

28 September 2021

Executive Secretary
The Inspection Panel
1818 H Street, NW
Washington, DC 20433
USA

Via Email: ipanel@worldbank.org

Re: Supplemental information regarding the Request for Inspection on the Kampala Institutional and Infrastructure Development Project Series

Dear Inspection Panel,

We are writing on behalf of the Requesters to submit additional information to the Panel regarding the connection between the claims raised in the Request and the World Bank-financed project, and in anticipation of certain arguments that we are aware KCCA has raised in the past. This information is intended to supplement the Request submitted to the Panel on 17 June 2021. This submission is intended to provide further context and explanation to frame and understand the issues raised in the initial Request, and includes discussion of the following issues:

- The KIIDP-1 and KIIDP-2 are two investments in a single underlying project and concerns raised about either phase should therefore be eligible for consideration in the Panel's investigation;
- Requesters' claims to the land are valid despite KCCA's claims that the area is a protected wetland;
- The December 2020 attempted evictions were for the purpose of clearing way for the Lubigi drainage channel expansion; and
- The 2016 cut-off date does not meet the requirements of the World Bank safeguards and therefore cannot be applied to the Requesters.

I. KIIDP-1 and KIIDP-2 are two investments in a single underlying project and concerns raised about either phase should therefore be eligible for consideration in the Panel's investigation.

As described in the Request for Inspection and further detailed in follow-up interviews, many of Requesters' concerns date back to the first phase of the Kampala Institutional and Infrastructure Development Project (KIIDP-1) and continue through to the second and current project phase, KIIDP-2. All of these concerns should be included within the scope of an

Inspection Panel investigation. According to the 2020 Inspection Panel Resolution, the Panel is empowered to hear Requests relating to World Bank supported projects approved before the date of the 2020 Inspection Panel Resolution for which the loan financing the project is not yet substantially disbursed (defined as less than 95% disbursed).¹ The Resolution gives no further guidance as to the scope or definition of the underlying “project” for the purposes of Inspection Panel eligibility. However, the definitions used by various World Bank policy documents support a view of the KIIDP series as a single project carried out in two phases.

The Environmental and Social Policy for Investment Project Financing defines a “project” as “the activities for which the Bank support ... is sought by the Borrower, as defined in the project’s legal agreement between the Borrower and the Bank.”² In this case, the activities for which the bank support is sought span across both phases of KIIDP. As the definition directs, we find support for this in contractual documents between the Bank and Borrower. The 2008 KIIDP Financing Agreement includes a Project Description, which describes KIIDP-1 as “the first phase of the Program.”³ This “Program” is further defined as “the program set out in the letter from the Recipient to the Association dated September 24, 2007, describing a set of objectives, policies and actions designed to improve the institutional and infrastructure development of Kampala City Council, and to ensure enhanced accountability and transparency in the delivery of public services within Kampala City, and declaring the Recipient’s commitment to the execution of the Program.”⁴ In other words, the KIIDP was from the beginning framed in formal communications and agreements between the Bank and the Borrower as a single project to be carried out in multiple phases. This conception of the project is further supported by other sources:

- The KIIDP-2 Project Information Document and Project Appraisal Document both noted that KIIDP-2 “is the second phase of the Kampala Institutional and Infrastructure Development Project (KIIDP) which was originally conceived as an adaptable program loan (APL).”⁵

¹ Panel Resolution, ¶ 15 (8 Sep. 2020),

<https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/documents/InspectionPanelResolution.pdf>.

² World Bank Environmental and Social Policy for Investment Project Financing, ¶8 at p. 5 (2017),

<https://thedocs.worldbank.org/en/doc/360141554756701078-0290022019/original/WorldBankEnvironmentalandSocialPolicyforInvestmentProjectFinancing.pdf>.

³ KIIDP Financing Agreement, 20 Feb. 2008, Schedule 1: Project Description, p. 6,

<https://documents1.worldbank.org/curated/en/318721468319528425/pdf/FA01Conformed1.pdf>.

⁴ KIIDP Financing Agreement, 20 Feb. 2008, Appendix: Definitions, p. 19

<https://documents1.worldbank.org/curated/en/318721468319528425/pdf/FA01Conformed1.pdf>. Note: the Kampala City Council has since become the Kampala Capital City Authority.

⁵ KIIDP-2 Project Information Document, 20 Jan. 2014, ¶ 19 at p. 5,

<https://documents1.worldbank.org/curated/en/639331468317685743/pdf/PID-Appraisal-Print-P133590-01-20-2014-1390199862749.pdf>; KIIDP-2 Project Appraisal Document, 25 Feb. 2014, ¶ 20 at p. 6, <https://documents1.worldbank.org/curated/en/504911468115450273/pdf/PAD8000P133590010Box382156B00OU090.pdf>.

