

Gonzalo Castro de la Mata
Chairman

IPN REQUEST RQ 14/01

November 10, 2014

Notice of Non-Registration

Request for Inspection

Sri Lanka: Road Sector Assistance Project-Second Additional Financing (P116742)

Summary

In accordance with paragraph 17 of the Resolution¹ establishing the Inspection Panel, I hereby inform you that on March 24, 2014, the Inspection Panel (the “Panel”) received a Request for Inspection of the Sri Lanka: Road Sector Assistance Project - Second Additional Financing (P116742, RSAP-II, “the Project”). The Request is included as Attachment 1.

The Panel promptly recorded the receipt of the Request in its website, and after an initial review, sought additional information from the Requesters and World Bank Management. Bank Management approached the Requesters and took actions in an attempt to resolve their concerns. These efforts are described below.

The Panel decided not to register this Request in light of an on-going court case filed by one of the Requesters in the Court of Appeal of the Democratic Socialist Republic of Sri Lanka (CA. Application No. 138/2014). This court case relates to interpretation and application of local laws and legislation, which are not within the purview of the Inspection Panel. It mainly involves the determination of whether a drain located within this Requester’s property is private or public, and the related possibility of Project-financed construction activities proceeding within the Requester’s property. The Panel notes that the Court has issued an injunction and as a result, no construction activities are currently being undertaken within the Requester’s property.

The Panel notes that, in accordance with the Resolution establishing the Panel, the Requesters have the right to submit a new Request for Inspection based on new evidence or circumstances not known at the time of this Request.

The Project

The RSAP is an IDA-financed, US\$100 million Credit (CR 4138-CE) approved in 2005, with the objective of assisting Sri Lanka in maintaining and rehabilitating 620 kilometers of national roads “*to serve the needs of road users and the Sri Lankan public at large*”. RSAP also

¹ The World Bank Inspection Panel, International Bank for Reconstruction and Development and International Development Association, Resolution No. IBRD 93-10 and Resolution No. IDA 93-6, dated September 22, 1993.

supported the institutionalization of a sustainable maintenance arrangement for the national road network, and included a pilot for the rehabilitation and upgrading of rural roads. The implementing agency is the Road Development Authority (RDA).

The closing date for RSAP was September 30, 2011, and it received its First Additional Finance (CR 4429-CE) on September 16, 2008 to support cost escalations due to the unprecedented rise in world fuel prices in 2007/08. A subsequent request from RDA for the rehabilitation of additional road sections in the national road network was processed as the Second Additional Finance Credit (CR 4906-LK), i.e. RSAP II, on April 29, 2011, and the closing date was extended by 3 years to September 30, 2014. The new Project closing date is March 31, 2015. The concerns raised in the Request are related to an activity financed by RSAP II.

The Request

The Request was submitted by the following individuals: M. J. R Perera, M. N. D Perera, Shirley Dias, Anthony Suriyarachchi, and B. A. R Mallika (“the Requesters”). The Request was sent on behalf of themselves and others living in Tudella, Ja-Ela, Sri Lanka near the culvert 16/3 on the A3 road (Colombo-Puttalam Road). They state that they have suffered, or are likely to suffer, harm as a result of the failures or omissions by the World Bank related to the drainage system constructed near their properties, financed by the RSAP-II, and specifically the proposed widening of culvert number 16/3 located near Gama meda Road, Tudella, Ja-Ela. In subsequent communications, one of the Requesters (M.J.R Perera) informed the Panel that the total number of individuals affected by the “*mismanagement*” of rain water near the culvert is 67, and the approximate number of properties likely to be impacted is eight.

The Request raises several concerns about culvert 16/3, which according to Requesters, has been reconstructed on the Puttalam-Peliyogoda section of A3, near Gama meda Road. The Requesters claim that World Bank operational policies have not been observed in the design of the culvert, and that the Project will suffer “*adverse after effects*” and may endanger the safety of people due to this culvert. Specific concerns include:

Flooding. The Request states that culvert 16/3 proposes to drain rain water from the A3 into a private drain located on the property of Mr. M. J. R Perera. The Requesters are of the view that culvert 16/3, due to the increase of its catchment area by connecting recently constructed side drains to it, and the up-gradation and enlargement of its size, will carry more water into Mr. Perera’s private drain (also referred to as “trench” in the Request) than what the private drain can accommodate, and this will exacerbate the flooding that already occurs in the area.

