7 Pullout Pages).</p>	<p>This is unrelated to NaMSIP.</p> <p>This also relates entirely to the Viaduct-Road project, specifically the relocation of Wakulima Market to the site designated within the Muthurwa area.</p>
13.	<p>History of Muthurwa Market Development</p> <p>About 25 Blocks of 24 houses each were demolished on a three days' notice the experiences of demolitions and Evictions are very vivid.</p> <p>The community petitioned then President MwaiKibaki on sparing "Muthurwa Dallas Social Hall" located within the Muthurwa Market. To date the community which owned the facility has been denied access and use freely.</p>	<p>This is unrelated to NaMSIP.</p> <p>This refers to the construction of Muthurwa Market by the Ministry of Local Government and Nairobi City Council (now Nairobi City County Government (NCCG)) in 2006, predating NaMSIP.</p>
14.	<p>2005 Muthurwa Market Development within 16 Acres later 19 Acre and Historically in reference to the Muthurwa Market a multimillion four storey market that was to be constructed therein ended up being a scam, change of design and inflated costs arose, a facility that could have accommodated and created direct job opportunities to over 8,000 small scale traders ended up accommodating a partly less than 1,000 hawkers.</p> <p>Residents of Muthurwa whom born the blunt of evictions didn't get any opportunity or stalls despite themselves having been affected by the project. For reference into illegal sale of Kenya Railway Cooperation (KRC) land-Sunday Standard Aug 17, 2014 (Page 5).Public Notice in Sunday Nation 20th April 2008 (Page 7).</p> <p>https://www.standardmedia.co.ke/article/2000131704/pensioners-plight-how-kenya-railways-retirees-billions-were-plundered</p>	<p>This is unrelated to NaMSIP.</p> <p>This refers to the Muthurwa Market development and management in 2006, predating NaMSIP.</p>

No.	Claim	Response
15.	<p>Muthurwa Residents Right To Housing and the Right To City</p> <p>That the intended program is being undertaken without due diligence of land ownership being placed in considerations, thus our quest for realization of Right to Housing and accessible sanitation cannot be realized nor the universal quest of Right To City be achieved.</p>	This is unrelated to NaMSIP.
16.	<p>Muthurwa Right To Housing Case Verdict</p> <p>In line with Justice Musinga Ruling on Muthurwa matter and the verdict of Hon. Justice Isaac Leonora in petition No.65 of 2010 especially orders granted in page 72,73 and 74.</p> <p>https://www.standardmedia.co.ke/article/2000093629/how-judge-brokered-truce-in-muthurwa-estate-row</p>	<p>This is unrelated to NaMSIP.</p> <p>This refers to the dispute between the KRS Retirement Scheme as property owner of Muthurwa estate, and Muthurwa estate residents. The dispute has been arbitrated through the Kenyan court system since 2010, with court rulings issued in 2013 and 2016 that the landowner had the right to evict the residents.</p>
17.	<p>KRSRBS Formation Vide Legal Notice No.209/6502</p> <p>By December 2005 Muthurwa land was among several others which were controversially allocated to Kenya Railways Staff Retirement Benefits Scheme (KRSRBS) vide legal notice 169 of 2006 to cater for Pensioners needs, by early March 2006 the KRSRBS had hived off 15 Acres and an extra 4 Acres of the said land which paved way for construction of Muthurwa Market via Nairobi City Council (NCC), and an extra 2 Acres sold to Kenya Power & Lighting Company (KPLC) for the existing 16.11Kv Power Substation to date residents ailing complications related to radiation.</p>	<p>This is unrelated to NaMSIP.</p> <p>This refers to the KRS Retirement Scheme formation and the land transactions with Ministry of Local Government, NCCG and KPLC aimed at raising capital for the KRS Retirement Scheme, which took place in 2006-2011, predating NaMSIP.</p>
18.	<p>KRSRBS-Scheme Membership</p> <p>That through this process some members of our organization tend to greatly suffer irreparable damage, since they are residents and former workers of Kenya Railway Cooperation (KRC) which formed the Kenya Railways Staff Retirement Benefit Scheme(KRSRBS) to cater for the welfare of about 9400 members in essence the KRSRBS since its formation in 2006 has had only 5 Annual General Meetings with a partly less than 1,000 members attendance, thus it's a scam in making purporting to be selling the assets on behalf of 9500 Pensioners and Retirees.</p>	<p>This is unrelated to NaMSIP.</p> <p>This refers to the membership, governance, and annual meetings of the KRS Retirement Scheme.</p>
19.	<p>Recent Recarpetting of 1.10 Km-Muthurwa Market Exit /Jogoo Road</p> <p>Public tend to loss about Ksh. 107,000,000 (US\$ 1,038,835.23) for a 1.1Km exit road recently constructed by RESJOS ltd under supervision and stewardship of KURA, the road which serves as an access to Muthurwa Market connects at Joogo Road/Lusaka Road Landhies- Roundabout (S 01°17'030.134"), (E056°50'26.266") and ends at (S01°17'17.780", E036°50'266") its noteworthy to notice the Enterprise Road viaduct roads passes parallel or simultaneous to the stated road.</p>	<p>This is unrelated to NaMSIP.</p> <p>This refers to locally funded road works. NaMSIP does not finance any physical works in the Muthurwa area.</p>
20.	Legal Entities representing Muthurwa Residents	This is unrelated to NaMSIP.