- On KCCA’s website, KCCA groups both phases together under the project page titled, “Kampala Institutional and Infrastructure Development Projects.”⁶
- The KIIDP-2 Resettlement Action Plan provided background that KIIDP-2 “is part of the second phase of the Kampala Institutional and Infrastructure Development Project (KIIDP). The financing for both this second phase and the first phase is from the World Bank and is meant to address the institutional and infrastructure challenges of Kampala City.”⁷

Other bank policies have defined a “project” in different terms, but nonetheless lead to the conclusion that KIIDP should be seen as a single project accomplished in multiple phases. The Bank’s OP 10.00 on Investment Project Financing (April 2013) was in effect at the time the KIIDP-2 loan was approved and is thus a relevant source. This policy states that “Investment Project Financing supports projects (“Projects”) with defined development objectives, activities, and results, and disburses the proceeds of Bank financing against specific eligible expenditures.”⁸ From this framing, one can infer that a “project” is defined by its common development objectives, activities, and results. In the case of KIIDP, phases 1 and 2 are substantially similar in this respect.

As KIIDP was designed as the first phase of a multi-phase Adaptable Program Loan (APL), it includes both individual development objectives for each phase as well as an overall Program objective, defined in the PAD and other documents, to ‘develop a strong governance and management capacity in KCC to enhance service delivery and economic development’.⁹ The development objectives of the two phases are also very similar, as is expected given their structure as two parts of a multi-phase project:

- KIIDP-1: “support the Recipient’s efforts to improve the institutional efficiency of KCC, through the implementation of the Strategic Framework for Reform of the KCC.”¹⁰

⁶ See “Kampala Institutional and Infrastructure Development Projects (KIIDP),” Kampala Capital City Authority, <https://www.kcca.go.ug/kiidp>.

⁷ Resettlement Action Plan (RAP) for the Proposed Improvement of Priority Drainage Systems in Kampala Capital City under KIIDP2 Project (May 2017), p. 19, https://www.kcca.go.ug/media/docs/Final%20Drainage_RAP_Report.pdf.

⁸ OP 10.00 Investment Project Financing, World Bank Operational Manual, April 2013, ¶1, <https://ppfdocuments.azureedge.net/1598.pdf>.

⁹ Implementation Completion and Results Report, Kampala Institutional and Infrastructure Development Adaptable Program Loan (APL) Project, 27 Jun. 2014, ¶12, available at <https://documents1.worldbank.org/curated/en/545191468349818537/pdf/ICR29160P078380IC0disclosed07020140.pdf>.

¹⁰ KIIDP Financing Agreement, 20 Feb. 2008, p. 6, <https://documents1.worldbank.org/curated/en/318721468319528425/pdf/FA01Conformed1.pdf>. Note: the Kampala City Council (KCC) has since become the Kampala Capital City Authority (KCCA).

- KIIDP-2: “enhanced infrastructure and institutional capacity of KCCA to improve urban mobility in Kampala.”¹¹

The activities of the two phases are also strikingly similar, and the similarities and connections between the two phases even extend to the subproject level. One example of this is the Lubigi drainage channel itself, which was constructed along its current route under KIIDP-1 and is now being widened and expanded under KIIDP-2. In fact, the two phases even include a number of identical activities, since many activities planned under KIIDP-1 were ultimately dropped due to cost overruns and moved to a future phase.¹² Activities initially planned under KIIDP-1 but eventually carried out under KIIDP-2 include a number of secondary and tertiary drainage channel works.¹³ The construction of the Lubigi drainage channel also notably spans both phases, although it was not characterized as a deferred sub-project.

Past Inspection Panel practice also supports consideration of the two loans as both financing the same underlying project, therefore allowing for a broader scope of investigation. The Panel has in some cases interpreted a “project” to include a broader scope than the specific activities covered under the currently active Bank loan. This is particularly true in the scenario where the World Bank has provided multiple investments to different phases of the same underlying activity, even if the earlier loans have already closed. For example, in its handling of the Request related to the Kenyan Transport Sector Support Project (P124109) and its Additional Financing (P146630), the Panel treated the cumulative investments and activities as “the Project,” even though the original International Development Association credit was 96 percent disbursed around the time the Request was filed.¹⁴

Further support for the single-project framing comes through a closer look at the Adaptable Program Loan (APL) financing structure that the KIIDP Program was designed under. An APL was a since-retired Bank financing instrument that provided phased support for long-term development programs through a series of loans, with each new loan designed to build

¹¹ KIIDP-2 Project Information Document, 20 Jan. 2014, p. 5, <https://documents1.worldbank.org/curated/en/639331468317685743/pdf/PID-Appraisal-Print-P133590-01-20-2014-1390199862749.pdf>.

¹² Implementation Completion and Results Report, 27 June 2014, ¶ 28 at p. 7, <https://documents1.worldbank.org/curated/en/545191468349818537/pdf/ICR29160P078380IC0disclosed07020140.pdf>.

