

THE WORLD BANK INSPECTION PANEL: RESPONSE TO AMNESTY INTERNATIONAL'S BRIEFING PAPER ON BADIA EAST (SEPT 2014)

AND

AMNESTY INTERNATIONAL'S COMMENTS ON THE INSPECTION PANEL RESPONSES

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**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
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**FIRST PILOT ON EARLY SOLUTIONS: LAGOS METROPOLITAN DEVELOPMENT AND GOVERNANCE PROJECT (LMDGP):
WORLD BANK INSPECTION PANEL RESPONSE TO AMNESTY INTERNATIONAL'S CONCERNS RAISED IN ITS BRIEFING NOTE ON BADIA EAST (SEPT 2014)**

INTRODUCTION

The Inspection Panel appreciates and thanks Amnesty International for its interest in our work and its support for accountability broadly. Amnesty's work in focusing the world's attention on the plight of the evictees in Badia East and its vigorous campaign in favor of their human rights is also praiseworthy.

The Inspection Panel case was based on a Request by the Social and Economic Rights Action Center in Nigeria (SERAC) alleging that the demolition of hundreds of homes in Badia East as part of a housing development project financed by the Lagos State Government "without prior consultation, notice, compensation or resettlement" led to the "impoverishment and insecurity" of thousands of people. It was alleged that this was a result of World Bank's failure to ensure that the Lagos Government complied with its commitments made under the Financing Agreement for the LMDGP even though the evictions were not financed by the Project itself.

After consulting with the Requesters and Bank Management, the Panel decided to consider this case under the new Pilot approach on the basis of the Action Plan provided by Bank Management and agreed by the community and their representative. The main concern and the focus of the Action Plan centered on the urgent need for compensation by the evictees, taking into account that the Project closed on the day the Request was received by the Panel and that the Lagos Government essentially perceived the evictees as illegal squatters.

As a result of the implementation of the Pilot and as of today, the great majority of affected people have received compensation, and Bank Management is committed to following up until the completion of the compensation process. This accomplishment was a result of the intense work by the Requesters and other community representatives, SERAC, Bank, and the Lagos State Government over several months. On July 10, 2014, the Requesters expressed their satisfaction with the Pilot and Bank Management formally committed to maintain oversight until the completion of all payments, to resolve all outstanding grievances, to facilitate participation in vocational training facilities, and to inform the Board on final implementation of the Resettlement Action Plan.

They also undertook to carry out a stand-alone case study to extract lessons learned from LMDGP in a more systematic manner, provide in-depth analysis of the modalities of urban sector engagements in a mega-city like Lagos, and make recommendations towards the structure and manner of engagement in such settings. On July 16, 2014, the Panel informed the Board that based on the satisfaction of the community members it would not register the case.

Below are the Inspection Panel's comments to the specific concerns raised by Amnesty International.

PEOPLE FORCIBLY EVICTED WERE PART OF A WIDER GROUP MEANT TO BENEFIT FROM A WORLD BANK FUNDED PROJECT

The evictions in Badia East were not directly caused by activities financed under the World Bank's LMDGP. The linkage between the evictions and the Project stems from a provision in the Project's Financing Agreement requiring that all city-wide upgrading projects in Lagos, regardless of their source of financing, be implemented in accordance with the principles of the Bank policy on Involuntary Resettlement. This important distinction is clearly recognized in the Request for Inspection letter submitted by the then Staff Attorney of SERAC. There was a fundamental difference in perception, however, between the Bank and the Borrower regarding the entitlements of affected people. The borrower Government considered slum dwellers illegal squatters not entitled to any compensation under the law.

The Panel in its publicly available Notice of Non-registration (NNR) to the World Bank's Board highlights the areas in which the RAP implementation fell short of the WB's Involuntary Resettlement Policy. The Board is thus aware of potential non-compliance and these issues have not been simply ignored.

CONSULTATION ON THE PILOT APPROACH

Amnesty's Report claims that the Pilot was developed between the Inspection Panel and Bank Management with little regard for comments received from civil society.

The Panel undertook a lengthy process of consultations on its draft Operating Procedures from which the Pilot approach emanates, including detailed questionnaires and interviews, with both internal and external stakeholders. Internal consultations are a part of due diligence in any transparent and objective process, and by no means can be interpreted as constituting a conflict of interest. The Inspection Panel is an independent mechanism, and as such, its Operating Procedures, and in this case, the Pilot approach, is adopted by the Panel based on careful consideration of all inputs from stakeholders. In the final analysis, the Panel's independent judgment led to the development of the Pilot approach.

