

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.

Amnesty International has declared the Resettlement Action Plan (RAP), developed by the Lagos state government for the victims of the Badia East forced eviction, as an ineffective remedy for the human rights violations suffered by the victims. The organization is concerned that the RAP which has been signed off by the World Bank facilitates further human rights violations including the violation of the right to adequate housing.

Amnesty International has consistently criticised both the process for developing and finalising the RAP as well as its contents for failing to comply with international human rights law and standards. The RAP which was developed after the Badia East forced eviction and finalised close to a year after thousands of people were made homeless also fails to comply with the World Bank's policy on involuntary resettlement. Contrary to international human rights standards, the RAP was finalised in the absence of genuine consultation with affected people which, among other issues, has resulted in around 350 affected people being excluded from the list of beneficiaries.

The compensation amount offered by the Lagos state government is insufficient for finding adequate alternative housing in Lagos state and leaves victims of the Badia East forced eviction little choice but to find housing in other informal settlements thereby risking the possibility of another forced eviction. Badia East victims were not provided with any options for resettlement and therefore had little choice but to accept what was offered. They were also required to sign away their rights and any further compensation claims. The RAP and the process leading up to it therefore denies the Badia East victims their right to effective remedy.

Amnesty International is calling on the Lagos state government and the World Bank to disburse the financial compensation under the RAP only as interim assistance to the Badia East victims and revise the RAP to bring it in line with international human rights law and standards and the World Bank's policy on involuntary resettlement.

Lack of genuine consultation

The consultation process for developing the RAP for the Badia East victims cannot be considered 'genuine consultation' as required by international human rights standards, in particular, with regard to the provision of full, timely and accurate information. The World Bank's Operational Policy OP4.12 also states under its Policy Objectives, "Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs."

According to information received, around 350 Badia East victims were left out of the list of beneficiaries due to lack of proper representation in the consultative meetings. For consultation to be considered genuine and meaningful all affected persons should be able to participate either directly or indirectly through those they elect to be their representatives.

The RAP mentions three consultative meetings with community representatives in September 2013 where the 'Resettlement Matrix' and the Grievance Redress Mechanism were disclosed. However, community representatives were not given the full RAP document for consultation with affected people. The mere disclosure of compensation figures to community representatives cannot be sufficient to enable the representatives to consult effectively with affected people in order to enable them to make informed decisions on or provide inputs to the resettlement programme.

To make matters worse, the Lagos state government subsequently reduced the compensation package that was initially agreed to by seven out of the eight community representatives. This made an already inadequate remedy even more ineffective. Stating their dissatisfaction with the reduced offer the community representatives gave conditional acceptance to the compensation package. The conditions included the upward review of the compensation package and the offer of first refusal, to structure owners, in the housing scheme being developed on the Badia East land. The government's rejection of the conditional acceptance left affected people, who had suffered much deprivation for close to one year, with no choice but to accept an inadequate compensation package.

Additionally, the RAP which was dated November 2013 was forwarded to the World Bank for approval by the Lagos state government with a letter dated 26 November 2013, weeks before the affected people had accepted the reduced compensation package through their letter dated 20 December 2013. This is a further indication that the Lagos state government did not meaningfully consult with affected people.

Deeply Flawed RAP

Disclosed a year after the Badia East forced eviction, the RAP remains deeply flawed and inadequate as a remedy for human rights violations. The fact that the RAP has been developed retrospectively makes the need for its effectiveness as a remedy even more important. Unfortunately, the RAP fails to comply with international human rights law and standards; and also does not fully comply with the World Bank's policy on involuntary resettlement.

Clearly failing to recognize the rights of the Badia East victims, the RAP states its aim of "providing on compassionate grounds, reasonable financial assistance to affected persons whilst also accommodating the terms of the World Bank Operation Policy 4.12 (OP 4.12)." The RAP also states that it was developed "as much as possible, in line with the provisions of the Bank's Operation Policy OP 4.12 on Involuntary Resettlement".

Under international human rights law all persons affected by forced evictions "have a right to adequate compensation for any property, both personal and real, which is

affected.”¹ Also, “where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”² All affected persons are so entitled irrespective of their tenure status to land. This is also a requirement under the World Bank policy on involuntary resettlement.³

The financial compensation in the RAP, is provided on ‘compassionate grounds’ and is wholly insufficient for accessing adequate alternative housing in Lagos state. The lack of adequacy of the compensation has also been raised in a letter by the Badia East community representatives, dated 9 December 2013, sent to the chairperson of the Lagos State Government Technical Committee on Badia East. Amnesty International highlights that the provision of inadequate compensation will push the Badia East victims to other precarious living conditions, putting them at risk of further forced evictions.

The RAP also fails to provide for livelihood support to affected people which is needed to restore their livelihood and standards of living in accordance with the World Bank’s policy on involuntary resettlement.⁴ Similarly, it does not provide for compensation for businesses that were destroyed as a result of the forced eviction of 23 February 2013.