No.	Claim	Response
	The residents appointed REDACTED Muthurwa residents have two outstanding registered entities, that is REDACTED registered under Society Rules of 1968 on 6 th June 2012. Registration REDACTED registered under the Cooperative Societies Act, registration No REDACTED. Currently with a membership of REDACTED. The grouping being members of Habitat International Coalition.	
21.	<p>Intimidation and Threats</p> <p>On 30th May, 2018 as residents representatives we disputed the purported GIBBS International Ltd, JICA and KURA and local Administration Officer (Chiefs) household surveys process, REDACTED were arrested and implicated with trumped up charge s (Operating an Illegal Video and Obstruction) at City Court a bail of Ksh 100,000, each 50,000 (US\$ 1052.63) issued or its equivalent. Our REDACTED has severallv arrested and charged in two others trumped up charges at City Court, to date a warrant of Arrest was issued against REDACTED due to mixture of court files.</p>	<p>This is unrelated to NaMSIP.</p> <p>This stated consultation pertains to the Viaduct-Road project.</p>
22.	<p>Legal Representation involvement in feasibility Study and process</p> <p>On 3rd/4th June, 2018 an event which somehow neglected to capture household surveys of some residents. Our concern and fear is that in all the community engagement we have held, we have consistently informed the proponent (GIBB, JICA & KURA) to engage our Legal counsel REDACTE to guide the process, which they seem unable to consider, if by when they tend to engage our counsel initiating this process in turn could greatly contribute and set preamble terms and conditions for our acknowledging the purported Preparatory survey on Nairobi Viaduct & Road Construction Project (Environmental & Impact Assessment - ESIA-resettlement Action Plan (PAPs) Studies.</p>	<p>This is unrelated to NaMSIP.</p> <p>This pertains to the Viaduct-Road project as recognized by the Requesters in this paragraph.</p>
23.	<p>NEMA / NIUPLAN</p> <p>The purported GIBB International Ltd in collaboration with GIBB Africa Ltd a shell registered companies come consultant firms purporting to have been registered under the NEMA.</p>	N/A
24.	<p>NEMA: National Environmental Management Authority</p> <p>We tend to suffer irreparable damage, harm, suffering or are likely to suffer from the project or program as it has come to our attention that NEMA issued a letter to KRC dated 22/8/2017 Issued (Mid-Presidential Repeat Election) indicating/advising that there was no need to conduct a separate SEA for the above projects, considering the projects was assessed in NIUPLAN, a plan that the residents were not involved and if they were, the event lacked full disclosure and residents refused to consent or recognize the process, coupled with that the purported event was held within the middle of the Muthurwa market, where community Social hall is located, given that there was no proper notifications nor prior engagements.</p>	<p>This is unrelated to NaMSIP.</p> <p>The NIUPLAN being referred to here is a city-wide masterplan for Nairobi that was prepared in 2014 under JICA financing together with an SEA. The lack of consultations being referred to here pertains to the preparation of NIUPLAN and that SEA.</p>
25.	Existing Health Implication to residents, Muthurwa Market	This is unrelated to NaMSIP.

