

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 Embakasi 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-plight-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 FormationVide 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

[REDACTED] Currently with a membership of [REDACTED]. 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, [REDACTED] 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 [REDACTED] has severely 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.

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 [REDACTED] to guide the process, which they seem un able 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 /NIUPLANThe 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.

IIWhat 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 [Petition 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

VIFiveWorld 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 complaintto 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.

Phone No.

Email.....

Sign

2.

Identity No

Phone No..

Email....

Sign

3.

Identity No

Phone:.....

Email:....

Sign.....