The Pilot approach cannot be described as "a marked departure from the functions described in the Board Resolution that established the Panel." The Pilot approach does not alter the mandate and the function of the Panel, which is to hear requests for inspection from people who have been affected by actions or omissions by the Bank in non-compliance with its policies and procedures. Since the Pilot approach does not contain elements that amend the Panel Resolution or its Clarifications, the document describing the Pilot process was sent to the Board on an information basis. Sending it on an information basis in no way precludes the Board from expressing comments or even voicing objections. No objections were received from Board members, and recent interactions with them on the Lagos Pilot confirmed their overwhelming support for the efficacy of the approach.

Furthermore, it is important to note that the Pilot is to be applied on an exceptional basis and by no means intended to become the norm for processing Requests.

PRECONDITIONS FOR PARTICIPATION IN THE LAGOS PILOT

The Amnesty Report states that the Requesters agreed to participate in the pilot on the basis of three preconditions, of which at least one was not fulfilled by the World Bank. The Panel would like to clarify that the Requesters' Representative, in communication (email and telephone) with the Panel in November 2013, understood and agreed to the suggestion that the three pre-conditions, relating to the release of the RAPs and clarifications about the Grievance Mechanism, be taken up in the direct dialogue between Management and the Requesters under the aegis of the Pilot and the Panel proceeded on this basis. The Panel also wishes to state that the three pre-conditions raised by the Requesters were noted in the Panel's Notice of Receipt.

INADEQUATE FINANCIAL ASSISTANCE RATHER THAN COMPENSATION

The Pilot process resulted in prompt payment to over 9,000 evictees, and we consider this to be a good outcome particularly in a context in which the evictees are considered illegal squatters under local law.

Of particular significance, we are not aware of any instances in which the Lagos State Government has provided compensation to evictees for an eviction caused by a project financed by them, establishing their own structures and processes such as the Technical Committee and a grievance redress process, as was the case here, and this creates an important precedent with the possibility for a longer term impact.

Under the very specific circumstances of this Pilot (the Project was closed the same day the Request was received, both the Federal and the Lagos State Governments were unwilling to recognize "squatters" as having any rights, the eviction did not take place as part of the Project), the Panel's judgment was that a lengthy process of investigation would not yield improved outcomes for the Requesters.

THE RAP PROCESS CONTRAVENES BANK POLICY

The Panel concurs with Amnesty's assessment that the RAP process was inadequate. The Panel's NNR informed the Board the ways in which the RAP implementation fell short of Bank Policy on Involuntary Resettlement, including the lack of prior socio-economic studies including a census, lack of proper consultations, etc. The Panel has stated that by definition, a retroactive RAP is deficient of the necessary features for orderly resettlement to take place and therefore falls short of Bank policy.

THE PANEL DID NOT REGISTER A REQUEST THAT MET ELIGIBILITY REQUIREMENTS

As spelt out in the Board document outlining the Pilot process, its purpose is to create an opportunity to redress an alleged harm, based on the implementation of an Action Plan agreed upon between the Requesters and Bank Management beforehand, thus delaying a decision on whether or not to register a case. It is understood that the Pilot is implemented to respond to Requests that meet the admissibility criteria. A Pilot cannot be initiated unless the Requesters wish to proceed in this manner. The Pilot is concluded, and the case is not registered, upon receipt of a written communication from the Requesters that they are satisfied with the results of the process. These conditions were met in the present case.

CONCLUDING REMARKS

On September 3, 2014, the Inspection Panel briefed the Committee on Development Effectiveness (CODE) of the World Bank Board on this first Pilot experience. The briefing outlined the implementation of this first Pilot, together with its achievements, challenges, and lessons for future Pilots. As set forth in the publicly available document on the Pilot approach presented to the Board of Executive Directors in November 2013, the results and effectiveness of the Pilot will be assessed by the end of 2015.

In the Panel's view, the Lagos Pilot case proved to be both efficient and effective in redressing the grievances of affected people by focusing Bank efforts on solving the critical needs of thousands of evictees, while maintaining consistency with the Resolution that established the Inspection Panel. The Panel recognizes that there are important lessons for the application of future Pilot cases. These are noted in the NNR. The case also highlights the tremendous challenge of resettlement of slums in rapidly growing cities in a sustainable manner.