No.	Claim	Response
	<p>traders and passerby.</p> <p>Over the past 10 years a feeder road constructed traversing within the estate for eastlands commuters vehicles continue to expose the residents to grave health implications, the market waste dump site present at the main entrance of the market next to Muthurwa Mosque School, is a health hazardous, agricultural waste and domestic waste. The presence of this waste at the site has led to contamination of surrounding air, water and soil. These pollutants in large concentrations have been shown to cause chronic damage to renal malfunction, liver damage, anaemia, asthma, impotence in men and lung cancer.</p>	<p>NaMSIP does not have any physical investments in the Muthurwa area, and thus no activity that could entail environmental, social, health or safety impacts.</p>
26.	<p>Ndungu State Corporation Land Report</p> <p>The very real tosses suffered by citizens through illegal dealings in state land scams.</p>	<p>This is unrelated to NaMSIP.</p> <p>This refers to the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Ndungu Commission) established in 2003, predating NaMSIP, to inquire into the extra-legal allocation of public lands and lands reserved for public purpose to private individuals and corporate entities, and to provide recommendations to the Government for the restoration of those lands to their original purpose or other appropriate solutions.</p>
27.	<p>Its augmented that by abusing control of state corporations, a practice highlighted by the Ndung'u Commission Report provided critical details about what happens in the aftermath of illegal or irregular land allocations. Ndung'u showed how those allocated land would move quickly to sell it, in many cases, to state corporations at hugely inflated prices. Pressured into making illegal purchases of public property, these institutions become "captive buyers of land from politically connected allottees." State corporations has been the victims and not just the conduits for realizing the profits of land grabbing – a further injustice. The economic and social costs of widespread land corruption... will be borne by Kenyans for many years to come.</p>	<p>This is unrelated to NaMSIP.</p> <p>This also refers to the 2003 Ndungu report, predating NaMSIP. See above response to Item 26.</p>
28.	<p>The Government of Kenya (GoK) has failed to do what was intended (regularize community land tenure) but also, as a result of this failure and through a program of forced evictions, the borrowers (GoK) are in flagrant violation of the World Bank's operational policies i.e., on Environmental Social Standards - Safeguard policies on Involuntary Resettlement the Government of Kenya - is in violation of the loan covenant under which the project is to be agreed upon. This means that not only should the loan to the Government of Kenya be suspended but also all payments already made to the Government of Kenya should be returned to the Bank until a commission of Inquiry has been established and resolutions agreed upon by the entire East Africa Community.</p>	<p>This is unrelated to NaMSIP.</p> <p>The alleged evictions referred to (presumably of the KRS Retirement Scheme and tenants) are not part of any Bank-supported project, and therefore the Bank's policies are not applicable.</p> <p>NaMSIP does not support any physical investment in the area.</p>
29.	<p>Due Diligence Procedures.</p>	<p>The Bank office in Nairobi received a complaint on May 23, 2018 about the lack of consultation pertaining to the Viaduct-</p>

