

August 27, 2014

Dear President Kim and Ms. Watanabe:

We are writing to request an immediate suspension of the Inspection Panel’s “Pilot Program” and an independent investigation of the Pilot given the failure of the first complaint addressed under this program, the Lagos Metropolitan Development and Governance Project (“the Lagos case”). Contrary to the contention that the Pilot promotes early solution seeking, which we agree would be a positive contribution, the Pilot as designed and implemented has instead entrenched deep problems.

The World Bank’s accountability is undermined by the Pilot, which provides an inadequate process for addressing the concerns of impoverished, project-affected people. Following the implementation of the Pilot Program in the Lagos case, thousands of Nigerians who were forcibly evicted from their homes are still living in poverty, in precarious conditions or in danger of further forced evictions, because they did not receive adequate financial assistance to secure alternative housing.¹ The Pilot Program only served to legitimize the Lagos State Government’s “take it or leave it” negotiation process, while failing to provide restoration of livelihoods to those whose homes and lives were torn apart as a result of the project.²

Additionally, the Pilot Program denies accountability for serious harm and interferes with the purpose and mandate of the Inspection Panel in the following ways.

The Pilot Denies the Bank the Opportunity to Improve Projects Through Lessons Learned

By the Panel’s own admission, information it learned during an initial assessment of the Pilot Program in Lagos indicates that the Bank failed to comply with its safeguard policies, resulting in serious harm to poor communities who were forcibly evicted from their homes by the Lagos government.³ Despite this evidence of safeguards violations, the Panel declined to conduct an investigation. An investigation could have provided Bank Management and the Board of Directors an opportunity to understand the cause and extent of the Bank’s policy violations and to learn lessons to improve future projects. The Lagos case demonstrates the devastating accountability gap that the Pilot has created, whereby eligible cases may be denied registration and investigation even where the Panel finds evidence of violations.

¹ Memorandum in Support of Request for Registration of IPN Request RQ 13/09, 4, Obuba & Obuba Legal Practitioners (11 July 2014), available in Annex III to the Notice of Non-Registration at [http://ewebapps.worldbank.org/apps/ip/PanelCases/91-Annexes%20to%20the%20Notice%20of%20Non-Registration%20-%20Request%20for%20Inspection.%20Management%20Action%20Plan.%20related%20documents%20\(English\).pdf](http://ewebapps.worldbank.org/apps/ip/PanelCases/91-Annexes%20to%20the%20Notice%20of%20Non-Registration%20-%20Request%20for%20Inspection.%20Management%20Action%20Plan.%20related%20documents%20(English).pdf) [hereinafter Memorandum in Support of Registration].

² *Id.* at 5.

³ See Notice of Non-Registration and Panel’s Observations of the First Pilot to Support Early Solutions, IPN REQUEST RQ 13/09, ¶33, The Inspection Panel (16 July 2014) [Hereinafter Notice of Non-Registration]. These findings are based on information gathered during the Panel’s initial assessment and three-day site visit, which aimed to assess the progress achieved under the Pilot. The evidence gathered during this cursory assessment reveals the need for further investigation, but alone it is an inadequate basis to form meaningful project insight.

The Pilot Blocks Access to the Inspection Panel

Additionally, information from the record in the Lagos case⁴ calls into question the utility of the Pilot Program and raises serious concerns that the Pilot may have the effect of preventing requesters from accessing the Panel's process. Before initiating the Pilot Program in the Lagos case, the Inspection Panel verified that the Request met the requirements for registration and assured Requesters that if they were not satisfied with the Pilot process, they would have the right to request that the Panel register their Request.⁵ Although two out of three of the Requesters in the Lagos case expressed their deep dissatisfaction with the Pilot Program and therefore submitted a request for registration, their case was nonetheless closed without registration.

The stated purpose of the Pilot is to provide an opportunity for requesters to obtain "early solutions" to their concerns, improving the effectiveness and efficiency of the Panel. This intimates that initiation of the normal Panel process would deny Management the opportunity to come to an "early solution" on the case. However, affected people are already allowed, and even required, to attempt to address their concerns directly with World Bank Management before initiating an Inspection Panel request. In the Lagos case, the NGOs representing the affected people had already been in conversation with Bank Management for over a year. The rationale for the Pilot Program ignores that this contact has already been required and undervalues the Panel's important role in assisting the World Bank to understand and address the concerns of affected people and report on compliance issues to the Bank's Board of Directors.

