



## THE WORLD BANK INSPECTION PANEL'S EARLY SOLUTIONS PILOT APPROACH: THE CASE OF BADIA EAST, NIGERIA

In July 2014 the World Bank Inspection Panel, the Bank's complaints mechanism for people who believe that they have been, or are likely to be, adversely affected by a World Bank-funded project,<sup>1</sup> decided not to register a Request for Inspection made by people who had been subjected to a forced eviction in Badia East, Lagos, Nigeria.<sup>2</sup> The Panel's decision not to register the Request followed the use of a new approach - the 'pilot approach to support early solutions in the Inspection Panel process'. This briefing describes the background to the Request, the establishment of the pilot approach policy and its application to the Badia East Request.

### BACKGROUND TO THE CASE

On 23 February 2013 the Lagos state government sent bulldozers into Badia East, an informal settlement in Lagos, Nigeria, and demolished at least 266 structures that served as homes and businesses.<sup>3</sup> The demolitions affected 1,933 tenement households and 319 residential structure owners.<sup>4</sup>

None of the legal and procedural safeguards that are required under international human rights law and standards in relation to evictions were observed. There was no genuine consultation with the affected people to identify alternatives to eviction. The government failed to provide adequate notice, legal remedies, alternative housing for those unable to provide for themselves or compensation for the loss of property. No relief was provided to mitigate the effect of the eviction. Without adequate alternative housing and with their means of livelihood destroyed, many people had to depend on friends, family or the broader community for food, clothing, and shelter.<sup>5</sup>

The people who were forcibly evicted were part of a wider group of people meant to benefit from a World Bank-funded project, the Lagos Metropolitan Development and Governance Project (LMDGP), which aimed to increase access to basic services. Following the forced eviction, the World Bank intervened with the Lagos state government which agreed - in April 2013 - to provide the affected people with compensation under a Resettlement Action Plan (RAP). A RAP was to be prepared by the government in line with the World Bank's Operational Policy 4.12 on Involuntary Resettlement ('Involuntary Resettlement Policy')<sup>6</sup> and approved by the World Bank.

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<sup>1</sup> The Board of Executive Directors of the World Bank created the Inspection Panel in 1993. The World Bank Board is made up of World Bank Group's President and 25 Directors chosen by the World Bank's Member States. The objective of establishing the Panel was to promote accountability at the World Bank, give affected people a greater voice in activities supported by the World Bank that affect their rights and interests, and foster redress when warranted, (<http://ewebapps.worldbank.org/apps/ip/Pages/AboutUS.aspx>). The Panel can investigate complaints relating to two components of the World Bank, the International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA).

<sup>2</sup> The Inspection Panel, Request for Inspection Nigeria: Lagos Metropolitan Development and Governance Project (P071340), Notice of Non-Registration and Panel's Observations of the First Pilot to Support Early Solutions, 16 July 2014 (referred to 'Notice of Non-Registration'), (<http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=94>).

<sup>3</sup> Database of affected people created in May 2013 by a 10-person committee made up of Badia East residents and leaders.

<sup>4</sup> Reviewed Resettlement Action Plan (RRAP) for displaced persons in Badia East, November 2013.

<sup>5</sup> Interviews by Amnesty International with affected people, Badia East, 15 and 16 May 2013.

<sup>6</sup> <http://go.worldbank.org/96LQB2JT50>



The Lagos state government established a Technical Committee to develop the RAP. In August 2013, some community members were contacted by the Technical Committee inviting them to a meeting.<sup>7</sup> However, many other members attended this meeting and the Technical Committee asked those present to choose eight representatives. All those chosen as representatives were structure owners. No tenant was among the eight representatives even though tenants constituted the majority of the affected people. The limitations of community participation in the RAP process are discussed in depth in an Amnesty International report, *At the Mercy of the Government: Violation of the Right to an Effective Remedy in Badia East, Lagos State, Nigeria* (August 2014).

Between August and September 2013, the eight representatives engaged in negotiations with the Technical Committee. They agreed on a list of affected persons and on amounts of compensation for losses suffered. One of the community representatives refused to sign the agreement considering that the amounts were too low. The Lagos authorities prepared a draft RAP and shared it with the World Bank which gave it preliminary approval.<sup>8</sup>

On 30 September 2013, three people affected by the forced eviction asked the Social and Economic Rights Action Centre (SERAC), a Lagos-based NGO, to file a Request for Inspection with the World Bank Inspection Panel. The Request complained that people had not received any emergency relief, compensation or resettlement and that the process of developing the RAP lacked transparency and did not allow for genuine and inclusive participation of the community.<sup>9</sup>

## **THE PANEL'S ANNOUNCEMENT OF THE PILOT APPROACH AND ITS APPLICATION TO THE BADIA EAST REQUEST**

On 6 November 2013, the Panel announced a new 'pilot approach to support early solutions in the Inspection Panel process' ('pilot approach'):

[T]he Inspection Panel, Operations Policy and Country Services (OPCS) and Legal VPU [Legal Vice-Presidency Unit] have had several meetings and sought constructive new ways to support early solutions in the Panel process for both the people who request an inspection by the Panel and the World Bank. In this spirit, a pilot approach has been developed that offers opportunities to address and resolve requesters' concerns without immediately initiating a full-fledged Panel process.<sup>10</sup>

The pilot approach allows the Panel to postpone its decision on registration of a Request for Inspection to give the World Bank and the people who make the Request (referred to by the Panel as 'Requesters') time to resolve the issues between themselves.