No.	Claim	Response
	<p><i>That the ongoing program being undertaken without due diligence of land ownership being placed in considerations., thus our quest for realization of Right to Housing and accessible sanitation cannot be realized nor the universal quest of Right to the City be achieved.</i></p> <p><i>We did complain to World Bank staff on the following occasions [Petition Dated REDACTED official email REDACTED to kenyaalert@worldbank.org</i></p> <p>Complaint submitted to Japan International Cooperation Agency (JICA): Complaint letter dated REDACTED</p> <p>Response received directed for a follow up meeting with officials concerned, in essence this was not agreeable. For we believed that the response received is not satisfactory as it does not answer or solve our problems for the following reasons:</p>	<p>Road project and historical grievances, all of which were unrelated to NaMSIP.</p> <p>The alleged evictions and demolitions were not brought to Management's attention prior to the Request for Inspection.</p> <p>In response to the May 23, 2018 complaint the Bank (on May 31, 2018) offered a meeting to further discuss the complaint. However, this offer to meet was not taken up by the complainant.</p>
30.	<p>Five World Bank's operational procedures we believe may apply to Muthurwa Redevelopment Process and will end up being violated.</p> <p>[i] Environmental Assessment OP/BP 4.01 (Letter from NEMA to KRC consenting to previous engagement, hence the community was not party to it)</p> <p>[ii] Physical Cultural Resources OP/BP 4.(Muthurwa Social Hall use and management have been denied since 2008)</p> <p>[iii] Indigenous Peoples/ Elderly OP/BP 4.10 (The majority of residents is elders and has court cases pending in court awaiting their lumpsum monies and packages)</p> <p>[iv] Involuntary Resettlement OP/ BP 4.12 (There was NONE Free Prior and Informed Consent from the entire affected residents)</p> <p>[v] Projects in Disputed Areas OP/BP 7.60 (Pending Court cases and interference of Judicial Process coupled with Collective Bargaining Agreement submitted to court with Interlocutory Orders)</p> <p>A proper Social Assessment (SA) must be undertaken under the parent project and this informs the development of a Vulnerable and Marginalized Group Framework (VMGF).</p> <p>The Framework includes provisions on grievance redress and accountability. A Bank-supported project will include a number of mechanisms for addressing concerns and grievances arising in connection with a project and Project-affected parties.</p>	<p>(i) The correspondence between National Environmental Management Authority (NEMA) and KRC is unrelated to NaMSIP.</p> <p>(ii) The 2008 closure of the Muthurwa Social Hall long predates NaMSIP.</p> <p>(iii) NaMSIP has no physical investment that would affect indigenous or elderly people in the Muthurwa area.</p> <p>(iv) NaMSIP has no physical investment that entails land acquisition or resettlement in the Muthurwa area.</p> <p>(v) NaMSIP does not operate in any disputed areas, as defined by OP7.60.</p>
31.	<p>[with regard to retaliation] REDACTED has been arrested and sued on trumped up charges in City Court.</p> <p>Given the urgency of the matter, we anticipate more sinister threats and injuries granted that evictions and demolitions have been listed to be undertaken during this Easter Festivals period.</p>	<p>Management takes the allegations of retaliation seriously. Although they do not relate to NaMSIP, the Bank sent a letter to the Borrower and MTIHUUD on April 26, 2019, copying KRC and the KRS Retirement Scheme, emphasizing the absolute necessity of protecting</p>

No.	Claim	Response
	We have stern warning from local administration against holding our usual residents meeting, so as to intimidate the residents.	<p>complainants, victims and witnesses from any form of threat, intimidation or reprisal.</p> <p>Field missions were undertaken by Bank Management: the Practice Manager (GSURR) on May 1-3, 2019; and the Practice Director (GSURR) on May 15-17, 2019—to reemphasize the messages.</p>
32.	Through World Bank Inspection Panel. We request for a direct appointment with the President Republic of Kenya in line with the concerned ministries.	N/A
33.	<p>We needed prior information and detailed breakdown of:-</p> <ol style="list-style-type: none"> 1. Ksh 6 Billion (US \$ 58,252,427.20) Breakdown of Project Cost (Disturbance Allowance Per Household) for Project Affected Persons (PAPs) (Household resettlement, relocation or compensation). 2. We demand for fresh government official household surveys/census, capturing all the residents' data, structures and working spaces, schooling and recreational amenities in the presence of our lawyers. 3. We request that half the 72 Acre land be allocated to cater for the residents Right to Housing units-Undertaken by the both the Muthurwa Residents Welfare Association and Muthurwa Housing Cooperative Society in partnership with Cooperative Bank Of Kenya. 4. We request Ksh 3.6 Billion to cater for disturbance allowances channeled to residents Muthurwa Residents Cooperative Society to cater for all residents, structures and projects, we emphasize for a clear guidelines on how to address Vulnerable Persons, Elders, and foreigners, traders working and residing within the affected area. 5. We demand representation of our regal counsel in all the deliberations related to Muthurwa estate, that is REDACTED 6. Due to sentimental value and for prosperity we demand for 25 Years management and preservation of our Cultural Heritage Site. Muthurwa Hall, Shaffie Mosque, Muthurwa Clinic. 7. We point out that following the 9 Years exposures of Muthurwa residents to Kenya Power & Lightning Company at 66.11 Kv Power Substation) we demand for better financial distribution of Benefits, to cater for damages now and there after due to exposure. We emphasize for government of Kenya and the KPLC Company to cater for 15 yrs medical cover for those already exposed. 8. We point out that 10 years ago a feeder road measuring 2 Km was constructed traversing within the Muthurwa estate to cater for over 4000 vehicles plying Eastland exposed residents to gravious health hazards, to date over 12 resident have died as 	<p>(1) This refers to the Viaduct-Road project, unrelated to NaMSIP.</p> <p>(2) NaMSIP does not have any physical investment entailing household surveys in the area. The cited surveys/census pertain to the RAP for the relocation of the Wakulima Market to the site designated within the Muthurwa area under the Viaduct-Road project.</p> <p>(3) The land in the Muthurwa area that belonged to KRS now belongs to the KRS Retirement Scheme, NCCG and KPLC. The demands of residents are unrelated to NaMSIP.</p> <p>(4) No disturbance has been caused by NaMSIP, which is not carrying out any physical investments in the area.</p> <p>(5) NaMSIP does not finance any physical investment that entails displacement. For the planning under NaMSIP, at least ten consultations have been held. Another consultation is planned for second half of 2019 and public notice will be duly provided.</p> <p>(6) Cultural heritage assets have been identified in consultation with stakeholders in the current NaMSIP planning process, and preservation has been recommended.</p> <p>(7) This is unrelated to NaMSIP and predates NaMSIP.</p> <p>(8) This is unrelated to NaMSIP and predates NaMSIP.</p> <p>(9) NaMSIP does not finance any activities that entail demolitions.</p> <p>(10) The relocation of Wakulima Market relates to the Viaduct-Road project and the allocation of stalls is unrelated to NaMSIP.</p>

