

# **Land Rights and the New World Bank Safeguards**



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## **Lessons from Cambodia, Lao PDR and Ethiopia**



inclusive  
development  
international

## **Introduction**

**Many World Bank projects have negative impacts on people's lives, lands and livelihoods.**

Some of the most harmful impacts are caused when people and entire communities are physically and economically displaced. Displacement occurs when people's land is expropriated for the project, their access to land and natural resources that they rely upon is restricted, or productive resources that they depend upon for their livelihoods are depleted or destroyed because of project activities.

**Physical and economic displacement causes homelessness, landlessness, food insecurity, unemployment, psychological trauma and the breakdown of social networks and cultures.** In short, World Bank projects that cause displacement result in greater impoverishment. It is almost always the poor and most marginalized that are displaced and made worse-off by development projects. Urban poor communities that are forced to make way for big infrastructure, or are evicted because their tenure arrangements are not recognized by a land-titling program, are pushed to the outskirts of the city and often have no choice but to become squatters in order to survive. Rural and forest communities, whose land and productive resources are confiscated and destroyed to grow large-scale mono-plantations, are forced to compete with other communities for remaining land and resources, while others migrate to cities that are already struggling to sustain the urban population. Riparian communities are impoverished when hydropower dams built upstream change the river ecosystem and deplete or destroy river resources, including fish.

**The current World Bank safeguard policy on involuntary resettlement, while far from perfect, goes a long way towards providing protections against the harmful impacts of physical and economic displacement.** Since the 1980s, the World Bank has led the way in requiring proactive measures to ensure that people who will be displaced by Bank projects will be counted, consulted, compensated and supported. The objective of the policy is to treat involuntary resettlement as a development opportunity, with project benefits shared with those made to give up their homes and land to make the project possible. Under the policy, the Bank's Board of Directors is provided evidence that the borrower has a serious plan to meet this objective and ensure that those to be displaced will not be made worse-off, before it decides to approve financing for the project.

**The World Bank now wants to lower the bar, putting countless people at risk of forced displacement and impoverishment.** The proposed Environmental and Social Framework (ESF) requires less due diligence and monitoring by the Bank, leaving it up to governments and private businesses, often with low capacity, little will and poor human rights records to assess, manage and monitor displacement impacts. The Board no longer gets to review full resettlement and livelihood plans before it decides on whether to approve a project for financing. Environmental and Social Standard 5 (ESS5) on involuntary resettlement is far narrower in scope than the current policy, and fails to protect many types of project-affected people who suffer displacement as a result of Bank projects. The ESF allows the World Bank and its Borrowers to avoid the application of safeguards altogether: Projects to be implemented through subprojects will only trigger the ESSs if they are classified by the Borrower as 'high risk'. Even if the Borrower rates the subprojects as having a substantial risk of harm to people and the environment, it only needs to apply national regulations, regardless of how weak they are.

**The case studies from Cambodia, Laos and Ethiopia that follow show the real displacement impacts of World Bank projects and explain the strengths and weaknesses of the current safeguard policies and the proposed ESF in practice.** They show how instead of using the rare golden opportunity of the safeguards review to strengthen the policies, the Bank has significantly diluted important protections and entitlements.

**It's not too late for the World Bank to do the right thing and adopt a new generation of safeguards that will prevent impoverishment and improve the lives of people who sacrifice their land and resources for national development.** Effective safeguard policies are critical to inclusive development and shared prosperity.

## The Land Management and Administration Project

IDA Commitment: \$24,3000,000

Approved: February 26, 2002

Status: Closed

### Background

Post-conflict Cambodia has experienced strong economic growth and a massive influx of foreign private investment. Land values, especially in the country's capital, Phnom Penh, have soared. Phnom Penh residents, who had settled in an ad hoc manner on vacant inner-city land in the years that followed the fall of the Khmer Rouge regime, soon found themselves living on coveted real estate. In rural areas, huge swaths of farmland and forests used by smallholder families and indigenous communities have been leased by the government to Cambodian elites and foreign investors for logging and agro-industrial concessions. While a Land Law that recognizes adverse possession rights and provides formal tenure security for much of the population was enacted in 2001, weak rule of law and abuses of power have rendered these legal rights largely ineffective at securing tenure in practice. Forced evictions of poor households and communities are rampant, regardless of their legal rights to the land.