The full Notice of Non-Registration can be accessed through [http://ewebapps.worldbank.org/apps/ip/PanelCases/91-Notice%20of%20Non-Registration%20\(English\).pdf](http://ewebapps.worldbank.org/apps/ip/PanelCases/91-Notice%20of%20Non-Registration%20(English).pdf)

For complete set of documents on the case related to Nigeria Lagos Metropolitan Development and Governance Project, please go to this link: <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=94>

For more information about the Inspection Panel, please visit: www.inspectionpanel.org

The World Bank Inspection Panel's Early Solutions Pilot Approach: Comments on the Panel's Response to Amnesty International's Briefing on Badia East

On 2 September 2014, Amnesty International issued a briefing paper: *The World Bank Inspection Panel's Early Solutions Pilot Approach: The Case of Badia East, Nigeria*. The Badia East case involved the forced eviction of some 9,000 people. The Inspection Panel has provided a response to the issues raised in this briefing (included above in this document).

Amnesty International welcomes efforts to provide "early solutions" to victims of human rights abuses and it recognizes that the World Bank's engagement following the Badia East evictions secured some financial assistance for affected communities. However, Amnesty International continues to have serious concerns about the manner in which the Early Solutions Pilot was implemented in Badia East.

Amnesty International notes the following in relation to the Panel's response on the Badia East case.

The Panel's statement that the evictions in Badia East were not directly caused by World Bank financed activities

Those forcibly evicted at Badia East were part of a wider group of people intended to benefit from a World Bank-funded project: they were part of the identified beneficiary population. In addition, the financing agreement between the Bank and the government of Nigeria required Lagos state to apply the World Bank's Resettlement Policy Framework in all resettlement taking place in Lagos. The fact that the Bank intervened with the Lagos state government over the evictions specifically on the need

to remedy the situation, demonstrates that the Bank accepted it had responsibility in respect of the Badia East evictions.

Following the Bank's intervention the Lagos state government agreed - in April 2013 - to provide the affected people with compensation under a retrospective Resettlement Action Plan (RAP). Furthermore the RAP which was to be prepared by the government in line with the World Bank's Policy on Involuntary Resettlement was directly funded and approved by the World Bank.

The Panel's statement that the Pilot Approach resulted in a good outcome

The Pilot Approach was initiated in Nigeria in November 2013 after three people affected by the Badia East forced evictions filed a request with the Inspection Panel to investigate the case. The process concluded in July 2014 with a decision by the Panel not to register the complaint for full investigation. The Panel did this despite the fact that the outcome of the RAP was – by the Panel's own admission – significantly flawed and two out of the three requesters asked for investigation. The community was asked to accept a RAP, under which its members were not offered alternative housing they were not given promised support to restore lost livelihoods and they were not given adequate compensation for their losses.

The Panel has claimed that the Pilot Approach resulted in a good outcome, notwithstanding the facts that (a) the RAP was not consistent with World Bank standards and (b) the RAP effectively endorsed violations of international human rights law, to which Nigeria is a state party.

The Panel's basis for considering the outcome of the Pilot Approach to be positive is based on its view that the affected community did receive some financial assistance and given that the Lagos's state government regarded the evictees as illegal squatters without entitlement to compensation, this was positive.

While Amnesty International would agree that some financial assistance is better than nothing, characterising the Pilot Approach as a "success" on this basis comes dangerously close to endorsing human rights violations carried out by the Lagos State and supported by the Bank.

The implementation of the Pilot Approach at Badia East did not lead to adequate compensation. In fact after the Panel initiated the Early Solutions Pilot Approach, the Lagos state government reduced the amount of financial compensation it had already agreed with the communities before the Pilot had started.

Amnesty International also remains seriously concerned that:

- The Badia East residents who had asked for the Panel's intervention had agreed to participate in the Early Solutions Pilot Approach on the condition that they were given a copy of the draft Resettlement Action Plan (RAP). The Requesters had stated to the Panel that the draft RAP was essential for them to determine whether World Bank Management's Action Plan complied with World Bank safeguards requiring adequate alternative resettlement. However, the draft RAP was never provided to the Requesters or to the community at large. The community only saw the RAP after the negotiations had concluded.
- The Panel refused to register the Request for inspection even though it met the eligibility requirements. In its response to Amnesty International, the Panel claims that the Requesters had expressed satisfaction with the outcome of the Early Solutions Pilot in a written communication. However, as stated in the Panel's Notice of Non-Registration, two out of the three original Requesters expressed dissatisfaction with the outcome, while only one expressed

satisfaction. For a Request for Inspection to be eligible for registration, at least two affected people must make the request; this condition was met in the Badia East case.