No.	Claim	Response
	<p>a result of lungs infections related deaths, granted that the road was constructed via mixture of cement and fine sand. We therefore demand the Nairobi County Government to cater for a 15 Years Medical cover for those initially exposed.</p> <p>9. That if Muthurwa estate is to be demolished the Muthurwa Housing Cooperative Society will be granted rights to demolish and cater away all earmarked areas /materials, that is stones, iron roofs, pipings and trees.</p> <p>10. We demand that if the Wakulima Market will be relocated and redeveloped that the Muthurwa residents through their registered grouping will be granted 100 Stalls, manage sanitation facilities and manage the market for a 25 Years period in collaboration with NCCG.</p> <p>11. We demand for judicial Fast tracking and settlement of all Kenya Railways Pensioners and Retirees cases, we hope through the recent petition to Chief Justice for formation of a three bench judge to settle the cases-Which has lasted in court for the past 21 Years.</p> <p>12. That a Binding Agreement will be accomplished to cater for the above requests and demands as espoused by the Attorney General correspondence of 2017 directing Kenya Railways Corporation Managing Director to liaise with Muthurwa Residents and Nairobi City County Government (NCCG).</p> <p>13. We request for proper agreed time frames for project commencement and developments. We also demand WB Environmental Safeguards Standards to be followed to the latter.</p> <p>14. We demand for involvement of agreed International Observers.</p>	<p>(11) This is unrelated to NaMSIP. The arbitration of the legal dispute between the KRS Retirement Scheme and the residents has been carried out through the Kenyan court system.</p> <p>(12) <i>N/A</i>. This refers to the above local legal dispute.</p> <p>(13) The Bank's safeguard policies apply to Bank-financed projects only. Under the NaMSIP planning process, a SEA is being prepared for the masterplan, taking into account relevant Bank policies.</p> <p>(14) <i>N/A</i>.</p>
34.	<p><i>Although we recognize that you face constraining time frames, we will not be coerced into submission.</i></p> <p>That in no way is Muthurwa estate stopping or interfering with the construction of the viaduct road. We call for the implementing organizations to adhere to the World Bank-CURE Framework</p> <p>Principle 1.Acknowledgingthe city as a "cultural construct" where built structures and open spaces are closely linked to the social fabric.</p> <p>Principle 3.Fostering cultural expressions to offer appropriate ways to deal with post-crisis trauma affected communities .</p> <p>Principle 4. Prioritizing culture early in the planning process, starting with needs assessments and the implementation of emergency interventions that reflect community priorities.</p>	<p>The Culture in City Reconstruction and Recovery (CURE) framework was developed by the Bank and UNESCO to guide post-disaster, post-conflict city recovery. It does not apply here.</p> <p>The Viaduct-Road project is to be financed by JICA.</p> <p>Again, see above on CURE Framework.</p>