According to the policy, the pilot approach can be applied to a Request if the Panel proposes it, and World Bank Management<sup>11</sup> and Requesters agree to it.<sup>12</sup> Under the pilot approach, World Bank Management has to provide the Panel with information on the steps it will take to address the harms alleged in the Request for Inspection and a timeframe for implementing them.<sup>13</sup> The Requesters should be able to consider this information before deciding on whether to engage in the pilot approach (and

<sup>7</sup> Amnesty International interview with community representatives, 28 April to 9 May 2014.

<sup>8</sup> Letter to Amnesty International from the World Bank sent from the World Bank Washington Office by the Acting Country Director for Nigeria, dated 20 May 2014.

<sup>9</sup> Request for Inspection: In the matter of the Lagos Metropolitan Development and Governance Project (Project ID: P071340), paras. 6 and 7.

<sup>10</sup> Piloting a new approach to support early solutions in the Inspection Panel process, p.1 (referred to as 'Piloting a New Approach'); available at (<http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/PilotingNewApproach.pdf>).

<sup>11</sup> In this briefing, World Bank 'Management' refers to staff of the World Bank that are part of or act under the direction of the World Bank's Senior Management.

<sup>12</sup> Piloting a New Approach, para. 4.

<sup>13</sup> Ibid, para. 4.



thus support postponing a decision on whether to register their Request).<sup>14</sup> The pilot approach policy recognises “the right of Requesters at any time to indicate that they are not satisfied [with the steps taken by World Bank Management] and would like the Panel to register their Request.”<sup>15</sup> The policy stipulates:

If the Requesters are satisfied that their concerns are being successfully addressed, and they so inform the Panel in writing, the Panel will not register the Request, and will issue a Notice of Non-Registration. In other cases, to be able to inform its judgment on whether to close the matter or register the Request, the Panel may visit the Requesters and the project area to have direct discussions. If the Panel decides to register the Request according to its normal process, it will outline the process undertaken to this point as well as the basis for registering in the Notice of Registration sent to the Board and Management.<sup>16</sup>

## **BOX: PUBLIC CONSULTATION ON THE PILOT APPROACH**

The pilot approach policy was developed by the Panel in consultation with two World Bank departments: Operations Policy and Country Services (OPCS) and the Legal Vice-Presidency Unit.<sup>17</sup> The World Bank’s Regional Units endorsed the pilot approach.<sup>18</sup> It was publicly announced and presented to the Committee on Development Effectiveness (CODE), a sub-committee of the World Bank’s Board of Executive Directors, on 6 November and was implemented from 11 November onwards in Badia East. A public consultation on the pilot approach policy occurred from 14 November 2013 to 15 January 2014.<sup>19</sup> The Panel received comments in January 2014 from 32 civil society organisations that were critical of the pilot approach and stated that it was vague, vested too much discretion with the Panel and created unnecessary ambiguity and unpredictability for Requesters.<sup>20</sup> It made no changes to the pilot approach policy following these comments.<sup>21</sup>

## **THE PANEL’S APPLICATION OF THE PILOT APPROACH TO THE BADIA EAST REQUEST**

The Panel received the Badia East Request for Inspection on 30 September 2013. It met with the World Bank Management to discuss the case.<sup>22</sup> The Bank described several actions and commitments which it and the Lagos state government were undertaking to address the situation of those evicted at Badia East.<sup>23</sup> The World Bank Management prepared a document, titled ‘Actions proposed by Bank Management’ (the ‘Management Action Plan’) dated 29 October 2013, which included a commitment that the World Bank would review the RAP and “ensure that it reflects the commitments made earlier and follow up on its disclosure to and consultation with the community.”<sup>24</sup> The earlier commitments referred to are commitments made by the Lagos state government to the World Bank to ensure the RAP

<sup>14</sup> Ibid, para. 3 (c).

<sup>15</sup> Ibid, para. 5 (b).

<sup>16</sup> Ibid, para. 8.

<sup>17</sup> Piloting a New Approach, p. 1.

<sup>18</sup> Ibid.

<sup>19</sup> The Inspection Panel, Update of the Panel Operating Procedures, (<http://ewebapps.worldbank.org/apps/ip/Pages/Panel-Operating-Procedures-Update.aspx>).

