

Alf Morten Jerve
Chairperson

IPN REQUEST RQ 12/02

May 24, 2012

NOTICE OF REGISTRATION

Request for Inspection Kenya: Energy Sector Recovery Project

On May 10, 2012, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) relating to the Kenya – Energy Sector Recovery Project and the Kenya Energy Sector Recovery Project Additional Financing. The Request was sent by Mr. Peter Usher, on behalf of the Njumbi Road Residents’ Association (NRRA) (the “Requesters”). In addition to the Request, the Panel received several attachments including a letter from the Chairman of the NRRA designating and authorizing Mr. Peter Usher to act on its behalf.

The Requesters’ concerns relate to the construction of an electric power sub-station located in Chalbi Drive, Bernard Estate, Lavington, Nairobi. This sub-station is being constructed by Kenya Power and Lighting Company’s (KPLC) as part of the Project. The Requesters state in one of the attachments that they consider “*the development to be illegal, inappropriate, environmentally unsound and poses a danger to people living near the development.*”

The Project

The objectives of the Energy Sector Recovery Project (ESRP) are to: “(a) *enhance the policy, institutional and regulatory environment for sector development, including private sector participation; and (b) increase access to electricity in urban and peri-urban*

areas while improving the efficiency, reliability and quality of service to customers.” An IDA Credit of US\$80 Million for the purposes of this Project was approved on July 13, 2004. On April 2, 2009, the Project received additional financing of approximately the same amount. The objectives for the additional financing are to: “meet a financing gap that will enable the project to meet its original objectives and to scale-up the project’s energy access program to enhance the project’s impact. In particular, the additional financing needs are for (a) cost overruns constraining the completion of the original project activities; (b) the need for credit re-allocation to facilitate implementation; and (c) scope for scale-up activities to strengthen the project’s development impact.”

The Request

The Requesters state in one of the attachments that the NRRA wishes at the outset to confirm that it understands and welcomes development in Kenya, asking that such development be consistent with the existing laws and statutes, be protective of the environment from harm, and be for the benefit of future generations of Kenyans. It adds that it previously stated these views in correspondence and discussion with the City Council of Nairobi, the National Environmental Management Authority, and the World Bank.

The Requesters state that they *“have already suffered and are likely to suffer further harm as a result of the Bank’s failures and omissions in the construction and operation of an electric power substation by the Kenya Power and Lighting Company (KPLC).”* In particular, they refer to *“Bank Environment and Social Safeguards Policy BP4.01 and OP 4.01 which require environmental assessment of projects proposed for World Bank financing to help ensure that they are environmentally sound and sustainable.”*

The Requesters state that the electric power sub-station, classified as a light-industrial complex, is located in an area reserved under Nairobi City by-laws for residential property only and that the development is forbidden under existing legislation. They add that the construction, which has significantly changed the environmental ambiance of the area, is going forth illegally. They state that a ‘Stop-Order’ has been issued by the National Environment Tribunal.

The Requesters state that the construction and operation of the power sub-station within a residential community causes risks to them from the associated pollution. They add that the construction has already comprehensively and negatively affected the value of properties within the vicinity of the sub-station. They state that no consultations were conducted with the affected people, totaling one hundred and fifty persons. All of them are totally opposed to this sub-station and have signed a petition against it.

The Requesters state that they have safety concerns, such as risks of fire and explosion, which are acknowledged by the Environmental Impact Assessment. They add that Njumbi Road has experienced explosion and fire on a previous occasion when a KPLC transformer exploded. According to them, severe damage to property and injury to

residents occurred on that occasion. They add that KPLC does not enjoy a reputation for efficiency and safety and residents are in fear for their lives. They state that, "*by endorsing KPLC activities and by ignoring its responsibilities to safeguard human rights, [the Bank] has put a community in jeopardy, placed people in danger and has destroyed their natural and human environment guaranteed within the Kenya Constitution.*"

The Requesters further state their concerns over the impacts on human health, including concerns from the impact of electro-magnetic radiation. They state that "*there is a risk possibly involving childhood leukemia and other serious illnesses*" The Requesters state that a number of small children live in their community, and risking their health is unacceptable. They state that, for safety reasons, there should be a buffer zone of no less than 200 meters between the sub-station and the nearest human habitation, while in this case, the sub-station shares a common wall with residences and the transformer is about 10 meters from the nearest bedroom.

They complain that the Bank has not inspected the site and recognized the unlawful nature of the development. The Requesters ask that the Bank requires from KPLC to seek an alternative and more appropriate site for its development. According to them, such alternative sites are as close as 200 meters away.

The Requesters state that they have raised their concerns with the Bank Country Office on a few occasions, adding that the Bank failed to provide a satisfactory response and should have interacted with them more and carried out an investigation as soon as they became aware of the problem.

The above claims may constitute, *inter alia*, non-compliance by the Bank with provisions of the following operational Policies and Procedures:

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|-------------|--------------------------|
| OMS 2.20 | Project Appraisal |
| OP/BP 4.01 | Environmental Assessment |
| OP/BP 13.05 | Project Supervision |

In accordance with paragraph 17 of the Panel's Operating Procedures (the "Operating Procedures"), I am notifying you that I have, on May 24, 2012, which is also the date of the dispatch of this notice, registered this Request in the Inspection Panel Register. Please note that the Panel's registration is an administrative procedure and it implies no judgment whatsoever concerning the merits of the Request for Inspection.


As provided in paragraph 18 of the IDA Resolution that established the Panel, paragraphs 2 and 8 of the "*Conclusions of the Board's Second Review of the Inspection Panel*" (the "1999 Clarification"), and paragraph 18(d) of the Operating Procedures, Bank Management must provide the Panel, no later than June 25, 2012, with written evidence that it has complied, or intends to comply, with the Bank's relevant policies and procedures in relation to the above-referenced Project. The subject matter that Management must deal with in a response to the Request is set out in paragraphs 3 and 4 of the 1999 Clarification.

After receiving the Management response, the Panel will, as outlined in the 1999 Clarification and as provided by paragraph 19 of the Resolution, *“determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and shall make a recommendation to the Executive Directors as to whether the matter should be investigated.”*

All communications with the Requesters in connection to this Request will be sent to Mr. Peter Usher.

The Request has been assigned IPN Request Number RQ 12/02.

Yours sincerely,


Alf Morten Jerve
Chairperson

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