The Land Management and Administration Project (LMAP), supported by the World Bank, aimed to strengthen tenure security, clarify property rights and develop the land market in Cambodia. The cornerstone of the project was a systematic land-titling program that would turn legitimate land claims into registered ownership. Both private rights to land and State property would be recorded in the land register.

### Safeguards issues

The land titling program worked well for households who had lived on undisputed land since before the Land Law was passed; the adjudication of land claims and the issuance of titles was a fairly straightforward matter in these cases. However, the program was ineffective at securing land tenure for three types of people: 1) those with legitimate claims to their land, but who were living on prime urban real estate sought-after by well-connected investors or fertile rural land targeted for plantation development; 2) those without legal claims, either because they had settled on the land after 2001 or they were living on land legally classified as State property, and 3) Indigenous Peoples, which own land collectively, and who were excluded from the project by design.

For the first group of households, the program failed because it was not designed in a way that took into account prevailing political-economy factors, namely the combination of rapid hikes in real estate values and rampant abuse of power. As the State illegally claimed great swathes of valuable land, forcibly evicted the residents despite their legitimate claims, and turned the land over to investors, the Bank's monitoring system neglected to notice.

For the second group of households, who did not have legal claims to the land, for example because they resided along riverbanks or on the edge of forests or, which were classified as State public property under the law, the program as implemented made no provision for their resettlement. As a result, these households, usually already very poor, were made vulnerable to eviction, landlessness, homelessness and impoverishment, and would foreseeably have no choice but to squat elsewhere.

LMAP aimed only to secure one tenure form, by issuing titles to individual households with ownership rights to particular parcels of land. The third group - Cambodia's Indigenous Peoples - were not intended beneficiaries of the program. Under their customary laws and practices, these communities hold collective rights to their ancestral lands and territories, which are also recognized in the 2001 Land Law. Indigenous communities live on some of the most fertile and coveted land in the country, and consequently face competition for their land from investors. As a result, they are sorely in need of the protection of registered collective title. The program's narrow focus on securing, and therefore promoting, individual ownership, and its exclusion of other forms of tenure, such as collective ownership, meant that the most vulnerable groups, including Indigenous Peoples, were left unprotected.

## How did the safeguard policies apply?

**Involuntary resettlement:** LMAP provided an administrative process for determining the legitimacy of land claims, but failed to provide protections for people whose claims were denied and were thus subject to eviction. Although a Resettlement Policy Framework was developed for the project, during implementation no attention was paid to putting the framework into practice. This may have been as a result of the lack of clarity in OD 4.30 (and in OP 4.12) on the applicability of the involuntary resettlement protections to land titling projects, and in particular to inhabitants on land designated as State property.

**Appraisal/design (due diligence):** For LMAP to be effective, its design should have reflected a sound risk assessment that took into account contextual political-economy factors. OMS 2.20 on Project Appraisal required that the Bank assess various aspects of the project to examine its economic and social objectives, whether the proposed project could be expected to meet those objectives efficiently, and to recommend necessary conditions for this to occur. Although OMS 2.20 required, *inter alia*, economic, institutional and sociological aspects to be examined, it may not have been explicit enough in requiring the identification and management of risks deriving from the prevailing political economy (eg. abuse of power, land speculation, vulnerability of indigenous communities) as part of the Bank's due diligence. Land titling is commonly perceived as a purely technical endeavor by the World Bank, making safeguards to ensure a thorough process of due diligence that takes into account the non-technical factors that affect land tenure essential.