<sup>20</sup> Civil society comments on Inspection Panel Draft Operating Procedures, p. 2, (<http://www.accountabilitycounsel.org/wp-content/uploads/2014/02/Joint-CSO-letter-on-Inspection-Panel-OPs.pdf>).

<sup>21</sup> The pilot approach policy released in November 2013 was included without substantive changes in the Panel’s Operating Procedures dated April 2014.

<sup>22</sup> The Inspection Panel, Request for Inspection Nigeria: Lagos Metropolitan Development and Governance Project (P071340), Notice of Receipt of Request, 11 November 2013 (referred to ‘Notice of Receipt of Request’), p. 3.

<sup>23</sup> Notice of Receipt of Request, p. 3.

<sup>24</sup> Notice of Receipt of Request, Annex 1: Nigeria – Lagos Metropolitan Development and Governance Project, Actions proposed by Bank Management (referred to as ‘Management Action Plan’), para. 13 (b).



included skills training, micro-credit, and employment opportunities and that it would include entitlements to compensation consistent with, and using the same valuation methodology as, a previous RAP that had been developed in 2012.<sup>25</sup> (This referred to a RAP developed after 300 structures in Badia East had been demolished on 6 March 2012 by the Lagos state government to make way for the construction of a drainage canal. Under the 2012 RAP, 124 people were paid cash compensation).<sup>26</sup> The Management Action Plan also committed the World Bank to hire a consultant to provide assistance to the Lagos state government to ensure close adherence to World Bank resettlement policies.<sup>27</sup> The Panel provided the Management Action Plan to the Requesters and proposed the use of the pilot approach.<sup>28</sup>

On 7 November 2013, the Requesters, via the organisation representing them, SERAC, told the Panel that the Management Action Plan “unfortunately falls short of providing sufficient concrete information to enable us and the community to evaluate what is on the table and monitor progress over the coming month.”<sup>29</sup> They agreed to participate in the pilot approach on three conditions, one of which was the disclosure by World Bank Management of the most recent version of the RAP that was being developed in their case, as well as all associated documents relating to implementation of and the budget for the RAP, explaining:

It is particularly important for us and the community to be able to independently evaluate the revisions made [to the RAP] against the standards outlined in OP 4.12 [the World Bank Involuntary Resettlement Policy] requiring adequate alternatives to resettlement if resettlement is not on the table. For instance, does the package for tenants adequately enable them to resettle themselves in a situation where they will have security of tenure? Does the livelihoods support offered sufficiently offset the lack of resettlement?<sup>30</sup>

The Panel responded saying it would pass these information requests to World Bank Management. It informed the Requesters that the Panel had asked for a copy of the 2012 and 2013 RAPs, which World Bank Management had indicated it would provide.<sup>31</sup>

The Requesters informed the Panel they would be willing to engage in dialogue with World Bank Management once they had received the requested documents and information.<sup>32</sup> The Panel responded that the pilot would begin when the Panel notified the World Bank’s Board that it had received their request for inspection. It asked SERAC and World Bank Management to keep it informed of progress, “but otherwise [the Panel] will generally step back to give this direct dialogue its best opportunity for success in meeting the concerns of the community.”<sup>33</sup> The Panel also noted that the Requesters “have the right to inform the Panel at any time that you are not receiving a response to your questions and are not satisfied with the progress, and would like the Panel to register the Request.”<sup>34</sup>

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<sup>25</sup> Ibid, para. 8.

<sup>26</sup> Amnesty International, *At the Mercy of the Government: Violation of the Right to an Effective Remedy in Badia East, Lagos State, Nigeria* (19 August 2014) AI Index: AFR/44/O17/2014, p. 10.

<sup>27</sup> Management Action Plan, para. 16.

<sup>28</sup> Notice of Receipt of Request, p. 3.

<sup>29</sup> Notice of Non-Registration, Annex 3, Email from SERAC’s Attorney working on the Request to the Inspection Panel’s Executive Secretary, dated 7 November 2013.

<sup>30</sup> Ibid.

<sup>31</sup> Notice of Non-Registration, Annex 3, Email from the Inspection Panel’s Executive Secretary to SERAC’s Attorney working on the Request, dated 7 November 2013.

<sup>32</sup> Notice of Non-Registration, Annex 3, Email from SERAC’s Attorney working on the Request to the Inspection Panel’s Executive Secretary, dated 8 November 2013.

<sup>33</sup> Notice of Non-Registration, Annex 3, Email from the Inspection Panel’s Executive Secretary to SERAC’s Attorney working on the Request, dated 7 November 2013.

<sup>34</sup> Ibid.



On 11 November 2013, five days after announcing the pilot approach, the Panel announced that the pilot approach would be applied to the Badia East Request.<sup>35</sup> At this point, the information which the Requesters had made a condition of their participation in the pilot had not been disclosed. The World Bank did not provide the Requesters with the most version of the RAP, even though it had received a draft from the Lagos state government in September 2013.<sup>36</sup> It was not until the RAP was finalised in February 2014 that it was publicly released and therefore available to the Requesters. This was three months after the commencement of the pilot approach.