No.	Claim	Response
	<p>Principle 6. Using finance models that balance immediate/ short-term needs with the medium/long-term development timeframe and plans.</p> <p>Principle 7. Ensuring effective management of the reconstruction process by striking a balance between people's needs</p> <p><i>We strongly advocate for implementation of Viaduct-Road through CURE World Bank Framework</i></p> <p>The operationalization of the CURE Framework which was adapted from the Disaster Recovery Framework (DRF) and involves Three phases:</p> <ol style="list-style-type: none"> 1. Damage and Needs Assessment and Scoping. This phase includes the assessment of damages and impacts to tangible and intangible cultural heritage, Cultural and creative industries, housing stock and land resources, services and infrastructure. The resulting economic losses to the affected population from the interruption of services and use of assets. Building on the damage and needs assessments, a scoping process is conducted, which includes data collection, asset mapping, stakeholder mapping. 2. Policy and Strategy. This phase involves designing the policies, strategies and planning processes that translate the damage and needs assessments and vision into plans and planning regulations, through participatory approaches where stakeholders and communities are fully engaged. 3. Implementation. This phase, which is critical to the success and sustainability of relocation, reconstruction and recovery efforts, includes setting up effective institutional and governance structures, a risk management strategy, and a communication and engagement strategy. <p>CURE Framework, which emphasizes the need to integrate people-centered and place based Strategies and policies with culture as the foundation to achieve sustainable change. Building on the People, Places and Policies framework developed in the UNESCO Global Report '<i>Culture: Urban Future</i>'.</p> <p><i>How will those involved meet this Standard?</i></p> <ul style="list-style-type: none"> • Residents and Partners are involved at the start of the process in identifying and defining the focus that the engagement will explore. • A clear and agreed engagement plan is in place. <p>All available information which can affect the engagement process has been shared and used to develop the community engagement plan.</p> <ul style="list-style-type: none"> • Partners agree what the outcomes of the engagement process should be, what Indicators will be used to measure success, and what evidence will be gathered. 	

No.	Claim	Response
	<ul style="list-style-type: none"> • The timescales for the engagement process are realistic. • There are sufficient resources to support an effective engagement process 	

Annex 2.
Timelines of NaMSIP Planning Process and Stakeholder Consultation

(i) Timeline of NaMSIP planning process.








Item	Plan	Actual
Contract signing		March 26, 2017
Phase 1: Inception	April-May 2017	Inception report in April 2017
Phase 2: Concept Development and Concept Selection	May 2017- April 2018	May 2017-April 2018 for the initial planning area; September 2018-June 2019 for the Muthurwa area
Phase 3A: Detailed Master Plan and Costing	May – November 2018	May 2018–May 2019 for the initial planning area; December 2018-July 2019 for the Muthurwa area
Phase 3B: Business and Implementation Planning	November 2018 - January 2019	December 2018-August 2019 for the whole planning area including the Muthurwa area
Phase 4: Implementation Plan	January – March 2019	January-September 2019 for the whole planning area including the Muthurwa area

(ii) Timeline of stakeholder consultations for NaMSIP planning.

Date	Objective	Participants
March 28, 2017	Kick-off meeting, for the client and the consultants to agree on the consultancy timeline and introduced the consultant to the key government counterparts	MTIHUD, KRC, NCCG, UN-Habitat, Gauff (the consultant for Green Mall project), DOHWA (main planning and design consultant for Railway City), GIBB (social and environmental study consultant for Railway City), and the Muma and Kanjama Advocates
April 6, 2017	UN-Habitat workshop for discussions on the visioning to seek feedback from key stakeholders	MTIHUD, KRC, NCCG, UN-Habitat, KURA, Nairobi Metropolitan Area Transit Authority (NaMATA), Gauff, Spacescape, Institute for Transportation and Development Policy, GoDown, DOHWA and GIBB
April 11, 2017	Inception workshop for the consultants to present the project understanding, field investigation findings, vision suggestion, and detailed work plan to the client and stakeholders	MTIHUD, KRC, NCCG, DOHWA and GIBB