¹³ Implementation Completion and Results Report, 27 June 2014, p. 8, <https://documents1.worldbank.org/curated/en/545191468349818537/pdf/ICR29160P078380IC0disclosed07020140.pdf>.

¹⁴ See Inspection Panel Kenya: *Transport Sector Support Project (P124109) and Its Additional Financing (P146630)*

<https://www.inspectionpanel.org/panel-cases/transport-sector-support-project-p124109-and-its-additional-financing-p146630>. This disbursement figure was reported as of 31 December 2018 (in the Management Response), whereas the complaint was filed on 17 December 2018. The Request met all Technical Eligibility criteria although the recommendation whether to investigate was deferred for six months.

upon lessons from the previous loan(s) in the series.¹⁵ Each new loan was dependent on satisfactory progress in meeting agreed milestones, benchmarks and triggers set for the previous loan. Between the approval of the first and second loan of the KIIDP series, the Bank changed its investment lending policy and discontinued the use of APLs. The KIIDP-2 went ahead as planned, funded through Investment Project Financing rather than as an APL.

Although the APL lending instrument was discontinued, KIIDP-2 was nonetheless conceived and designed essentially as the second loan in an APL series. The KIIDP-2 Project Appraisal Document noted that the designated triggers for moving from APL 1 to APL 2 had all been met.¹⁶ It also listed in detail the lessons learned from KIIDP-1 and explained how these lessons were accounted for in the design of KIIDP 2 through the development of appropriate mitigation measures.¹⁷ While we do not agree with the analysis that the triggers were all satisfied and adequate mitigation measures built into the second phase, these references do show that even as the financing instrument changed, the overall conception of the KIIDP as an APL remained.

The Inspection Panel has previously investigated an APL program and in that case saw fit to consider the full multi-stage program in its analysis of Bank safeguards implementation. In a 2006 Request for Inspection regarding the Honduras: Land Administration Project (IDA Credit 3858-HO), Requesters raised concerns that a project to reform the government's land administration system did not adequately take local indigenous rights and concerns into consideration. The Investigation Report found that it was inappropriate for activities to regularize land titles on indigenous peoples' lands to be included in the first phase of the APL, rather than the second, when the adoption of a legal and regulatory framework for indigenous peoples' lands was only a trigger for the second phase of the project.¹⁸ This finding demonstrates a conception of the full APL program as part of a single project for the purposes of the Panel's analysis of Bank safeguards implementation.

In the present case, a conception of the full KIIDP program is equally necessary to analyze the Requesters' concerns regarding the Bank's safeguards implementation. The concerns raised in the Request that relate to KIIDP-1 are inextricably linked to the current concerns arising under KIIDP-2. In many cases, Requesters who did not receive any compensation or received

¹⁵ Inspection Panel Report and Recommendation on Request for Inspection, Honduras: Land Administration Project (IDA Credit No. 3858-HO), ¶ 9 at p. 3,

https://aconsole-static.s3.amazonaws.com/media/public/cases/38-Eligibility_Report_English.pdf.

¹⁶ KIIDP-2 Project Appraisal Document, 20 Jan. 2014, ¶ 21 at p. 7,

<https://documents1.worldbank.org/curated/en/504911468115450273/pdf/PAD8000P133590010Box382156B00OUO090.pdf>.

¹⁷ KIIDP-2 Project Appraisal Document, 20 Jan. 2014, ¶ 40 at p. 14,

<https://documents1.worldbank.org/curated/en/504911468115450273/pdf/PAD8000P133590010Box382156B00OUO090.pdf>.

¹⁸ Honduras Investigation Report, p. xxiii, available at

https://aconsole-static.s3.amazonaws.com/media/public/cases/38-Investigation_Report_English.pdf.

such abysmally poor compensation that they were not able to resettle themselves in a dignified way had no choice but to stay on the land, despite mounting impacts from the drainage channel, including flooding, health and safety issues that made the area virtually uninhabitable during rainy periods. The fact that resettlement compensation was not appropriately provided under the first phase of the project directly led to there being so many families still living along the banks of the drainage channel and requiring resettlement assistance under KIIDP-2. These legacy issues were a critically important feature of the context that should have informed the environmental and social assessments and action plans required for KIIDP-2. In fact, this is the very purpose and goal of the APL series design.