The pilot approach policy requires acceptance from the Requester before postponing registration.<sup>37</sup> In this case the Requesters agreed to participate in the pilot on the basis of conditions, at least one of which was not fulfilled by the World Bank.

## **INADEQUATE “FINANCIAL ASSISTANCE” RATHER THAN COMPENSATION**

On 20 November 2013, the Lagos authorities informed community representatives that they would not pay the amounts that had been agreed between the Technical Committee and the representatives during the negotiations. The state authorities unilaterally reduced the amounts and described them as ‘financial assistance’ rather than compensation; the basis for this distinction was the Lagos state government’s desire to avoid creating a precedent of providing “full compensation to people without land title and development permits”.<sup>38</sup>

Five of the community representatives told the authorities that the amounts offered as financial assistance were inadequate.<sup>39</sup> However, the Lagos authorities were unwilling to negotiate on the amounts. On 20 December 2013, after unsuccessful efforts to change the Lagos authorities’ position - the community representatives accepted the financial assistance. Community representatives told Amnesty International that they - and other affected people - were worried that they might end up getting nothing if they did not accept the inadequate financial assistance.<sup>40</sup> This financial settlement was agreed to in a context where those who had been forcibly evicted were desperate for resolution after nearly ten months of living in precarious situations with no assistance from the government.

That the financial assistance was inadequate was not only the opinion of the community. The World Bank had commissioned two independent appraisals of the financial assistance amounts offered by the Lagos state government. These appraisals were dated 16 December 2013. The Bank told Amnesty International that “the conclusion of the Bank-hired appraisers indicated that while the payment for the tenants are adequate, the offers for the owners of dwellings were lower than market rates by about a third.”<sup>41</sup> However, the valuation was based on a survey of rents and structures of accommodation comparable to Badia, an informal settlement, and not the cost of housing in areas of Lagos where the affected people, including both tenants and structure owners, would not be at risk of forced evictions. The World Bank shared this information with the community on 23 December 2013, three days after they had already accepted the inadequate financial assistance.

Responding to Amnesty International queries on the inadequacy of the financial assistance the Panel stated:

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<sup>35</sup> Notice of Receipt of Request, p. 1.

<sup>36</sup> Letter to Amnesty International from the World Bank Director for Nigeria, dated 4 November 2013.

<sup>37</sup> Piloting a new approach, para. 3 (c).

<sup>38</sup> Reviewed Resettlement Action Plan (RRAP) for displaced persons in Badia East, November 2013, p. 5 and p. 11. This document is available in the Annex to the Amnesty International report, ‘At the Mercy of the Government.’

<sup>39</sup> Meeting between the Lagos state government and the community representatives held on 20 November 2013.

<sup>40</sup> Interviews with community representatives, 28 April to 9 May 2014.

<sup>41</sup> Letter to Amnesty International from the World Bank sent from the World Bank Washington Office by the Acting Country Director for Nigeria, dated 20 May 2014.



We agreed and have stated in the Notice of Non-Registration that the compensation amounts were inadequate. However, under the totality of the circumstances ... the Panel's judgment was that an investigation in this case would not have resulted in better outcomes for the affected people.<sup>42</sup>

## THE RAP PROCESS CONTRAVENES WORLD BANK POLICY

The use of the pilot approach was based – in part - on the World Bank 'Management Action Plan' which included a commitment that the World Bank would review the RAP and “ensure that it reflects [certain] commitments”.<sup>43</sup> The Management Action Plan also committed the World Bank to hire a consultant to provide assistance to the Lagos state government to ensure close adherence to World Bank resettlement policies.<sup>44</sup>

Amnesty International has examined the RAP process in-depth and published its findings in a report released in August 2014: *At the Mercy of the Government: Violation of the Right to an Effective Remedy in Badia East, Lagos State, Nigeria*. This research concluded that the process of developing the RAP did not comply either with the World Bank's Involuntary Resettlement Policy or with international human rights standards.<sup>45</sup> Specifically, there was no genuine consultation with or meaningful participation by affected people or the community representatives during the development of the RAP; the Lagos state government unilaterally reduced the agreed compensation amounts; and a draft of the RAP was not publicly disclosed during negotiations, even though such disclosure is required under Article 22 of the World Bank's Involuntary Resettlement Policy. The RAP did not include livelihood assistance as required by the World Bank's Involuntary Resettlement Policy.<sup>46</sup>

The RAP fails to provide options for adequate alternative housing for affected people nor does it provide any evidence of the Lagos state government having identified and considered feasible options for providing affected people with adequate alternative housing and resettlement, even though such steps are required by the World Bank's Involuntary Resettlement Policy.<sup>47</sup>

On 27 January 2014 the World Bank approved the RAP.<sup>48</sup> Amnesty International has specifically asked