In subsequent clarifications received from the Requesters, the Panel was informed that the Requesters are also concerned that culvert 16/3, as currently designed, may flood their properties because the natural flow of water of the private drain is towards the sea (i.e. east-west direction), whereas culvert 16/3 channels water to the Depa Ela canal behind Mr. Perera’s property, i.e. in a west-east direction. The Requesters’ believe that this is contrary to the natural slope of the land.

Displacement and Resettlement. The Requesters also believe that the increased volume of water will especially damage properties and localities that are downstream of the culvert, thereby

causing harm to livelihoods and private properties, and possibly lead to displacement and resettlement of downstream inhabitants.

Design Flaws. The Requesters contend that designing a culvert to drain onto a private property is contrary to the “*standards & legislative enactments governing such constructions.*” They also state that the private drain into which the culvert is to deliver its volume of water is much smaller than the culvert, thereby implying “*serious design flaws.*”

Remedy. The Requesters suggest that storm water from culvert 16/3 should be directed in a southwardly direction along the A3, and eventually be taken to the nearby Depa Ela canal through a concrete channel which will need to be constructed. The Requesters state that this southwardly direction is also the direction of the existing ground slope, and in their view, this will be an effective and lasting solution.

The Requesters state that RDA has provided verbal responses to their concerns, but these are not satisfactory because, they believe, the enlarged culvert will carry a greater volume of water into a smaller sized private drain/trench which cannot cater to the increased volume.

The Requesters also state that on January 26th, 2014 they have closed “*permanently the said private trench accepting the storm water from the said culvert lead away*” in response to written requests and petitions received from residents who fear flooding from the culvert design, which may cause flooding of houses on the opposite side of the street. Management has informed the Panel that this unilateral closure is in turn increasing flooding to neighbors elsewhere.

Events Following Receipt of Request

Following the receipt of the Request for Inspection, and due to some gaps in information, the Inspection Panel had several verbal and written interactions with the Requesters and Bank Management in an effort to seek factual clarifications. The Panel is grateful for the full cooperation that both parties have extended to it during this period.

The Panel notes that RDA has offered a solution to the Requesters for the possible threat of flooding to their properties, but this offer has not been accepted. RDA’s proposal involved the installation of an underground hume pipe on Mr. Perera’s property which would replace the existing open drain. The Panel also notes the measures taken by Bank Management to address the issues raised by the Requesters, including meetings at the site, conducting an independent technical assessment of the alleged design flaws as well as an independent assessment of Mr. Perera’s proposal.

Mr. Perera, however, views proposals by RDA with regard to any proposed construction activity on his private property as a threat to his legal ownership; he also believes that laying an underground pipe, or any activity related to draining water through his property, will diminish its resale value. Moreover, Management has reviewed the alternative proposal presented by Mr. Perera described above, but believes it not to be technically feasible due to lack of required elevation at the site.

The Panel has also been informed by Mr. Perera and Bank Management of the petition filed by Mr. Perera in the Court of Appeal. The Panel understands that the court case mainly

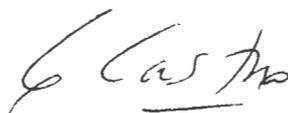
involves the determination of whether a drain located within this Requester's property is private or public, and the related possibility of Project-financed construction activities proceeding in the Requester's property. As a result of this petition, the Panel understands that the Court has granted an injunction halting construction activities on Mr. Perera's property. The Panel has been informed that this injunction remains in effect at the time of submission of this Notice of Non-Registration.

Panel's Determination

The Panel understands that whether Project-financed construction activities may take place in the Requester's property will be determined based on the decision of the Court of Appeal. The likelihood of harm from possible flooding potentially exacerbated by the Project, as alleged in the Request, is not occurring at this time. The Panel notes that interpretation and application of local laws and legislation, with regard to local government authority over the alleged private drain situated in Mr. Perera's property, is not within the mandate of the Panel.

In light of the foregoing, the Inspection Panel has decided not to register this Request. The Panel notes that, in accordance with the Resolution establishing the Panel, the Requesters have the right to submit a new Request for Inspection based on new evidence or circumstances not known at the time of this Request.

Yours sincerely,



Gonzalo Castro de la Mata
Chairman

Attachment

Mr. Jim Yong Kim, President
International Development Association

The Executive Directors and Alternates
International Development Association

Mr. M. J. R Perera
"Loretto" 254, Tudella, Jaela, Sri Lanka

Case number PIC 7596

Dear Ladies and Gentlemen,

First & foremost, we are grateful to the World Bank and the parties involved in the above project for undertaking a daunting task to improve the livelihood in the area concerned.