One example that underscores this point well is the concern that flooding has increased significantly in the local area since the course of the Lubigi drainage channel was altered under KIIDP-1. In fact, KIIDP-1 Bank documents reflect significant deficiencies in environmental safeguards compliance. As the Implementation Completion and Results Report notes, “During project implementation, there were deficiencies in complying with environmental mitigation or safeguard measures. (The last five Implementation Supervision Report (ISR) until project closing rated overall safeguards as moderately unsatisfactory.) This was mainly due to KCC/KCCA lacking sufficient capacity in environment and social safeguards.”¹⁹

Despite this admission, the Bank completely missed the impact of these safeguards failures on the project area and local residents. A KIIDP-1 Project Development Objective (PDO) indicator to reduce the number of people affected by flooding along the Lubigi Channel was recorded in closing documents as fully achieved, claiming that “no flooding [was] reported in the Lubigi catchment area in 2013.”²⁰ The stark disconnect between the lived experience of local residents and this reported progress indicator suggests a lack of effective monitoring and follow-up by the Bank and the Borrower on important social and environmental impact questions, even when the Bank realized there were serious problems with safeguards compliance and capacity within KCCA.

This is precisely the type of weakness that an APL program was designed to identify, learn from and adapt to. That the flooding problems have continued on for so many years past the closure of KIIDP-1 and into the implementation of KIIDP-2 reveals failures in the Bank’s supervision and monitoring of the APL series, and failures to address shortcomings of the KIIDP-1 and integrate those into the design and implementation of KIIDP-2.

¹⁹ Implementation Completion and Results Report, Kampala Institutional and Infrastructure Development Adaptable Program Loan (APL) Project, 27 Jun. 2014, ¶ 46 at p. 14, <https://documents1.worldbank.org/curated/en/545191468349818537/pdf/ICR29160P078380IC0disclosed07020140.pdf>.

²⁰ Implementation Completion and Results Report, Kampala Institutional and Infrastructure Development Adaptable Program Loan (APL) Project, 27 Jun. 2014, p. viii, <https://documents1.worldbank.org/curated/en/545191468349818537/pdf/ICR29160P078380IC0disclosed07020140.pdf>.

Allowing these concerns that touch upon KIIDP-1 activities, lessons, indicators and triggers within the scope of a Panel investigation is therefore necessary to ensure a comprehensive investigation that is able to draw real conclusions regarding what went wrong. Just as complainants' concerns relate to actions under both investments, a comprehensive understanding of what went wrong can only be achieved through a review of the full KIIDP program (cumulatively, "the Project").

II. Requesters have valid claims to their land and should be compensated accordingly.

We understand that KCCA has claimed that the Requesters live in a protected wetland, and contend that the 3rd December, 2020 eviction notices and associated evictions were unrelated to the KIIDP-2 project. These claims are false. First, the requesters have legitimate interests in the land that are impliedly and expressly acknowledged by both KCCA and the Buganda Land Board. Second, KCCA in its own correspondence confirms the requesters' narrative that the evictions were related to the project. Third, the timing of the December 2020 evictions and the Ugandan government's failure to treat the area as a protected wetland through their own actions suggest that their claim regarding the protected wetland status of the area is little more than a pretext for illegally evicting residents without compensation.

As recently as earlier this year, the Buganda Land Board has continued to validate requesters' land holdings. Residents pay annual rent for their land for which they receive receipts from the Board.²¹ At the request of KCCA, recently many even had to pay significant sums to the Board to obtain documentation proving Kibanja land ownership.²² These documents from the Buganda Land Board confirm that requesters are affected by the Lubigi drainage channel, and call on KCCA to compensate requesters for the loss of their land in accordance with the project's approval requirements.²³ Letters from the local chairperson to KCCA on behalf of individual residents also echo these sentiments, stating that the Local Council has "no knowledge of any encumbrance or dispute" on the land. The Buganda Land Board (BLB) and Local Council continue to affirm requesters' claims to their land, while NEMA and KCCA have failed to provide community members with any documentation to the contrary. In fact, NEMA and KCCA previously acknowledged the need to compensate Bibanja holders. An Environmental and Social Impact Assessment Report, commissioned by KCCA and prepared by SMEC, states that on the 24th November 2015, BLB officials met to discuss compensation for those on Kabaka's land affected by the project.²⁴ This report was approved by NEMA and endorsed by the World Bank.

²¹ Annex C - Receipts of payment of Busuulu (examples).

²² Annex L - Buganda Land Board registration confirmation (examples).

²³ Annex L - Buganda Land Board registration confirmation (examples).

²⁴ The Environmental-and-Social-Impact-Assessment-Report at p.116.

KCCA has argued that requesters' titles are invalid because of government directives cancelling land titles in wetlands areas.²⁵ However, these directives rest on unstable legal footing. First, government actors have failed to clarify whether these residents' land titles actually fall within those to be cancelled by the wetlands directives. Second, Ugandan law, and particularly the constitution of Uganda, provides for due process and just compensation when taking land for a public purpose yet no due process has been followed in the Requesters' case.²⁶

When the government deprives its citizens of their fundamental right to property, Ugandan law places the onus on the government to provide landowners with clear evidence justifying the taking of their land. But the government has yet to sufficiently clarify the legal status of land titles in Kawaala Zone II. To our knowledge, the National Environment Management Authority (NEMA) has failed to publicly disclose information on the precise boundaries of designated wetlands or which specific land plots the cancellation of titles will apply to, nor has it made such information available to individual landholders in Kawaala Zone II. Residents of Kawaala Zone II should not have to pay the price for this lack of clarity--losing their homes, land, livelihoods, and right to compensation without a transparent explanation.