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<sup>42</sup> E-mail from Panel's Executive Secretary to Amnesty International, 27 August 2014. The circumstances to which the Panel referred in its email were that (a) “eviction was not part or caused by the project, (b) “the project was already closed” (c) “the Government of Lagos does not consider that ‘squatters’ have any legal rights, to name a few”. However (a) the Lagos state government had stated in a court case involving some affected people against the government that the location from which the people had been evicted was chosen for housing development because the area had been earmarked for regeneration/renewal under the LMDGP. This is discussed in Amnesty International's report, *At the Mercy of the Government*, p. 9; (b) In a letter from the World Bank Country Director for Nigeria to Amnesty International on 28 June 2013, the World Bank had informed Amnesty International that it had confirmed with the Lagos state government that even after the closure of the LMDGP, the Lagos state government's obligations under the financing agreement with the World Bank to implement the RAP would remain in effect and the World Bank would continue to monitor its implementation. It further stated in that letter: “This is important for sustaining the long term partnership between the World Bank and the Lagos State Government.”; (c) All people, including those living in informal settlements, have a right to adequate housing and the Lagos state government was also required under the LMDGP financing agreement to ensure that displaced persons are assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels.

<sup>43</sup> Management Action Plan, para. 13 (b).

<sup>44</sup> Management Action Plan, para. 16.

<sup>45</sup> See pp. 22-27.

<sup>46</sup> Paragraphs 2 and 6 (c) requires a RAP to include measures to ensure that affected people are offered support needed to restore their livelihood and standards of living.

<sup>47</sup> The World Bank's Involuntary Resettlement Policy requires consideration of options for providing adequate alternative housing and resettlement instead of cash compensation (para. 11) and that involuntary resettlement should be minimized (Policy Objective 2).

<sup>48</sup> Letter to Amnesty International from the World Bank Washington Office by the Acting Country Director for Nigeria, dated 20 May 2014.



the World Bank to explain how the Badia East RAP can be considered to be compliant with its Involuntary Resettlement Policy.<sup>49</sup> The World Bank asserted that the RAP is compliant,<sup>50</sup> but did not provide basis for this assertion.

## THE PANEL'S ENGAGEMENT WITH THE FINANCIAL ASSISTANCE PACKAGE AND RAP

The pilot approach policy requires the Panel to review the situation within three months after it decides to postpone registration of a Request for Inspection.<sup>51</sup> On 20 March 2014, the Panel issued an interim Note to the World Bank Board indicating that it would continue to postpone its decision on registration. It said that it had been informed by World Bank Management and the Requesters that an agreement on compensation payments had been reached but that "some practical issues remain."<sup>52</sup> (It is unclear whether the Panel was referring to inadequacies of the RAP or delays in disbursement of the financial assistance).

By March 2014, the Panel was under pressure from Amnesty International and other civil society organisations to address the inadequacies in the Badia East RAP.<sup>53</sup> On 29 May 2014, an Inspection Panel delegation visited Badia East where they met with six out of the eight community representatives, approximately 80 Badia East residents and SERAC.<sup>54</sup> The Inspection Panel subsequently noted that: "Many of the affected people interviewed by the Panel in Badia East complained that payments were totally insufficient for them to restore their previous livelihoods."<sup>55</sup> The Panel did not state whether any people interviewed expressed their satisfaction with the payments.

Through a letter dated 25 June 2014, two of the three people who had originally requested a Panel inspection informed the Panel that they had appointed a lawyer as their new representative.<sup>56</sup> In the letter they expressed their dissatisfaction with the RAP and the pilot approach and requested the registration of their Request for Inspection.<sup>57</sup> Their position was elaborated in a letter, dated 11 July 2014, sent by their lawyer to the Panel. This letter stated that the RAP did not provide for resettlement of displaced persons, that the financial assistance was inadequate to offset the harms suffered, and that the draft RAP had not been disclosed to affected persons so as to enable them to be properly consulted.<sup>58</sup> The lawyer's letter was accompanied by a letter of support from 41 affected people.<sup>59</sup> In addition, five community members participated in a video message to the Panel, posted online on 13 July 2014, in which they request registration of the Request for Inspection.<sup>60</sup>

On 10 July 2014, the Panel received an email message from SERAC stating that the Badia East community was satisfied with the pilot approach and the implementation of the RAP.<sup>61</sup> This letter was accompanied by a letter bearing the signatures of five community representatives and the third

<sup>49</sup> Amnesty International letter to the World Bank Director for Nigeria, dated 15 May 2014.

<sup>50</sup> Letter to Amnesty International from the World Bank sent from the World Bank Washington Office by the Acting Country Director for Nigeria, dated 20 May 2014.

<sup>51</sup> Piloting a New Approach, para. 8.

<sup>52</sup> The Inspection Panel, Request for Inspection Nigeria: Lagos Metropolitan Development and Governance Project (P071340), Interim Note, 20 March 2014, p. 1.

