

Our Ref: 26<sup>th</sup> October, 2018

Your Ref:

Date:

Road Contractors  
Civil Engineers  
Mechanical Engineers  
Piping and Process  
Structural Steel



Natacha Foucard,  
Officer in Charge  
Special Procedures Branch  
Office of the High Commissioner for Human Rights,  
NAIROBI

Dear Madam,

**Re: Joint Communication from Special Procedures, Office of the High Commissioner for Human Rights.**

We refer to your email dated 26<sup>th</sup> October, 2018 and wish to respond as follows:

We reiterate our letter dated 26<sup>th</sup> July, 2018 that we are employed by the Government of Kenya through the Kenya Urban Roads Authority (KURA), the Employer, for the Construction to Bitumen Standard of Ngong Road - Kibera - Kungu Karumba- Langata Road Link (MI 12) Road.

The Kenya Urban Roads Authority vide section 9 of the Kenya Roads Act has the mandate to prepare the road works programs and also to liaise and co-ordinate with other road authorities in planning and on operations in respect of roads among others.

As such, Kenya Urban Roads Authority has the obligation to provide the Right of Way (ROW) under which the road is to be constructed. The selection of the road, removal of obstacles and human resettlement is within the sole responsibility of Kenya Urban Roads Authority (KURA). Accordingly, the Environmental Impact Assessment (EIA) of the project is also done and approved by the Employer and its construction engineers with no reference to the contractor.

It is only after providing the Right of Way (ROW) that the contractor can commence the process of construction.

With regard to your specific accusations we responds as follows;

- i) We reiterate that H young has never been involved in the demolition of any structures whether permanent or temporary. Demolition was conducted by government agencies who are the only ones authorized to do so. All our

equipment is clearly marked with our logo and name and if you have any videos showing our company conducting the demolitions then we welcome you to present the same to us.

- ii) We reiterate that as contractors our obligations are set out in our various contractual documents and we are not obligated neither do we have the leverage to mitigate against the alleged human rights adverse impacts. We further advise that on your assertion on what the company should or should not have done in this case, we have no such right under the law and your accusations are unfounded. We have to assume that the Government being the custodian of the Law is already acting within the law.
- iii) We reiterate that the Environmental Impact Assessment and resettlement of the affected persons falls within the mandate of KURA. Our company was not privy to this discussions neither were we informed of what the government intended to do regarding the demolition.
- iv) The company has no leverage to interfere government actions or influence them in any form and we are under no obligation contractual or legal to prevent or mitigate government actions. Any attempt to do so would result in a breach of law or contractual obligations.
- v) You allege that we had a duty to conduct a human rights assessment in accordance with the Guiding Principles on Business and Human Rights. We are not investors. As contractors, we have no obligation to conduct a human rights due diligence or consult potentially affected stakeholders. Our contract does not provide for it and the Laws of Kenya do not require it. We reiterate that you are addressing your queries to the wrong entity and as such guidance should be sought from the government and its agencies.

In conclusion, it is our contention that your observations amount to unfounded accusations and condemnations of our action or lack thereof. We refute the same in their entirety as being ill informed or lacking in proof. We find it equally perturbing that you are using the process of corresponding with us as a tool of obtaining incriminating evidence of our activity or lack thereof.

In the circumstances we will not entertain any further correspondence on the subject matter.

Yours Faithfully,

FOR: H. YOUNG & COMPANY (E.A) LIMITED

  
VERONICA NJOKI  
COPORATE AFFAIRS OFFICER