In addition, the RAP fails to provide options of adequate alternative housing for affected people and merely ruled it out by stating: “The state eventually opted for monetary compensation after due consultations with representatives of affected Communities, in view of the number of affected persons as provision of physical resettlement does not appear feasible.” However, there is no evidence in the RAP of the government having identified and considered feasible options for providing affected people with adequate alternative housing and resettlement.

Denial of the right to an effective remedy

In order for affected people to access the inadequate compensation package under the RAP the Lagos state government required them to sign forms affirming to relinquish all claims to damages, compensation or restitution, whether financial or otherwise or other legal or equitable rights which they may have in respect of any loss suffered as a result of being forcibly evicted from Badia East. Amnesty International condemns this “affirmation” process and considers the action of the government deplorable, all the more so that the RAP and the process leading to it is deeply flawed and seriously inadequate. Nobody should effectively be forced to relinquish their fundamental right to an effective remedy as guaranteed under a number of international human rights treaties ratified by Nigeria, particularly when they continue to be at risk of serious violations.

¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, para 13

² UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, para 16

³ World Bank Operational Policy 4.12 on Involuntary Resettlement, para 15

⁴ Ibid. para 6.

Conclusion

Amnesty International is extremely concerned that the RAP sets a dangerous precedent, particularly for people negatively affected directly or indirectly by World Bank funded projects and also for victims of forced evictions.

The Lagos state government, as a second tier of government of the Nigerian state, must act consistently with Nigeria's obligations under international human rights law.

The acceptance of the inadequate RAP by affected people does not rectify its gross defects neither does it make it an effective remedy for gross violation of human rights. Also, the challenges the Lagos state government has experienced in developing and implementing the RAP cannot be an excuse for the government not to comply with its human rights obligations. The precarious situation of affected people was compounded by the government's failure to provide them emergency relief which could have alleviated their suffering.

The inadequate RAP and its failure to fully comply with the World Bank's policy on involuntary resettlement has exposed the World Bank's weakness in ensuring that borrowers fully comply with its policies.

Consensus or compromise is not a remedy for gross violations of human rights under international law and standards.

Amnesty International calls on the World Bank to publicly state that the RAP does not comply with the Bank's Operational Policy 4.12 on Involuntary Resettlement and to open discussions with the Lagos state government in order to ensure that:

- Affected people are paid the financial compensation under the RAP only as interim assistance;
- Adequate alternative housing is provided to affected people who are still homeless;
- Livelihood support is provided for affected people and they are assisted in re-establishing businesses that were destroyed;
- All "affirmations" that affected people were required to sign are cancelled;
- Resettlement options that were explored by the Lagos state government are made publicly available;
- Independent, effective and accessible grievance mechanisms are established that have the authority to provide a just and fair redress to affected people who have been left out of the list of beneficiaries;

- All future engagements with the Badia East community are conducted based on genuine consultation.

Background:

On 23 February 2013 the Lagos state government with the support of heavily armed police demolished at least 266 structures that served as homes and businesses of affected people. At least 2237 households and close to 9000 people were affected. The Lagos state government failed to put in place legal and procedural safeguards that are required under international human rights law and standards prior to any eviction. 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 to those unable to provide for themselves, and compensation for their loss. (<http://www.amnesty.org/en/library/info/AFR44/006/2013/en>).

Badia East is part of the larger Badia community, which is one of nine settlements (“slums”) meant to benefit from the World Bank funded Lagos Metropolitan Development and Governance Project (LMDGP). The objective of the US\$200 million project was to increase sustainable access to basic urban services through investments in critical infrastructure. The infrastructure component of the project included urban upgrading activities in nine of the largest slums identified in 1995 in Lagos State, along with drainage and solid waste management projects.

In 2013 the Lagos state government agreed with the World Bank to extend the Resettlement Policy Framework the government developed in 2005 to the people forcibly evicted from Badia East on 23 February 2013; this necessitated the development of a RAP which had to be approved by the World Bank.

Amnesty International had written to the World Bank several times in the past few months to express deep concerns about the development of the RAP by the Lagos state government and the absence of concrete measures to address violations of international law and standards on the right to effective remedy and the right to adequate housing.

To mark the anniversary of the Badia East forced eviction, on 21 February 2014, Amnesty International issued a press release expressing serious concerns about the delays in providing adequate compensation and resettlement for the victims; and the non-disclosure of the RAP. Simultaneously, on 21 February 2014, the Lagos state government announced publicly its disclosure of the RAP for perusal by members of the public.

Nigeria is a party to the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and People’s rights and other international and regional human rights treaties, which require it to realize the right to adequate housing, and to prevent and refrain from carrying out forced evictions.

All victims of human rights violations have a right to an effective remedy under international human rights law. This right has been recognised in a number of international human rights treaties and instruments to which Nigeria is a state party; and

also under international human rights standards.

The UN Basic Principles and Guidelines on Development-based Evictions and Displacements provide that “All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

According to international human rights standards⁵, depending on the individual circumstances and the gravity of the human rights violation and the circumstances of each case restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition have been stipulated as the forms of effective remedies that should be made available to victims of human rights violations.

In addition, under international human rights standards⁶, “cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.”

⁵ UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 18 - 23

⁶ UN Basic Principles and Guidelines on Development-based Evictions and Displacements, para 60.