Internal government documents do not offer more clarity on the status of land titles in the area. A leaked, confidential letter from NEMA Executive Director Tom Okurut to the Executive Director of KCCA regarding the cancellation of titles on wetlands in 2018 provided no specific mention of Kawaala Zone II.²⁷ While the letter specified plot numbers for land titles to be cancelled in other wetlands areas, with regard to the Lubigi Section, the document only vaguely stated that "degraded sections of the wetland should be restored."²⁸ The letter did not provide a further breakdown of the Lubigi Section, which is notably large and encompasses multiple neighborhoods around Kampala. Moreover, the full document, dated March 28, 2018, was never shared with the community and is written in English, a language most community members do not understand.²⁹

KCCA and NEMA have failed to follow any of the procedures required under Ugandan law to issue a wetlands restoration order. The alleged restoration order of the Lubigi Section

²⁵ Annex G - Letter from KCCA Legal Officer to LC1 Chairman Kawaala Zone II, Re: Symptomatic Intent to Forcefully Evict the Presumed Affected Residents Along Lubigi Channel from their Individual Pieces of Land and Destroying Property Thereon with Impunity, January 19, 2021.

²⁶ The government argues that all land titles acquired in wetlands areas after 1995 are invalid, and thus such a process is not required. However, serious questions have been raised about the constitutionality of canceling titles that have been duly issued by competent authorities without any mandated process or compensation. "Cancelling Wetland Land Titles," New Vision (May 23, 2014), https://www.newvision.co.ug/new_vision/news/1341030/cancelling-wetland-land-titles.

²⁷ Annex M - Letter from NEMA Executive Director to KCCA Executive Director, Re: Cancellation of Titles in Wetlands on Public Lands, March 28, 2018.

²⁸ Annex M - Letter from NEMA Executive Director to KCCA Executive Director, Re: Cancellation of Titles in Wetlands on Public Lands, March 28, 2018, p. 7.

²⁹ Following local protest of the December 2020 eviction notices, a copy of only the first page of this letter was sent to the LC1 in January 2021. This page included no reference to the relevant area where Kawaala Zone II is located.

issued in the abovementioned government directives does not conform with Ugandan law.³⁰ Under the law in effect at the time the directives were issued, NEMA was required to undertake a thorough set of procedures in order to legally enact a wetlands restoration order, including:

- *Notice and a chance to correct:* Where it appeared to the authority (NEMA) that harm had been or was likely to be caused to the environment by an activity by any person, it served on that person an environmental restoration order requiring that person to take action to remedy the harm to the environment as specified in the order within twenty-one days.³¹
- *An opportunity to dispute the restoration order:* At any time within twenty-one days after the service of an environmental restoration order, a person upon whom the order had been served could give reasons in writing, and request the authority to reconsider that order.³² Where a request was made for reconsideration, the authority was required within thirty days after the receipt of the request, to reconsider the environmental restoration order and notify in writing the person who made the request of his or her decision on the order.³³ Upon reconsidering the case, NEMA would confirm, vary, suspend or withdraw the environmental restoration order.³⁴
- *A fair hearing:* The law also required the authority to give a person who requested a reconsideration of an environmental restoration order the opportunity to be heard orally before a decision was made.³⁵

Since the restoration was never served on the community members, they never got the opportunity to be heard to have it varied, suspended or withdrawn.

Additionally, the alleged restoration order in NEMA's letter does not conform with the statutory particulars of a lawful restoration order. Specifically, it falls short of the 7 (seven) statutory requirements. The said 'restoration order of Lubigi Section' does not specify: (1) the activity to which it relates;³⁶ (2) the person or persons to whom it is addressed;³⁷ (3) the time at which it comes into effect;³⁸ (4) the action which must be taken to remedy the harm to the environment and the time, being not less than thirty days or such further period as may be prescribed in the order, within which the action must be taken;³⁹ (5) the powers of the executive director to enter land and undertake the action specified in paragraph;⁴⁰ (6) the penalties which may be imposed if the action specified is not undertaken;⁴¹ and (7) the right of the person served with an environmental restoration order to appeal to the court against that order.⁴²

³⁰ At the time the then Executive Director, Dr. Tom O. Okurut the old law, National Environment Act Cap. 153 was in force.

