

Eimi Watanabe
Chairperson

September 5th, 2014

Dear Natalie and colleagues:

Thank you for your letter dated August 27th 2014 addressed to President Kim and myself concerning the application of the Pilot approach for the first time, in the Lagos Metropolitan Development and Governance Project (LMDGP). I take the opportunity to thank you for your interest in our work and your unwavering support for the Inspection Panel and its activities, which we have always appreciated. I am therefore pleased to provide the answers to your questions in that context.

By way of introduction, I would like to re-emphasize that the Pilot applies only to a select number of cases that fulfill clearly defined criteria. As you know, the vast majority of cases are subject to the Panel's established process, and we have repeatedly maintained this in the past (see for example our correspondence with you and other CSOs dated March 6th 2014). In this context, it is important to stress that there is absolutely no intention for the Panel to use the Pilot as its *modus operandi* in the future.

Below I specifically respond to your concerns, point by point:

“The Pilot Denies the Bank the Opportunity to Improve Projects through Lessons Learned”

We are convinced that the application of the Pilot does not prevent the drawing of lessons and the facilitation of institutional learning. In the case of the first pilot in Lagos, lessons are clearly outlined in Sections G and H in the Notice of Non-Registration (NNR), both for the Project as well as for the Pilot process itself, and call the attention of the Bank's Board to various issues. On the Project itself, lessons are drawn on the inherent inadequacies of retroactive RAPs and the insufficiency of a legal agreement without accompanying efforts and resources for its supervision. On the Pilot process itself, two important lessons are: (i) the Panel needs to ensure that the mandate that is given to the Requesters' representative is made clear to all stakeholders, and (ii) there needs to be clearly defined and accepted procedures for consultation and representation, and a willingness of stakeholders to abide by the established process.

Importantly, other instruments are also available for the learning of lessons. In the LMDGP case, there will be a stand-alone, in-depth case study of the Project and its wider relevance for Bank engagement in the urban renewal sector. The crucial importance of this case study has been recognized by many Executive Directors and their Advisors, and Management has indicated that it would be undertaken within the next six months. Management has also committed to report back to the Executive Board once the RAP implementation has been finalized by the Lagos State Government.

“The Pilot Blocks Access to the Inspection Panel”

The Pilot does not block access to the Panel as demonstrated in this case, where the Requesters had full access to the Panel at all times. Two members of the Panel (including myself), the Executive Secretary, and a staff member visited Badia East in person to speak with Requesters and their representatives freely and directly. Throughout the Pilot process, there were numerous instances in which the Panel intervened to bring to the attention of Bank management specific concerns raised by the Requesters, to which Bank management promptly responded.

Furthermore, and as stipulated in the Pilot document, Requesters can at any time request for the process to be stopped and ask for a full investigation. In this particular case, we in fact received a last minute request to register the case, but we decided not to follow this route after carefully reviewing the issue of community representation. We noted that the initial Request for Inspection was submitted by the Social and Economic Rights Action Center (SERAC) in Lagos, who *“have been mandated by individuals, families and groups living in the Badia area of Lagos State to file the present Request for Inspection.”* We were also able to ascertain that the majority of the community representatives who were selected by the community to speak for them in the RAP process expressed their satisfaction in writing.

Management has also taken adequate measures to address the remaining concerns related to the implementation of the Action Plan. We believe that as with any process, once there is recognition of who represents the affected people and who speaks on behalf of the community, this has to be respected by all engaged in the process, unless the latter explicitly declares their withdrawal of trust in their representative through a due process. It is important to emphasize that issues of community representation are not unique to the Pilot approach. These issues can arise in any Panel case, as they have in the past, and the Panel has always used its judgment to make a decision in this regard taking into account prevailing circumstances. The Panel has also stated that going forward, there needs to be greater clarity on the issue/process of community representation and its acceptance by stakeholders.

“The Pilot Lacks Basic Protections and May cause More Harm than Good”

We fail to understand how a process that resulted in prompt payment to over 9,000 evictees as a result of Government action can be considered as having caused more harm than good, particularly in a context in which the evictees are considered illegal squatters by local law. We are not aware of instances in which the Lagos State Government has provided compensation to evictees for an eviction caused by a Government-financed project, as was the case in this instance. This alone creates a very important precedent which hopefully will be replicated and have a longer term impact.

Your concern also seems to assume that the Pilot is equivalent to a mediation process. We re-emphasize that this is not the case: the Pilot is a facilitated opportunity to implement an agreed upon Action Plan between Bank Management and the Requesters. Furthermore, and under the 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 Pilot process, which enables an immediate and concerted focus on dealing with the problems on the ground, was a more productive approach that could lead to better outcomes for the evictees, and in a speedier timeframe.

“The Inspection Panel Abandoned its Mandate by Adopting a *Majority Rules* Approach to Determining Registration Following the Pilot”

The Panel received conflicting communication just before finalizing its report to the Board. The Panel carefully and thoroughly assessed the communication and took the position to continue to respect the established modality of communication and representation that was agreed upon (i.e. SERAC being mandated by the community to represent them, and eight community representatives selected as their spokespersons). Further, during the Panel’s field visit to Badia, while the Panel heard many statements of frustration over the compensation amounts, no one expressed dissatisfaction over SERAC’s representation, despite the existence of numerous opportunities for doing so during the many informal interactions and walkabouts in which the Panel engaged. Recognizing alternative representation at this late stage and consequently disregarding SERAC, which had consistently been involved in supporting the community throughout the process, could have caused or exacerbated divisions within the community. Based on SERAC’s and community representatives’ expression of satisfaction and the Panel’s assessment of Management’s commitment to follow-up on the remaining actions, the Panel decided to issue the Notice of Non-Registration to the Board.

“Conflict of Interest and Irregularities in Developing and Approving the Pilot Program”

This statement is misinformed, since as you well know, the Panel undertook a lengthy process of consultations on its Operating Procedures, including detailed questionnaires and interviews, both internally and externally. The Pilot approach was derived from the comments received during this process. Internal consultations are a part of due diligence in any transparent and objective process, and we fail to see how this can constitute a conflict of interest. As you are well aware, 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 inputs from stakeholders, and in the final analysis, it is based on the Panel’s independent judgment.

Furthermore, the Pilot 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/or the function of the Panel. 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 informational basis. Sending it on an informational basis does in no way preclude expressing comments on it or even voicing objections. The Panel’s interaction with Executive Directors and Advisors over the months regarding the Pilot approach indicated overwhelming support for the process.

In closing, I would like to re-emphasize that 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 original Request for Inspection submitted by the then Staff Attorney of SERAC. The Panel in its NNR highlights the areas in which the RAP implementation fell short of the WB's Involuntary Resettlement Policy so that the Board is aware of potential non-compliance and these issues are not simply ignored.

I would also like to mention that the Pilot will be independently evaluated at the end of 2015, based on the valuable experiences gained from the Lagos case, and other Pilot cases which the Panel may decide to implement as long as they conform to the criteria established to select a pilot.

Many thanks again for your comments and concerns.

With best regards,



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