**Land tenure:** The common bias towards individual freehold (ownership) above other forms of tenure arrangements, including collective rights, means that safeguards on land tenure are crucial to ensuring that the rights and interests of the most vulnerable groups are protected and promoted in the design of land sector projects. The lack of safeguards on land tenure is a significant gap in the current suite of safeguard policies, especially where the indigenous peoples policy is not triggered.

**Monitoring and supervision:** Given the dynamic nature of the land market and the high risk that poor communities would face forced eviction and be unable to defend their land claims through administrative or judicial channels against the State, a commensurate level of monitoring and supervision of the project was necessary. OP 13.05 on Project Supervision required the Bank to supervise project activities to identify problems promptly as they arise, recommend ways to resolve them and/or changes in project concept or design as circumstances change. BP 13.05 places responsibility for supervision on the task team leader and describes a range of measures that he or she must adopt, including in the case of implementation problems. In addition mandatory bank procedures on involuntary resettlement (BP 4.12) contains detailed requirements on the Bank to conduct robust supervision from the beginning of project implementation through completion. Despite this, the supervision system failed to detect or address the problems raising under LMAP until they were brought to the Bank's attention by NGOs. This suggests that sufficient resources may not be available to task team leaders to supervise adequately, even where the policy requires it.

In response to a request submitted to the Inspection Panel in 2009 by a group of Phnom Penh poor households, the Panel found the Bank had failed to comply with OD 4.30, OMS 2.2, OP/BP 13.05, which were the applicable policies at the time LMAP was approved.

## How would the proposed ESF apply?

**Involuntary resettlement:** The ESF explicitly excludes land titling from the scope of ESS5 on involuntary resettlement. This means that households and communities deemed not to have ownership rights that are then threatened with forced eviction would not be protected, foreseeably leading to increased homelessness, poverty and repeat squatting in other areas. The exclusion of land titling from ESS5 will precipitate bad development practice contrary to the World Bank's objectives.

**Due diligence:** Under the proposed ESP, the description of the Bank's due diligence responsibilities is much more brief and vague than in OMS 2.20. The ESP requires the Bank to conduct due diligence based on the information provided by the Borrower. It can at its discretion seek further information, but is not explicitly required to confirm the accuracy or rigor of the Borrower's assessment by, for example, actively seeking a range of views from a variety of sources. The Bank is not compelled to seek independent third-party verification of the information provided by the Borrower. There is no requirement for an analysis of political-economy factors that may influence the project or, indeed, the Borrower's own assessment.

**Land tenure:** The proposed ESS1 requires the Borrower to take into account as part of its social assessment risks associated with land tenure and use, "including (as relevant) potential project impacts on local land use patterns and tenurial arrangements, land access and availability, food security and land values, and any corresponding risks related to conflict or contestation over land and natural resources." ESS7 provides some additional protections in relation to indigenous peoples tenure rights, but these will not always be applied due to the option provided to Borrowers to 'opt-out' of ESS7. Furthermore, the definition of 'indigenous peoples' appears to make ESS7 inapplicable to country contexts where the majority of the population identifies as a distinct indigenous group and practices a customary form of tenure. For communities in these countries and for non-indigenous communities with alternative tenure arrangements, there are no other provisions in the ESP to safeguard their land rights. The importance of land to people's lives and livelihoods calls for much more direction in the ESP to ensure that a variety of tenure forms are promoted and secured through land sector projects, prioritizing the tenure arrangements of the most vulnerable groups.

**Monitoring and supervision:** The ESP significantly weakens the Bank's monitoring and supervision requirements, containing no detail at all about the Bank's role. Monitoring by the Bank appears to be a highly flexible task, which may be limited to reviewing annual reports provided by the Borrower.