- In its response, the Panel refers to eight community representatives, who were not the Requesters but who had represented the community in previous negotiations with the Lagos state government. While there may have been different views within the Badia East community on the resolution of the case, Amnesty International is concerned that the Panel selectively listed only those views that supported the closure of the Early Solutions Pilot Approach in Badia East. The Inspection Panel stated in its Notice of Non-Registration that during their visit to Lagos affected people whom they met expressed dissatisfaction with the process. Notably, they do not report that any of those they met told the Panel that they were satisfied.
- Although the Panel's Notice of Non-Registration recognizes as a major shortcoming that the RAP was prepared and implemented after the evictions rather than in advance, it fails to address the World Bank's additional failures to ensure the RAP complied with World Bank safeguard policies. The Notice of Non-Registration fails to point out that the World Bank formally approved a RAP that did not comply with World Bank policy. The Panel did not draw these specific omissions by the World Bank to the attention of the World Bank Board and by refusing to register the Request, it precluded an investigation into them.
- The Panel did not assess the World Bank's Management Action Plan to verify that it was consistent with World Bank safeguard policies. Nor did the Panel assess whether World Bank Management fully implemented this Action Plan. Amnesty International's briefing paper showed that the Action Plan was not fully implemented. In its response to Amnesty's briefing paper, the Panel did not contest these concerns.
- The Panel claims that an investigation would not have yielded improved outcomes for the Requesters. However, the Panel's Board-approved mandate requires it to consider whether a Request is eligible for investigation. If the Panel were to consider that the outcome of the Early Solutions Pilot Approach was likely to be more beneficial, at the very least this should have been discussed and agreed with those requesting the Inspection.

In Amnesty International's view, the Early Solutions Pilot Approach legitimized a process which led to violations of the right to an effective remedy for communities who had already been subjected to a forced eviction. As mentioned, Amnesty International welcomes the Panel's initiative to encourage early solutions to problems that arise in the context of World Bank projects. However, such efforts should not lead to situations in which the Panel – as it did in this case – tacitly legitimized the denial of human rights.

The Early Solutions Pilot Approach should be significantly revised based on the lessons learned from Badia East case. Any effort to provide early solution should be underpinned by robust principles such as:

(a) Legitimacy and independence: enabling trust from the stakeholder groups for whose use the processes are intended;

(b) Accessibility: being known to all stakeholder groups for whose use the processes are intended, and providing adequate assistance for those who may face particular barriers to access;

(c) Predictability: providing a clear and known procedure with an indicative time frame for each stage of the process, and clarity on the types of process and outcome available and means of monitoring implementation;

(d) **Equitability:** seeking to ensure that those using the processes have access to all relevant information, advice and expertise necessary to engage in a remedial processes on fair and informed terms. The process should aim as far as possible to offset power imbalances;

(e) **Transparency:** keeping those using the process, and their representatives, informed about progress in their case, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness;

(f) **Rights-compatible:** ensuring that the process and the outcomes are consistent with internationally recognized human rights and World Bank safeguards policies;

(g) **Enforceability:** recommendations by the accountability mechanism of appropriate steps to ensure remedy for affected persons should be implemented by the World Bank Board; and

(h) **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

In light of the problems documented in relation to the Badia East case, Amnesty International advocates that the Early Solutions Pilot Approach should not be used again until it is revised and calls on the Boards of Directors of the Bank to ensure an independent review is carried out as a matter of urgency without waiting for the review planned for the end of 2015.

Amnesty International has monitored forced evictions in Nigeria since 2009. It has conducted three research missions to Badia East to gather evidence and testimonies about human rights violations. Amnesty has met with affected persons, Lagos state government, local NGOs, the World Bank and the Inspection Panel. On the basis of this research, it has produced two reports and one briefing paper on Badia East.

Links to AI's work are provided below:

Briefing: The World Bank Inspection Panel's Early Solutions Pilot Approach: The case of Badia East, Nigeria, 2014, <http://www.amnesty.org/en/library/info/AFR44/018/2014/en>

Public statement: World Bank: Investigate Inspection Panel's Pilot Approach to Early Resolutions and its application in Badia East, Lagos, Nigeria, 2014, <http://www.amnesty.org/en/library/info/AFR44/020/2014/en>

Report: At the mercy of the government. Violation of the right of an effective remedy in Badia East, Lagos State Nigeria, 2014, <http://www.amnesty.org/en/library/info/AFR44/017/2014/en>

Press release: The Inspection Panel turns its back to forcibly evicted people in Nigeria, 2014, <http://www.amnesty.org/en/news/nigeria-world-bank-panel-turns-its-back-forcibly-evicted-community-2014-07-18>

Report: If you love your life, move out! Forced eviction in Badia East, Lagos State, Nigeria, 2013, <http://www.amnesty.org/en/library/info/AFR44/006/2013/en>