³¹ Section 68 of National Environment Act Cap. 153

³² Section 69 (1) of the National Environment Act Cap. 153

³³ Section 69 (3) of the National Environment Act Cap. 153

³⁴ Section 69 (4) of the National Environment Act Cap. 153

³⁵ Section 69 (5) of the National Environment Act Cap. 153

³⁶ Section 68(2) (a) of the National Environment Act Cap. 153

³⁷ Section 68(2) (b) of the National Environment Act Cap. 153

³⁸ Section 68(2) (c) of the National Environment Act Cap. 153

³⁹ Section 68(2) (d) of the National Environment Act Cap. 153

⁴⁰ Section 68(2) (e) of the National Environment Act Cap. 153

⁴¹ Section 68(2) (f) of the National Environment Act Cap. 153

⁴² Section 68(2) (g) of the National Environment Act Cap. 153

As a public functionary, KCCA is expected to provide a paper trail (evidence) proving compliance with the processes under Sections 68-69 as outlined above. Yet in this case, none of these steps has been taken. If the restoration order had been properly served on individual community members, they likely would have not only applied for reconsideration, but also exercised their individual right to appeal the decision arising from the reconsideration. Although the relevant legal framework has been updated since the time the directives were issued, it is not a surprise that even in the current legal regime the safeguards for a right to be heard prior to the implementation of the restoration were re-enacted in the National Environment Act, 2019. Under the current law, if someone (in this case the people of Kawaala) were dissatisfied with the environmental restoration order, then they would apply to NEMA to review the environmental restoration order within twenty-one days after the receipt of the order.⁴³ Where a request for review has been made, NEMA shall, within fourteen days of receipt of the request, give the person who has requested the review an opportunity to be heard, orally or by submission of documentary evidence.⁴⁴ The Authority then constitutes a committee to review a request placed before it.⁴⁵ Subsequently, the constituted committee hears the matter and makes a report of its findings and recommendations to the Executive Director within thirty days from receipt of the request.⁴⁶ Then, the Executive Director may, acting on the findings and recommendations of the committee and with a statement of reasons for the decision, confirm, vary, suspend, or withdraw the environmental restoration order;⁴⁷ and notify, in writing, the person who made the request of the Authority's decision on the restoration order.⁴⁸ Finally, where a person on whom an environmental restoration order has been served fails, neglects, or refuses to take the action required by the order, or where the Executive Director does not review the order in favour of the applicant, the Authority (NEMA) or authorised officer, may, within a period specified in the environmental restoration order or such further period as the Authority may determine. Therefore, furnishing the letter issued⁴⁹ in itself is not satisfactory.

III. KCCA's efforts to evict requesters are driven by the KIIDP-2 Lubigi drainage channel expansion, not separate concerns related to the protection of wetlands.

The attempted evictions of requesters in December 2020 were effectively an effort to make way for the Lubigi drainage channel expansion. Circumstances on the ground highlight the linkages between these evictions and the drainage project, separate and apart from any wetlands

⁴³ Section 132 (1) of the National Environment Act 2019.

⁴⁴ Section 132 (3) of the National Environment Act 2019. For conceptual clarity, it should be read together with Article 42 of the 1995 Constitution of the Republic Uganda (As amended). The constitutional provision requires 'any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.'

⁴⁵ Section 132(4) of the National Environment Act, 2019.

⁴⁶ Section 132(5) of the National Environment Act, 2019.

⁴⁷ Section 132(6)(b) of the National Environment Act, 2019.

⁴⁸ - Section 132(6)(b) of the National Environment Act, 2019.

⁴⁹ The letter Referenced NEMA/4.2.5 and dated 28th March, 2019.

designation. First, KCCA tried to evict community members from the drainage channel project site immediately before construction of the channel was set to begin. A World Bank implementation status report for KIIDP-2 from December 14, 2020, less than two weeks after KCCA distributed the eviction notices, confirmed that the contractor for Lubigi and Nakamiro channels had mobilized and was on the ground at that time.⁵⁰ Even if the evictions were carried out under the guise of clearing the wetlands, the timing and location of the evictions corresponds with the requirement to clear the area ahead of KIIDP-2 construction. Additionally, the evictions of Kawaala Zone II community members were conducted by KCCA, not NEMA. Ugandan law vests authority to manage wetlands to NEMA,⁵¹ and NEMA's own leaked letter assigned eviction related tasks to NEMA, the Ministry of Water and Environment (MWE), and the Ministry of Internal Affairs (MIA).⁵² The area's wetlands status continues to serve as a convenient pretense for evicting residents in the path of infrastructure projects, which in turn, only further threaten the health and function of the wetlands.