## Recommendations

- ESS5 should apply to land administration activities, including titling programs, that result in a determination or clarification of the tenure status of households and/or communities. The Bank should only agree to support land sector projects that include the development and adoption of a resettlement policy that meet the requirements of ESS5. This is a critical element of ensuring that land sector programs are designed to reduce poverty and promote shared prosperity. It is consistently the poorest households that are made vulnerable to eviction under such programs and need the protections of the resettlement policy most.
- The ESP should contain much stronger and more detailed provisions on land tenure in an additional ESS. In addition to a range of other safeguards, the ESP should specifically require

that land sector projects promote and secure a variety of tenure forms, prioritizing the tenure arrangements of the most vulnerable groups. The option to Borrowers to opt out of ESS7 should be removed.

- Due diligence, monitoring and supervision requirements on the Bank in the ESP should be clarified and strengthened to reflect the procedures set out in the now archived OMS 2.20 and OP/BP 13.05 respectively, and to ensure that risks deriving from political-economy factors are identified and managed through project design, implementation and rigorous monitoring by the Bank. The Bank should be required to confirm the accuracy and rigor of the Borrower's assessment and monitoring reports by actively seeking a range of views from a variety of sources, including potentially affected people, and, for complex projects such as national and regional land titling projects, by obtaining independent third-party verification. ESS5 must be complemented by a set of mandatory procedures on for the Bank specific to involuntary resettlement, using BP 4.12 as a starting point.

## The Nam Theun 2 Hydropower Project

IDA Commitment: \$42,000,000 (NT2 Power Project) + \$20,000,000 (S&E Project)

Approved: March 31, 2005

Status: Active

### Background

In 2005, the World Bank agreed to contribute financing to construct what would become the largest hydropower dam in Laos. The Nam Theun 2 Power Company (NTPC), which holds the 25-year concession to build, own and operate the power station, is owned by a consortium of public and private investors, including Electricite du France, Electricity Generating Public Company in Thailand and the Government of Laos. While the World Bank's contribution amounted to a fraction of the total cost, its involvement was crucial to securing private sector investment in such a large-scale infrastructure project in Laos.

The project's development objective is to generate revenues through the environmentally and socially sustainable development of hydropower. The facility was expected to generate 995 MW power for export to Thailand and an additional 75 MW for domestic use. The revenues flowing to the Government of Laos were to be used on poverty alleviation programs throughout the country.

Nam Theun 2 became fully operational in 2010.

### Safeguards issues

In addition to its environmental impacts, the project caused significant physical and economic displacement. Some 6,300 people previously living in the reservoir area were resettled, while at least 120,000 people living downstream of the dam experienced adverse impacts on their livelihoods, mainly due to the depletion of fish catch. Many of those displaced were Indigenous Peoples. The magnitude of displacement and the heavy reliance of affected people on natural resources for their livelihoods necessitated complex, resource intensive and long-term mitigation and support measures.

The suppression of freedom of expression in Laos precludes meaningful consultation of project-affected persons, including the ability to seek the free, prior and informed consent of indigenous peoples.

### How did the safeguard policies apply?

**Assessing the overall project costs and benefits:** Although during project appraisal, development objectives of proposed projects need to be justified for Bank-financing, there is no requirement in the safeguard policies, and in particular in OP 4.12, to assess whether the displacement impacts, and risks of impoverishment, are reasonable and proportionate to the expected public benefits. In the case of a mega hydropower dam, such as Nam Theun 2, that will cause massive displacement in a country environment in which dissent is effectively prohibited, the risks of harm to affected people, and serious human rights violations, are extremely high. The policy did not require an assessment of whether the intended development benefits – increased government revenues and 75 MW of power for domestic use, justified these high risks of harm and costs of mitigation measures, which were far from fail safe.

**Free-standing resettlement project and panel of experts:** Although not required under the safeguard policies, due to the magnitude and complex nature of the environmental and social impacts of the Nam Theun 2 dam, social and environmental aspects were treated as a free-standing project. This ensured that environmental and social impacts and mitigation measures were paid serious attention from preparation and design to implementation and monitoring. During project preparation, the decision was made to establish a three-person panel of experts to provide independent monitoring and assessment. The panel provided important information and recommendations to improve the quality of mitigation measures, including with respect to resettlement.