<sup>53</sup> For example, see Amnesty International, Public Statement, 28 March 2014, Index No: AFR 44/003/2014, Nigeria: The World Bank rubber stamps flawed Resettlement Action Plan for Badia East (<http://www.amnesty.org/en/library/info/AFR44/003/2014/en>).

<sup>54</sup> Notice of Non-Registration, paras. 14-16.

<sup>55</sup> Notice of Non-Registration, para. 27 (g).

<sup>56</sup> Notice of Non-Registration, para. 10.

<sup>57</sup> Notice of Non-Registration, Annex III: Letter by two Requesters to the Executive Secretary of the Panel, dated 25 June 2014.

<sup>58</sup> Notice of Non-Registration, Annex III: Memorandum in Support of Request for Registration of IPN Request 13/09.

<sup>59</sup> The letter of support was sent via e-mail by the lawyer for the two Requesters on 14 July 2014 to the Chair of the Inspection Panel.

<sup>60</sup> The video message is available at: (<https://vimeo.com/100676384>).

<sup>61</sup> Notice of Non-Registration, Annex IV.



Requester, expressing satisfaction with the implementation of the RAP on the basis that 80 per cent of the people had received the financial assistance.<sup>62</sup>

On 16 July 2014, the Panel decided not to register the Request. In its official Notice of Non-Registration the Panel stated that it was concluding the pilot because “the majority of the community representatives expressed their satisfaction in writing and [World Bank] Management has taken adequate measures to address the remaining concerns related to the implementation of the Action Plan ...”.<sup>63</sup> This decision ended the Panel’s involvement in the process.

## **THE PANEL DISREGARDS THE WORLD BANK’S FAILURE TO ABIDE BY ITS COMMITMENTS**

One of the two bases for the Panel’s decision not to register the Request was that the World Bank had taken adequate steps to ensure implementation of the Management Action Plan. However, several commitments in the Management Action Plan were not met.

The Action Plan committed the World Bank to follow up on the disclosure of the draft RAP.<sup>64</sup> The draft RAP was not disclosed to the community. Moreover, although the World Bank itself had received a copy of the RAP in September 2013, and a revised version in November 2013 from the Lagos state government, it did not share either version. Only partial information, such as the amount of proposed compensation, was shared with the community representatives by the Lagos state government. The RAP was released only in a final form in February 2014, without any possibility of revision on the basis of community input. The Panel’s Notice of Non-Registration does not acknowledge that community consultation on the full draft RAP did not occur and that this was contrary to the Management Action Plan.<sup>65</sup>

The Management Action Plan committed World Bank Management to ensure the RAP included entitlements to compensation consistent with and using the same valuation methodology as a previous RAP.<sup>66</sup> However, the 2013 RAP clearly states that it does not use the same valuation methodology.<sup>67</sup> The Panel’s Notice of Non-Registration does not refer to this.

The Management Action Plan had committed the World Bank to hire a consultant to provide assistance to the Lagos state government to ensure close adherence to World Bank resettlement policies.<sup>68</sup> However, as detailed above, the RAP did not comply with the World Bank’s Involuntary Resettlement Policy. In its Notice of Non-Registration, the Panel states that “there were aspects of the Project that fell short of Bank safeguard requirements ...”<sup>69</sup> The Panel does not indicate that these shortcomings also contradict the commitments in the Management Action Plan.

The Management Action Plan committed World Bank Management to ensure the RAP included skills training, micro-credit, and employment opportunities.<sup>70</sup> However, these were not included in the RAP.

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<sup>62</sup> Ibid.

<sup>63</sup> Notice of Non-Registration, para. 31.

<sup>64</sup> Management Action Plan, para. 13 (b).

<sup>65</sup> Notice of Non-Registration, para. 19.

<sup>66</sup> Management Action Plan, paras. 13 (b) and 8.

<sup>67</sup> In the 2013 RAP, the Lagos state government set out its justification for this discrepancy on the grounds that: using the 2012 RAP methodology would be a huge financial burden on the government, that the amount payable under the 2012 methodology “significantly exceeds what the State Government normally pays as compensation even for property acquired compulsorily from legitimate owners of approved properties”, and that the Lagos state government “was also mindful of setting a precedent or communicating a policy whereby illegal occupiers of land without development permit have to be paid full compensation upon eviction”, Reviewed Resettlement Action Plan (RRAP) for displaced persons in Badia East, November 2013, pp. 4-5.

<sup>68</sup> Management Action Plan, para. 16.

<sup>69</sup> Notice of Non-Registration, para. 33.

<sup>70</sup> Management Action Plan, paras. 13 (b) and 8.