The Pilot Lacks Basic Protections and May Cause More Harm Than Good

Information available from the Lagos case suggests that the Pilot Program may disadvantage affected people. The Pilot enables Bank Management to engage with the requesters without the Panel becoming involved. However, unlike engagement through mediation or dispute resolution processes offered by other accountability mechanisms, or those available in virtually any other setting, the Pilot Program comes with no safeguards to ensure a fair process and offset the power imbalance usually found between affected people and those designing or implementing a project.⁶ The Pilot purports to promote early solution seeking without the benefit of any change in the power dynamic from the previous required attempts to resolve issues with Bank Management. Without the use of mediators or other independent experts as part of the Pilot Program, there is no reason to believe that early solutions will be fair, just or will lead to sustainable results.

In the Lagos case, the record suggests that the financial assistance offered to the affected people changed substantially after the Pilot Program was initiated, to the detriment of the affected people.⁷

⁴ See Lagos Metropolitan Development and Governance Project case page on the Inspection Panel website, available at <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=94>.

⁵ Notice of Receipt of Request, IPN REQUEST RQ 13/09, 1 and 4, The Inspection Panel (11 Nov. 2013).

⁶ Other international accountability mechanisms employ mediators, facilitators or other third-party neutrals to help ensure an equitable process and offset any power imbalance between the parties.

⁷ See Memorandum in Support of Registration, 4-5 (detailing the terms of a compensation package that was offered to communities shortly before the Pilot Program began and comparing it to a package offering significantly lower

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

Perhaps most troubling, the Inspection Panel used a “majority rules” approach to arrive at its decision not to register the case. In July 2014, two of the three Requesters listed on the original Inspection Panel Request, along with 41 community members, submitted a statement requesting that their complaint be registered. This request was followed by a detailed explanation of their dissatisfaction with the Pilot Program. Despite these clear statements by the initial Requesters, the Panel’s Notice of Non-Registration explains that it decided not to register the case because five out of the eight community representatives who had been selected to represent the community during negotiations expressed their satisfaction with the results of the Pilot Program.

This “majority rules” logic represents a stark departure from the language and intent of the Board Resolution that first established the Inspection Panel. The standards listed in the Resolution state that a complaint may be lodged by a group of two or more affected people. They say nothing of a practice of polling the larger community to determine what proportion is unhappy with the effects of the project as a threshold for mere registration. While the Resolution does allow for communications with the Panel via a local representative, the public record in the Lagos case gives no indication that the community representatives were authorized to act on behalf of the Requesters for purposes of the Inspection Panel complaint.⁸ A majority rules approach that does not take the requesters’ complaint into account, fails to provide accountability for Bank compliance failures that cause serious harm to only a segment of an affected population, and thus does not effectively serve the Panel’s mandate.

Conflict-of-Interest and Irregularities in Developing and Approving the Pilot Program

Because the Pilot Program represents a marked departure from the functions described in the Board resolution that established the Panel,⁹ the Board should have, but was not provided an opportunity to approve or reject the Pilot Program. Instead, the Pilot Program was created without transparency by the Panel, Bank Management (OPCS) and the Legal Department, and was sent to the Board as a mere notification on a non-objection basis.

Further, many of the above concerns about the Pilot were ardently raised in a public comment period during the Panel’s Operating Procedures review process – the Pilot Program was attached to the Operating Procedures as an annex – but no changes resulted. We understand that the Panel did not make any substantive changes in reaction to input from civil society because CODE had already approved the Procedures, effectively making the comment period a pro-forma consultation on an already approved policy.

Given these alarming results of the Pilot’s first application, we urge President Kim to

compensation, which was presented to communities as a “take it or leave it” option shortly after the Pilot Program was initiated).

⁸ See Notice of Non-Registration at ¶18 (explaining that the community representatives were appointed as part of the process of negotiating compensation with the government, and not in relation to the Inspection Panel complaint).

⁹ The Board Resolution that established the Inspection Panel directs that the Chairperson of the Panel “shall inform the Executive Directors and the President promptly upon receiving a request for inspection.” Resolution No. IBRD 93-10, Resolution No. IDA 93-6, ¶17, IBRD and IDA (22 Sept. 1993).

immediately initiate an independent investigation of the Pilot. We further request that the Inspection Panel suspend the Pilot Program and the President direct Bank Management to discontinue their engagement in any future Pilot cases, pending the publicly released results of the independent investigation. The Lagos case provides sufficient information on the Pilot Program to conduct an assessment, and suspension and immediate investigation of the Pilot are necessary to allow the Inspection Panel to return to its mandate and provide accountability for the Bank's operations.

Thank you for your attention to this urgent matter.

Sincerely,

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cc: Ms. El Bakri and Mr. Castro de la Mata