**Displacement due to land acquisition and restricted access to land:** OP 4.12 applied to people physically resettled by the project. The safeguard measures were successful at providing improved housing and local infrastructure to the resettled people. However, according to the panel of experts and other researchers, efforts to sustainably improve, or at least restore, livelihoods have been generally unsuccessful, including because of the poor quality of land at resettlement sites.

**Downstream impacts causing economic displacement:** The vast majority of project-affected people live downstream of the dam, and were predominately affected by dramatic reductions in fish catch, previously the cornerstone of their livelihoods. OP 4.12 does not apply to these downstream impacts, despite the severe nature of the economic displacement caused. Nonetheless, a downstream compensation program was put in place, which included one-time payments and several development initiatives. The program ended in 2013 and, according to the panel of experts and other researchers, was generally unsuccessful at restoring people's livelihoods, especially for poorer people and indigenous groups, who were less able to take advantage of the compensation program.

**Development and benefit-sharing objectives:** An objective of OP 4.12 is for resettlement to be treated as a development opportunity and to structure the project so that those displaced can share in project benefits. The requirements of OP 4.12, however, only set a restoration standard and do not make it mandatory for the Borrower to put in place benefit sharing mechanisms, where they are available, such as a share of the stream of revenues from a hydropower facility. As a result, the objective of improving poor people's living standards and livelihoods is aspirational in practice. The restoration standard may have contributed to the poor outcomes of the livelihood support programs.

## How would the proposed ESF apply?

**Assessing the overall project costs and benefits:** The ESF does not require an assessment by either the Bank or the Borrower of whether the displacement impacts and risks are reasonable and proportionate to the expected development benefits of the project.

**Free-standing resettlement project and panel of experts:** Neither is mandatory under the ESF, including in the case of projects that cause mass displacement and require complex mitigation measures.

**Displacement due to land acquisition and restricted access to land:** Physical and economic displacement as a direct result of land acquisition for the hydropower facility's construction and inundation of the reservoir area is covered by ESS5. However, unlike OP 4.12, the ESF does not require resettlement and livelihood plans to be prepared during project appraisal for consideration by the board, even for projects that cause mass displacement and require complex mitigation measures. Instead an Environmental and Social Commitment Plan (ESCP) must be prepared. An annex to ESS1 states that ESCPs will differ from project to project, and in some cases will include full resettlement plans and in others will refer to plans to be prepared by a future date.

**Downstream impacts causing economic displacement:** These impacts are not covered by ESS5, because its scope is limited to impacts of land acquisition and restrictions on land use. Downstream impacts would need to be caught in the general E&S Assessment (ESS1) and the vague mitigation hierarchy, which has a *compensation* standard, rather than a *restoration* standard. It is therefore foreseeable that the inadequacies and problems with downstream compensation programs in the Nam Theun 2 projects would be repeated. It is also conceivable that, because these impacts are not specifically referred to and not caught by the scope of ESS5, people economically displaced due to downstream impacts of a dam would not be identified in the E&S Assessment at all.