The Panel's Notice of Non-Registration does not refer to this discrepancy. It only refers to information it received from World Bank Management that "the Lagos State Government would provide training opportunities at the State Vocational centres for PAPs [Project Affected Peoples] as part of livelihood restoration and that the Technical Committee would sensitize those interested on the procedures for accessing these opportunities."<sup>71</sup>

Amnesty International has asked the Panel why it did not refer - in its Note of Non-Registration - to the World Bank's failure to implement the Management Action Plan. The Panel responded "It is not part of the agreed procedure for the Pilot for the Panel to undertake a compliance review."<sup>72</sup> However, if the Panel was unable to monitor the implementation of the Management Action Plan, it is not clear how it could claim that the World Bank Management's implementation of its Action Plan was one reason to refuse to register the Request.

The Panel's Notice of Non-Registration, as already stated, recognised that many of the affected people interviewed by the Panel in Badia East complained that payments were totally insufficient for them to restore their previous livelihoods.<sup>73</sup> However, the Panel appears to challenge these views by stating that "On the other hand, the Bank engaged two independent experts specifically to determine proper compensation amounts based on current market rates, and advised the Government accordingly."<sup>74</sup> The Panel fails to acknowledge in its Notice of Non-Registration that the two experts considered that the payments that the Lagos state government agreed to provide were, in the case of structure owners, one third less than market rates. Nor does the Panel indicate that the World Bank shared the valuation reports with the community only after negotiations between the Technical Committee and the community representatives had concluded and the latter had agreed to the financial settlement.

The Panel was aware of the flaws in the RAP and the process of its development as it had received detailed information on the issues from Amnesty International in May 2014. Amnesty International had provided the Panel with audio recordings of meetings between community representatives and the Lagos state government. Those recordings showed that five of the eight community representatives had expressed their dissatisfaction with the financial assistance provided and that Lagos state government had reduced the originally agreed amount and presented it to the community representatives as a 'take it or leave it' offer.

Given the fact that the World Bank failed to comply with its Involuntary Resettlement Policy or its commitments to the Requesters and the Panel, Amnesty International believes that the Panel should have proceeded towards a full investigation.

The Panel's decision in this case illustrates an intrinsic drawback in the pilot approach. The pilot aims to give the World Bank and Requesters time to resolve concerns about harm caused by a World Bank-funded project, but does not aim to ensure that Requesters concerns are resolved in a manner consistent with World Bank safeguard policies. The Pilot does not even require the Panel to check that the measures proposed by World Bank Management to address a particular Request are consistent with World Bank safeguard policies. Thus the Panel – whose primary role is to investigate alleged concerns about World Bank's non-compliance with its policies – may be in a position in which it asks Requesters to consider proposals by World Bank Management that are inconsistent World Bank policies. The Panel may then be facilitating non-compliance with World Bank policies. Amnesty International does not consider that this risk has been adequately considered by the Panel. In responding to Amnesty International's concerns on this point the Panel acknowledged that it did not consider compliance

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<sup>71</sup> Notice of Non-Registration, para. 21.

<sup>72</sup> E-mail from Panel's Executive Secretary to Amnesty International, 27 August 2014.

<sup>73</sup> Notice of Non-Registration, para. 27 (g).

<sup>74</sup> Notice of Non-Registration, para. 27 (g).



issues, stating: “The Notice of Non-Registration is not an investigation, and therefore it is not possible at this stage to make conclusive findings on the issue of non-compliance. However, we were deliberate in bringing to the Bank Board’s attention any and all issues of relevance that we learned through the process, including those areas in which we felt that the RAP or the process was inadequate.”<sup>75</sup>

## THE PANEL’S DECISION NOT TO REGISTER A REQUEST THAT MET ELIGIBILITY REQUIREMENTS

The Panel confirmed that the Request for Inspection met the basic requirements for registration when it received the Request.<sup>76</sup> These requirements, as set out in the mandate set out for the Panel by the World Bank Board, are as follows:

- a) The affected party consists of any two or more persons with common interests or concerns and who are in the borrower's territory (Resolution para. 12).
- b) The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester (Resolution paras. 12 and 14a).
- c) The request does assert that its subject matter has been brought to Management's attention and that, in the requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures (Resolution para. 13).
- d) The matter is not related to procurement (Resolution para. 14b).
- e) The related loan has not been closed or substantially disbursed (Resolution para. 14c).
- f) The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request (Resolution para. 14d).<sup>77</sup>

In its Notice of Non-Registration on the Badia East Request, the Panel made the following decision: “While the Panel’s Pilot process notes that the Panel will register the Request if the Requesters are not satisfied with the process. However, in this particular instance after ascertaining that the majority of the community representatives expressed their satisfaction in writing and Management has taken adequate measures to address the remaining concerns related to the implementation of the Action Plan, the Panel has decided not to register the Request and thus conclude the Pilot process.”<sup>78</sup>

Amnesty International expressed its concern to the Panel that its decision not to register a legitimate Request for Inspection, one which met all the criteria for registration, appears to contravene the Panel’s mandate and denies those who requested the inspection access to a remedial process. The Panel responded as follows:

The Pilot is precisely a remedial process because it allows for the requesters’ grievance to be addressed in a shorter time-frame, within a clear and previously agreed upon Action Plan, and in

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<sup>75</sup> E-mail from Panel’s Executive Secretary to Amnesty International, 27 August 2014.