Furthermore, the government's own actions show that it does not respect environmental regulations in the area, providing further evidence that the wetlands designation was little more than a pretext for evicting residents from Kawaala Zone II ahead of the drainage channel expansion. The governing principles set forth in Uganda's wetlands regulation require that wetland resources "be utilised in a sustainable manner compatible with the continued presence of wetlands and their hydrological functions and services."⁵³ Yet multiple government infrastructure projects have been constructed in the area in recent years, such as the Northern Bypass and Lubigi sewage treatment plant. The World Bank's Urban Environmental Profile of Kampala warns that the Northern Bypass "has encroached on the wetlands, altered hydrological function and threatened the loss of biodiversity of plant species due to the impact of limestone on water chemistry," and the sewage treatment plant has resulted in further loss of wetlands area.⁵⁴ Even the KIIDP drainage channel is expected to impact local hydrology. The same World Bank document explains that the Lubigi Channel drainage project has already "altered vegetation, soil and hydrological functions of a section of the wetland system."⁵⁵

⁵⁰ World Bank Implementation Status & Results Report, Second Kampala Institutional and Infrastructure Development Project (December 14, 2020), <https://documents1.worldbank.org/curated/en/392691607956639728/pdf/Disclosable-Version-of-the-ISR-Second-Kampala-Institutional-and-Infrastructure-Development-Project-P133590-Sequence-No-14.pdf>.

⁵¹ See e.g., The National Environment (Wetlands, River Banks and Lake Shores Management) Regulations, January 21, 2000, § 2, https://nema.go.ug/sites/all/themes/nema/docs/wetlands_riverbanks.pdf.

⁵² Annex M - Letter from NEMA Executive Director to KCCA Executive Director, Re: Cancellation of Titles in Wetlands on Public Lands, March 28, 2018, p. 10.

⁵³ The National Environment (Wetlands, River Banks and Lake Shores Management) Regulations, January 21, 2000, § 5 Principles, https://nema.go.ug/sites/all/themes/nema/docs/wetlands_riverbanks.pdf.

⁵⁴ World Bank Group, "Promoting Green Urban Development in African Cities: Kampala, Uganda Urban Environmental Profile," p. 2, 16, September 2015, <https://documents1.worldbank.org/curated/en/172411468190763021/pdf/100090-REVISED-P148662-Report-Kampala-UPEP-Final-September-2015.pdf>.

⁵⁵ World Bank Group, "Promoting Green Urban Development in African Cities: Kampala, Uganda Urban Environmental Profile," p. 2, September 2015,

These detrimental impacts are also borne out by the community's own experience. Requesters have experienced a marked increase in flooding in the local area since the drainage channel was constructed under KIIDP-1 and many Requesters report that it has moved sand, sewage and other debris onto their land and changed the leveling of their land. According to evidence shared by Requesters during the eligibility phase consultation meetings, the unprofessional execution of infrastructure projects (such as construction of the Northern Bypass and the Lubigi Sewage treatment plant) without proper drainage systems have forced run-off water to collect on the requesters' land. This exacerbates the flooding caused by the unlawful diversion of the channel, which carries more than 400 cubic meters of water through the requesters' land. Requesters are not certain whether KCCA even received the required approvals from relevant government agencies to proceed with this project given its environmental impacts.⁵⁶ While the government attempts to paint a picture of communities encroaching on protected wetland areas, their own large-scale infrastructure projects continue to impose "significant negative impacts on wetlands quality and function" in precisely the same area.⁵⁷ These impacts cast further doubt on KCCA's argument that the attempted evictions of Kawaala Zone II residents were driven by an effort to protect a delicate wetland environment, as opposed to the need to clear the area ahead of drainage channel works.

IV. KCCA's 30th November 2016 cut-off date should not apply to community members in Kawaala Zone II because they were not properly consulted or informed about the KIIDP-2 project or made aware of the cut-off date.

OP 4.12 instructs Bank clients to identify "cut-off dates," after which new residents to a project affected area are no longer eligible for compensation and other forms of resettlement assistance.⁵⁸ The cut-off date is typically the date the census of the affected population begins, but could also be the date the project area was delineated before the census.⁵⁹ Merely setting a cut-off date, however, is not enough. Bank policy requires effective, systematic, and continuous public dissemination of the information to inform current residents and prevent further population influx. KCCA's 30th November 2016 cut-off date for KIIDP-2 does not meet these requirements and is therefore invalid, at least with respect to the area of the drainage channel running through Kawaala Zone II. Community members in Kawaala Zone II were not properly included in the 2016 census that serves as the basis for the cut-off date. The date the project area

<https://documents1.worldbank.org/curated/en/172411468190763021/pdf/100090-REVISED-P148662-Report-Kampala-UEP-Final-September-2015.pdf>.

⁵⁶ National Environment Act, No. 5 of 2019, § 55,

[https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act.%202019%20\(1\).pdf](https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act.%202019%20(1).pdf); see Regulations 3(I)(b) & 10(1)(b) of 1998 Statutory Instruments to the Uganda Gazette No. 52 Volume XCI dated 21st August, 1998; Reg. 3, 5, 6, and 10 of the Water Resources Regulations, 1998.