**Development and benefit-sharing objectives:** These have been removed as objectives of ESS5.

## Recommendations

- The Borrower should be required to demonstrate, and the Bank should be required to verify, that the project is justified on general welfare grounds, taking into consideration both its intended development benefits as well as the anticipated magnitude and impacts of physical and economic displacement that it will cause. The project should only proceed if the displacement impacts are i) reasonable and proportionate to the development benefits of the project and ii) can be successfully mitigated to avoid harm.
- For projects with significant and high-risk displacement impacts that will require complex, resource intensive and long-term mitigation and support measures to meet the objectives of ESS5, the resettlement component should form a free-standing project to ensure that the full set of analytical, preparatory, supervision, monitoring and evaluation activities are undertaken effectively. An independent panel of experts should also be required in such cases.
- As a condition of appraisal of projects involving resettlement, the Borrower should be required to provide the Bank with the relevant draft resettlement and livelihood support plans and budgets and make them available at a place accessible to displaced persons and local NGOs, in a form, manner, and language that are understandable to them.
- Economic displacement caused by the downstream impacts of a project should be covered by ESS5. The scope of ESS5 should be expanded to include reduced access to productive resources caused by project activities. “Reduced access to productive resources” refers to depletion or other negative changes to resources essential to people’s livelihoods, or reductions in the ability to access those resources, that occur as a direct result of the project (ie. the changes would not occur if the project did not exist).
- An objective of ESS5 should be to treat resettlement as a development opportunity, including by assisting poor households to improve their livelihoods and living standards through appropriate and sufficient project investments and the sharing of project benefits. ESS5 required measures should effectively reflect this objective. Benefit-sharing is one of the most sustainable methods for ensuring that those displaced are not made worse off and instead become beneficiaries of Bank-assisted projects. For example, a share of the profits from a large hydropower dam could go to the people who invested their land to make the project possible.

## The Promoting Basic Services Project

IDA Commitment: \$1,990,000,000 (All Phases)

Approved: May 25, 2006 (Phase I)

Status: Active (Phase III)

### Background

In the wake of the Ethiopian government's violent crackdown on opposition supporters following the 2005 parliamentary elections, the World Bank and other donors suspended direct budget support to Ethiopia. This left a large budgetary gap for recurrent expenditures necessary for the operation of government. To fill this gap, the World Bank designed the Protection of Basic Services Project (PBS), which transfers block grants to subnational government budgets for recurrent expenditures in a number of sectors, including salaries of government staff. PBS aims to expand access to and improve the quality of basic services in five sectors (education, health, agriculture, and water and sanitation services and rural roads). The Bank project, which contributes to a multi-donor nationwide program, consists of three phases, the first of which (PBS I) started in 2006. The PBS III Project, renamed "Promoting Basic Services," was approved in September 2012.

### Safeguards issues

Due to the Ethiopian government's repressive and discriminatory practices, the transfer of block grants through PBS raises serious risks that the World Bank is financing human rights violations. Upon entry into the federal government's treasury, PBS funds are comingled with other funds and financial management systems put in place were not equipped to track the use of PBS funds at the local level. In addition to the risk that development benefits are being distributed unevenly due to endemic discrimination against certain groups, the lack of control or oversight by the Bank of its funds creates a danger that the funds are being used to perpetrate harms. The promotion of decentralization in such an environment, in which the Bank has no direct mechanism to influence the mode of service delivery at the local government level, is highly risky.

Beginning in 2010, in the four lowland regions of Gambella, Afar, Benishangul-Gumuz and Somali, the way the government chose to deliver services in the five sectors covered by PBS was through a "villagization" program, which entailed the relocation en masse of "scattered populations" from their fertile ancestral lands into centralized villages. The justification for villagization was to make it easier to improve access to basic services. The Anuak Indigenous People of the Gambella region claimed that they were forced to relocate by government officials, and that those that refused faced violence, including torture, rape and killing at the hands of the military. Moreover, many of the villages were not provided with basic services as promised, and plots allocated for agriculture were unsuitable for farming. People reported facing severe hunger at the sites.

### How did the safeguard policies apply?

The World Bank did not trigger any safeguard policies for PBS arguing that they are not applicable to projects that support recurrent expenditures. The Inspection Panel has found that this interpretation was unfounded and that safeguard polices should have applied as relevant to the project. The analysis below explains how the safeguards would have applied, if they had been correctly triggered.

**Subprojects:** The design of PBS gave discretion to subnational governments to design the mode of service delivery in the relevant sectors to fulfill the project objectives. Because the nature of PBS relied upon multiple subprojects for its implementation, detailed safeguard measures could not have been prepared for project appraisal. However, during project preparation it should have been recognized that the nationwide project would affect the many Indigenous Peoples living in Ethiopia. The risk that involuntary resettlement might be used as a mode of service delivery should have also been identified, since villagization programs had been used in Ethiopia in the past ostensibly for this purpose. By the time PBS Phase III was being prepared, the most recent villagization program was well underway.