Date	Objective	Participants
February 20, 2018	Visioning workshop for discussions on the project visioning statement and preliminary analysis on the economic, social, transport, and planning issues	Participants – 88 people from around 30 institutions
March 9, 2018	Thematic group workshop for sharing and discussing each sector's scoping analysis with key stakeholders	Participants – about 70 people, including field experts, professionals, and institutional representatives from transport, urban/infrastructure, economy/real estate, and social development
March 23, 2018	1 st County-level workshop to share findings from previous workshops and discuss the 3 alternatives of land use proposals for the initial planning area	Participants – 164 from various groups, including civic groups representing Muthurwa residents.
May 23, 2018	Validation workshop of the first interim report.	Participants – 20 people from MTIHUD, KRC, NCCG and the consultants
June 8, 2018	Workshop for options analysis (without Muthurwa) and sharing ideas about infrastructure, transportation and other technical aspects	Participants – 42 people from KRC, NCCG, UN-Habitat, NaMATA, field experts, professionals, and other stakeholder institutions
October 3, 2018	Thematic group workshop for sharing and discussing ideas regarding urban space, transport, economic and social aspects	Participants – 73 people, including field experts, professionals, and institutional representatives from transport, urban/infrastructure, economy/real estate, and social development
October 23, 2018	Discussion for presentation of material for County workshop in UN-Habitat	Participants – 24 people from MTIHUD, KRC, NCCG, UN-Habitat
October 24, 2018	2 nd County-level workshop to update project progress and engage with stakeholders to discuss land use options and urban development proposals	Participants – about 200 including civic groups representing Muthurwa residents.
December 3, 2018	Validation workshop of the second interim report	Participants – 17 people from MTIHUD, KRC, NCCG and the consultants
Second half of 2019	3 rd County-level workshop to present the draft plans	Participants will include all stakeholders and civic groups, including Muthurwa residents

KENYA NAIROBI METROPOLITAN SERVICES IMPROVEMENT PROJECT *Request for Inspection*

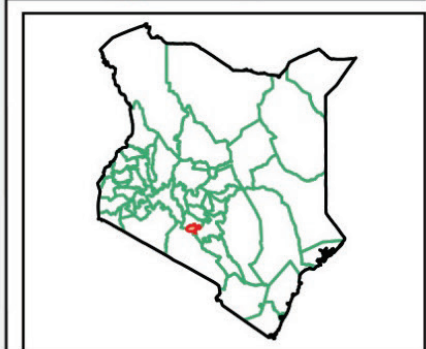
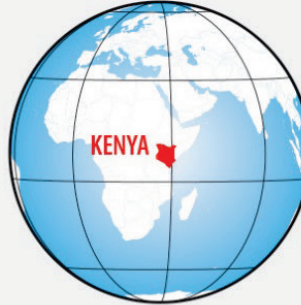
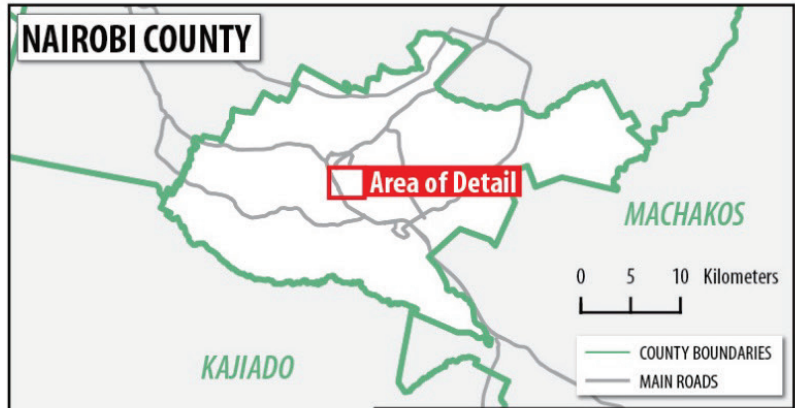
-  NaMSIP PLANNING BOUNDARY
-  PROPOSED VIADUCT UNDER NAIROBI VIADUCT AND ROAD IMPROVEMENT PROJECT (NOT BANK SUPPORTED)
-  PROPOSED ROADS UNDER NAIROBI VIADUCT AND ROAD IMPROVEMENT PROJECT (NOT BANK SUPPORTED)
-  HIGHWAYS
-  MAJOR ROADS
-  OTHER ROADS
-  RAILROADS