<sup>76</sup> Inspection Panel, Notice of receipt of inspection, p. 1.

<sup>77</sup> IBRD and IDA Board of Directors, 1999 Clarification of the Board's Second Review of the Inspection Panel, para. 7. The ‘Clarification’ refers to Resolution No. IBRD 93-10, Resolution No. IDA 93-6, “The World Bank Inspection Panel” (22 September 1993), paras. 12 and 14.

<sup>78</sup> Inspection Panel, Notice of Non-Registration, para. 31.



a concerted way. As the requesters are involved in deciding to pursue this approach, they are not being denied a remedy because have freely chosen this route.<sup>79</sup>

Amnesty International does not consider that the Panel has provided an adequate response to this concern.

In light of the Panel's decision on the Badia East Request, its invitation to Requesters to participate in the pilot approach appears misleading. It gave them an assurance in its notice of receipt of request that "in line with the Pilot approach, the Requesters have the right at any time to indicate that they are not satisfied and would like the Panel to register their Request."<sup>80</sup> In its response to Amnesty International's concerns about the outcome of the pilot approach in Badia East, the Panel stated that "the Panel's judgment was that an investigation in this case would not have resulted in better outcomes for the affected people."<sup>81</sup>

## CONCLUSIONS AND RECOMMENDATIONS

The Panel's mandate is to investigate the World Bank's compliance with its policies. Its decision to use a pilot early solutions approach was intended to postpone registration of a Request for Inspection in order to give the Requesters and the World Bank time to resolve the complaints amongst themselves.

However, regardless of the intention of the Pilot, what happened in practice was that the Panel stood back while a flawed RAP was developed, one that was inconsistent with World Bank policy and international human rights standards, and one which people agreed to only after it was made clear to them that there was no alternative. The Panel has stated that it could not – as part of the Pilot – examine compliance with World Bank policies.

The Panel has stated that: "The Pilot is precisely a remedial process because it allows for the requesters' grievance to be addressed in a shorter time-frame, within a clear and previously agreed upon Action Plan, and in a concerted way."<sup>82</sup> However, as noted earlier, basic pre-conditions set by the Requesters with regard to access to information were not met and several aspects of the Action Plan were not implemented.

Amnesty International is concerned that the Panel's position is that it (a) does not need to consider if a proposed Management Action Plan is consistent with World Bank policies; (b) that it cannot consider whether the outcome is compliant with World Bank policies and that (c) although the Management Action Plan is central to the pilot an outcome can be endorsed that does not include full implementation of this Plan, as the Panel cannot review this when reaching a decision.

As a result of the way the pilot was implemented in Nigeria, the people of Badia East have not been accorded their right to an effective remedy for the forced eviction they faced.

The Panel's decision on the Badia East Request also raises significant concerns about the pilot approach's credibility and its application to future Requests. Amnesty International is concerned that the pilot approach may leave people who are negatively affected by World Bank operations in a weak position when they raise concerns, in that they are effectively negotiating from a position of vulnerability and an unjust outcome can be endorsed by the Panel – regardless of whether the outcome adheres to Bank policy. The pilot approach weakens Requesters' negotiating position because their ability to secure

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<sup>79</sup> E-mail from Panel's Executive Secretary to Amnesty International, 27 August 2014.

<sup>80</sup> Inspection Panel, Notice of Receipt of Request, p. 4.

<sup>81</sup> E-mail from Panel's Executive Secretary to Amnesty International, 27 August 2014.

<sup>82</sup> Ibid.



an investigation rests on the discretion of the Panel, without any clear criteria to guide the Panel's decision.

In regard to the Panel's pilot approach, Amnesty International therefore calls on the World Bank Board to:

- Ensure that an independent investigation of the pilot approach, and the Panel's handling of this Request, is carried out;
- Consider, on the basis of the independent investigation, whether the pilot approach is appropriate, and pending the outcome of the investigation, suspend the pilot approach.

Amnesty International calls on the World Bank Board to instruct World Bank Management to:

- Re-engage with the Lagos state government on this case with a view to ensuring adequate compensation is paid to all affected people for all losses whether or not they have land title or building permits; in full compliance with the World Bank's Involuntary Resettlement Policy.
- Follow up on the request made to the Lagos state government to provide livelihood support to affected people of Badia East in form of skills acquisition training, micro-credit and employment opportunities; ensuring required support is provided to the Lagos state government to achieve this.
- Strengthen World Bank safeguard policies to ensure they are fully complied with by borrower governments, and that the Bank-funded projects do not result in human rights violations.
- Consider the risk of human rights violations in further lending to the Lagos state government, taking into account Lagos state government's failure to protect the right to adequate housing of people living in Badia East.