⁵⁷ World Bank Group, "Promoting Green Urban Development in African Cities: Kampala, Uganda Urban Environmental Profile," p. 2, September 2015,

<https://documents1.worldbank.org/curated/en/172411468190763021/pdf/100090-REVISED-P148662-Report-Kampala-UEP-Final-September-2015.pdf>.

⁵⁸ OP 4.12 ¶ 16, <https://ppfdocuments.azureedge.net/1572.pdf>.

⁵⁹ OP 4.12 ¶ 16 footnote 22, <https://ppfdocuments.azureedge.net/1572.pdf>.

was delineated does not provide an alternate basis for this cut-off date because the path of the drainage channel has not been marked or delineated in the community. Moreover, KCCA did not notify community members in Kawaala Zone II of this cut-off at the time of their census or in the years since.

Requesters did not participate in a 2016 census process, nor were they offered compensation through any such process, and therefore the claimed 30th November 2016 cut-off that was established based on this census should not apply to the Requesters. KCCA justifies this cut-off date by asserting that a “full census” of affected persons and valuation of their assets was completed by the cut-off date, and that each PAP signed a valuation form listing the cut-off date.⁶⁰ But this logic falls short with respect to Kawaala Zone II community members, who were excluded from these surveying and valuation processes in 2016.⁶¹ The Kawaala Zone II community first learned of general plans to expand and construct phase 2 of the Lubigi drainage channel in or around August 2013, when a delegation of KCCA representatives came to the community. But more than seven years have passed between that time and the December 2020 attempted evictions and in that time complainants barely received any information about the project. OP 4.12 envisions that PAPs will develop an understanding of the cut-off date and its implications during the census and valuation process, but because community members in Kawaala Zone II were not afforded this opportunity, imposing the 2016 cut-off date on them is both illogical and unjust.

A valid cut-off date also requires effective, systematic, and continuous dissemination of relevant information to affected communities.⁶² KCCA’s RAP includes aspirations for such widespread communication, including advising PAPs during household surveys, holding community sensitization meetings, and posting documentation throughout the project area.⁶³ In reality, however, community members in Kawaala Zone II have reported very few opportunities to meet with KCCA locally in the five years since the claimed cut-off date. When KCCA has provided community members with documents and forms to sign, they have been written in English, which illiterate and semi-literate community members do not understand. KCCA has not explained these documents at the time of signing and their purpose and contents remain equivocal to the mostly illiterate community members.⁶⁴ Moreover, the project site itself could not have provided community members with an alternate indication of the cut-off date. Even five years after KCCA’s official census, the proposed path of the channel expansion has not been clearly demarcated along the entire route, and community members are still uncertain of its exact parameters.⁶⁵ This is not the first time that KCCA failed in its obligations to communicate a cut-off date effectively and delineate the project area; similar issues were a documented problem

⁶⁰ RAP § 0.6, p. 11 and § 3.3.2.2, p. 34, https://www.kcca.go.ug/media/docs/Final%20Drainage_RAP_Report.pdf.

⁶¹ Even if these activities had taken place, we can argue they are unlikely to qualify as “systematic and continuous dissemination” of the cut-off date envisioned under op 4.12 Sect. 16.

⁶² OP 4.12 ¶ 16 footnote 22, <https://ppfdocuments.azureedge.net/1572.pdf>.

⁶³ RAP § 0.7 p. 11, § 3.2, p. 29, and Table 5, p. 53, https://www.kcca.go.ug/media/docs/Final%20Drainage_RAP_Report.pdf.

⁶⁴ Request for Inspection, p. 7, <https://www.accountabilitycounsel.org/wp-content/uploads/2021/07/wr-ac-complaint-public-versiondocx-1.pdf>.

⁶⁵ Request for Inspection, p. 27, <https://www.accountabilitycounsel.org/wp-content/uploads/2021/07/wr-ac-complaint-public-versiondocx-1.pdf>.

throughout the KIIDP-1 project.⁶⁶ Without continuous dissemination of information or demarcation of the project route in the five years after the cut-off date, it is unreasonable to place the onus on local community members to understand exactly which areas have been allegedly “acquired” for the project and which have not. This is especially true given that the entire local area is traditional Mailo land. Given that PAPs in Kawaala Zone II did not have effective notice of the project’s 30th November 2016 cut-off date--and have only been minimally informed about the project since late 2020--this cut-off date cannot be fairly applied to this community.

V. Conclusion

We trust that these additional arguments will clarify certain points raised in the complaint and issues relevant to the Panel’s upcoming eligibility decision. If you have any questions, please do not hesitate to contact us at any time.

Sincerely,

Representatives of the Requesters

⁶⁶ KIIDP-2 Project Appraisal Document, 25 Feb. 2014, ¶ 80 at p. 23, <https://documents1.worldbank.org/curated/en/504911468115450273/pdf/PAD8000P133590010Box382156B00OUO090.pdf>.