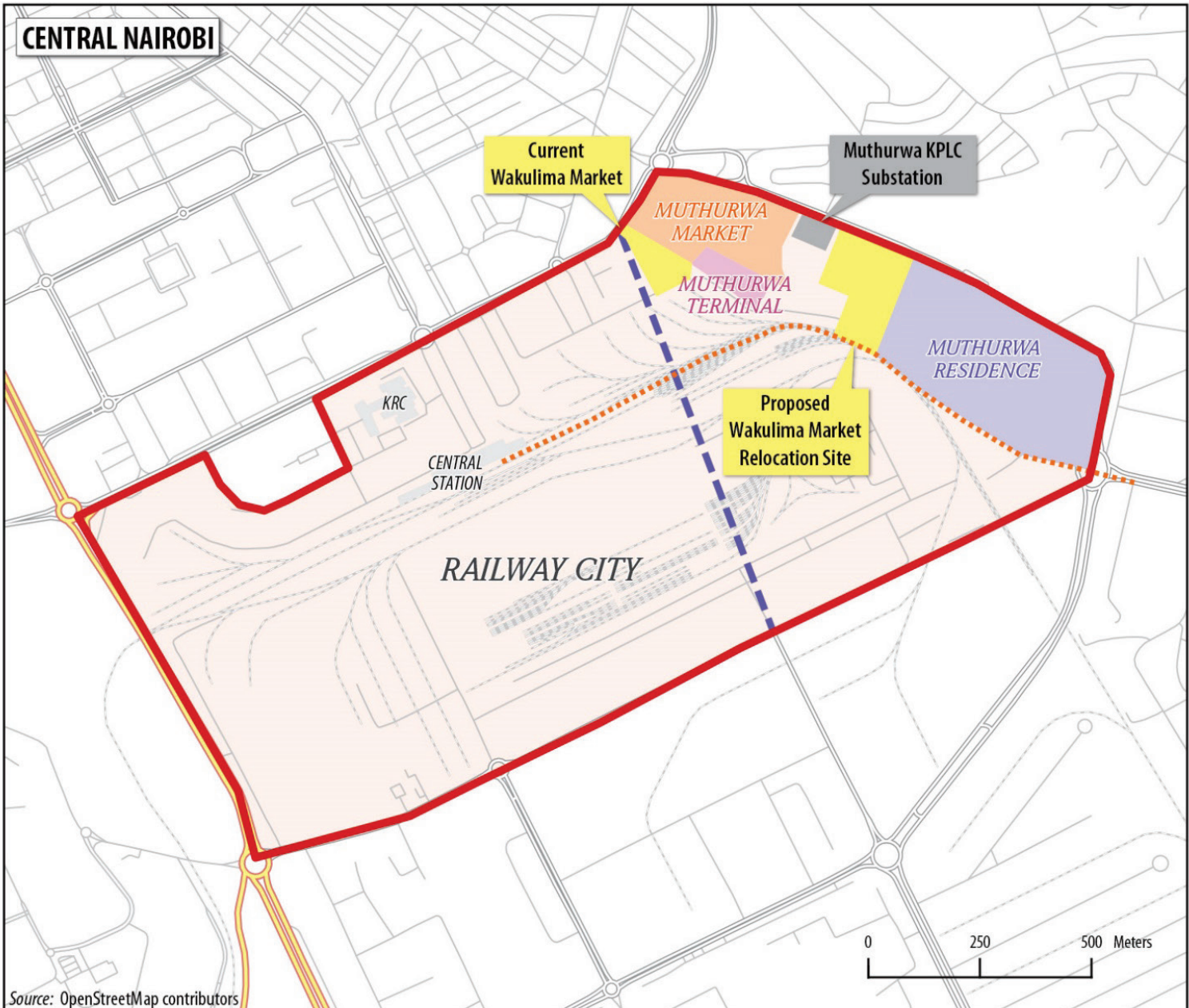
IBRD 44464 | JUNE 2019

This map was produced by the Cartography Unit of the World Bank Group. The boundaries, colors, denominations and any other information shown on this map do not imply, on the part of the World Bank Group, any judgment on the legal status of any territory, or any endorsement or acceptance of such boundaries.

NAIROBI COUNTY



CENTRAL NAIROBI



Source: OpenStreetMap contributors