If OP 4.10 and OP 4.12 had been triggered (see below re scope of OP 4.12), they would have required the preparation of an indigenous peoples policy framework and a resettlement policy framework as a condition of project appraisal. Once the subnational governments had designed the subprojects, full policy-compliant indigenous peoples and resettlement plans would have had to be submitted to the Bank for approval before the subproject would be accepted for Bank financing. If the safeguard policies had been applied to PBS, the forced relocation of indigenous communities with Bank financing could not have occurred, since it would have been contrary to both OP 4.10 and OP 4.12.

**Scope of the involuntary resettlement policy:** The Inspection Panel found that because involuntary resettlement was not necessary to fulfill the objectives of PBS, the involuntary resettlement policy did not apply. The Panel was referring to a provision regarding the scope of OP 4.12, which extends to “activities resulting in involuntary resettlement, that in the judgment of the Bank, are (a) directly and significantly related to the Bank-assisted project, (b) necessary to achieve its objectives..., and (c) carried out...contemporaneously with the project.” This means that even when unfettered discretion is vested in subnational governments for the design of local programs to fulfill project objectives, and the design chosen involves resettlement, OP 4.12 does not apply as long as there were feasible alternatives.

**Forced evictions:** Forced evictions are defined in international law documents as “the permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/or land which they occupy without the provision of, and access to, appropriate forms of legal and other protection”. Although OP 4.12 sets out required measures that if well-implemented would prevent forced evictions, there is no explicit prohibition on forced evictions.

## How would the proposed ESF apply?

**Subprojects:** Under the proposed ESF, projects that will be implemented through multiple subprojects can avoid the application of safeguards, including ESS5 on involuntary resettlement and ESS7 on indigenous peoples, altogether. According to the ESP and ESS1, only subprojects classified by the Borrower as high-risk need to comply with the safeguards. Subprojects classified as having a substantial or lower environmental and social risk only need comply with national regulations. The subproject loophole applies to both public sector programs and private sector investments through financial intermediaries such as commercial banks. This means, for a project like PBS, safeguards on indigenous peoples and resettlement would not apply. Under the ESF, the Borrower is responsible for classifying subprojects. Since PBS itself was not classified as high risk, it is highly unlikely that subprojects would be classified as high risk by the Government of Ethiopia or its subnational authorities. The ESF heavily incentivizes the Bank and Borrower to design projects in such a way as to require implementation through subprojects and thereby avoid application of the Bank’s environmental and social standards.

**Scope of the involuntary resettlement policy:** The scope of ESS5 is even narrower than OP 4.12, and only applies to involuntary resettlement caused by land acquisitions and restrictions on land use. It does not apply to the multitude of other project activities that cause displacement. It would not apply to the situation that arose in Ethiopia.

**Forced evictions:** ESS5 explicitly prohibits forced eviction, as defined under international law, of people who are eligible for entitlements and protections under ESS5. If ESS5 is not applied, forced evictions are not prohibited under the ESF. This means that forced evictions of the type carried out in Ethiopia to implement villagization would not have been prohibited by the ESF, despite the likelihood that Bank funds could be used to carry them out.

## Recommendations

- The ESSs should apply to all subprojects with social and environmental impacts, regardless of risk categorization. Frameworks establishing principles and procedures compatible with the ESSs should be prepared as a condition of project approval. Once the subprojects are defined and impacts are identified, full resettlement and/or Indigenous Peoples plans should be developed and submitted to the Bank for approval before the subproject is accepted for Bank financing.
- The scope of ESS5 should be extended to include any activities resulting in involuntary resettlement that are directly and significantly related to the Bank assisted project and the achievement of its objectives as set forth in the project documents.
- The ESP and ESS1 should prohibit the use of Bank funds to commit human rights violations, including forced evictions.

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