1. We M J R Perera, M N D Perera, Shirley Dias, Anthony Suriyarachchi, and B A R Mallika live and represent others who live in the area known as [insert name of area] Tudella Jaela Sri Lanka near the culvert 16/3 on the A3 road (Colombo Puttalam main road). Our addresses are attached.

2. We have suffered, or are likely to suffer, harm as a result of the failures or omissions in the World Bank Project P- 116742/ Colombo Puttalam Road (A3)- current (2) (3) Sri Lanka located in Drainage near culvert no. 16/3 near Gama meda Road Tudella Jaela..

3. The damage or harm you are suffering or are likely to suffer from the project or program:

a) The said lead way of the above numbered culvert has been directed to a private property (to a private drain). This we understand, after consulting the professionals in the field, is contrary to the standards & legislative enactments governing such constructions.

Moreover, the said private storm water drain is much smaller than the culvert (cross section), implying serious design flaws (or not considered for the design at all?).

b) Also the Lead away point is not directed towards the sea side (where the slope currently is); it is diverted to land side instead. In addition, it is also surprising to note that lowest point of the culvert has been set to a lower point than the mean ground water level leading to poor drainage.

c) Inundation due to storm water had been a perennial issue for the properties in the vicinity of the culvert for a quite a long time. There were flooding in the houses nearby for about 1.5 feet in many occasions, sometimes even inundating the A3 highway.

We understand that the project scope has been to find remedies & execute them without compromising the quality on deliverables. Though the recent project undertakings might provide answers to the issues upstream to the said culvert 16/3, it now imparts devastating threats/ effects for the localities downstream of the culvert as the capacities upstream the culvert is now increased and the storm water movement after the said culvert set to be poorly managed (or not managed).

4. The World Bank's operational policies you believe have not been observed:

Incomplete / Flaws in design considerations for the culvert 16/3 (Failed to see the big picture)

Adverse after effects (if the project is to be closed at the current standing) endangering safety of people.

This would not result in complete solution/ improvement of the livelihoods and the environment as envisaged through the project execution. The subsequent adverse consequences, if not attended, include threat of inundation of properties & displacement and resettlement related issues for the downstream of the said culvert 16/3.

This situation, if not attended comprehensively, would definitely hamper the overall quality of the project delivery.

We have duly informed this concern through the proper channels to the local authority (Road Development Authority, Sri Lanka) on 21st October 2013 in writing (a copy in sinhala language is attached).

Therein we have suggested directing the culvert lead way parallel to the A3 highway (to the South, the direction to which the ground slope is currently on) & developing a new concreted channel to carry the storm water directly to the nearby canal. This would be the lasting & effective solution for the problems anticipated, contrary to the current set up. (A pictorial explanation is attached.)

Unfortunately, we have received no response to date. The verbal response and explanations given by the Authority is not satisfactory and will not solve our problems for the following reasons;

- 1) Now that the water ways upstream to the culvert 16/3 have been enlarged & extended, the issues will be more aggravated for us during rainy seasons endangering the properties & livelihood of the residents/area.
- 2) Going by the sheer size of the enlarged culvert, we believe that it is the common sense that the said trench (through a private property) onto which the lead way of the culvert is now directed, cannot be chosen to cater for the requirements of the culvert.

We would like to add that we have now taken steps, on receipt of the written requests / petition from the residents likely to be affected, to close permanently the said private trench accepting the storm water from the said culvert lead way (on 26th January 2014). This was done after assessing resident's claim that the storm water would fill completely the said private trench from the back flow of the trench (opposite flow towards culvert lead way) in case of a heavy rain & the storm water coming from the culvert would occupy the adjacent properties endangering the livelihood. Also we see a great risk of inundation of the A3 highway at this location during the next rainy season, as early as April 2014".

- 3) We are in the process furnishing an independent report from a chartered civil engineer in this regards in due course.

Please note that we choose to write to your good office as the last resort. We believe that the current standing pertaining to the above project would be in contrary to the terms of reference stipulated by the World Bank for project execution (by Road Development Authority- Sri Lanka or their vendors)

Seeking intervention, our first contact was made with your office on the 29th January 2014 and were advised to contact the inspection panel on 21st February 2014.

Hence we hereby earnestly request the Inspection Panel-recommendation to the World Bank's Executive Directors that an investigation of these matters be carried out & instigate suitable corrective actions ASAP please.

We do hereby declare that the Particulars furnished by us in this request are correct and true according our knowledge.

Also, we do authorize you to disclose our identities, in compliance with the World Bank Privacy Policy.

Our contact details are as following:

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