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Chairperson

IPN REQUEST RQ 12/05

October 09, 2012

NOTICE OF REGISTRATION

Request for Inspection

ETHIOPIA: Protection of Basic Services Program Phase II Project Additional Financing (P121727) and Promoting Basic Services Phase III Project (P128891)

On September 24, 2012, the Inspection Panel (the "Panel") received a Request for Inspection (the "Request") related to "*the World Bank-financed Ethiopia Protection of Basic Services Project*"¹ in support of the Government's Promoting Basic Services Program (hereinafter referred to as the "PBS Program" or "PBS").² The Request was submitted by "*two local representatives*" on behalf of 26 Anuak people from the Gambella region of Ethiopia (the "Requesters"). The representatives have been authorized by two groups of Anuak living in different locations to submit the Request. The representatives and the Requesters have asked the Panel to keep their identities confidential "*due to grave concerns about our personal security and that of our relatives (...)*."

The Request is composed of a letter, to which an annex is attached, and of affidavits with signatures of the affected people that authorize the representatives to submit the Request on their behalf. The Annex, which elaborates on the Request's claims, was prepared by Inclusive Development International (IDI), a Non-Governmental Organization (NGO). The Requesters' representatives ask that the annex forms an official part of the Request. Due to security concerns, the Requesters' representatives also appoint IDI as their contact reference for all correspondence related to this Request.

¹ At the time of receipt of the Request the following two Bank projects were not closed: the Protection of Basic Services Program Phase II Project Additional Financing (hereinafter "PBS II-AF") and the Promoting Basic Services Phase III Project (hereinafter "PBS III").

² According to the PAD for PBS III, for its first two phases, the 'PBS' acronym formally referred to the 'Protection of Basic Services Program'. However, at the Government's request, while maintaining the 'PBS' acronym, it now refers to the 'Promoting Basic Services Program'.

The Project

The World Bank involvement in the PBS Program started in May 2006 and is composed of four continuous operations, including 2 Additional Financing (AF): PBS I, PBS I-AF, PBS II, PBS II-AF, PBS-Social Accountability Program and PBS III. Donors and Government's overall total cost of these operations has exceeded USD 13 billion. The Bank's total commitments have amounted to almost USD 2 billion.

The Request for Inspection raises concerns about the Bank support to the PBS Program. However, only PBS II-AF and PBS III were still open at the time of receipt of the Request for Inspection. The PBS II-AF and PBS III are hereinafter referred to as "the Project". PBS II was approved by the Bank on May 14, 2009 for USD 540 million and benefitted from PBS II-AF on February 22, 2011 for USD 420 million. PBS II-AF is expected to close on January 7, 2013. PBS III was approved by the World Bank Board on September 25, 2012 for a total amount of USD 600 million.

According to the Project Appraisal Document (PAD) of PBS II, the Program Development Objective is to contribute to expanding access and improving the quality of basic services in education, health, agriculture, water supply and sanitation, and rural roads delivered by sub-national governments, while continuing to deepen transparency and local accountability in service delivery. The PAD of PBS III states that the Bank's support will contribute to the higher-level objective of expanding access and improving the quality of basic services by funding block grants that ensure adequate staffing and operations, and by strengthening the capacity, transparency, accountability and financial management of government at Regional and Local Authorities Level. The program defines basic services as education, health, agriculture, water supply and sanitation and rural roads.

The PAD of PBS III lists three main Components:

- 1- Sub-program A: Basic Service Block Grants (USD 6.2 billion of which the World Bank contribution is USD 555 million);
- 2- Sub-program B: Strengthening Local Accountability and Transparency Systems (Citizen's Engagement, Local Public Financial Management and Procurement, and Managing for Results) (USD 114.9 million of which the World Bank contribution is USD 40 million);
- 3- Sub-program C: Results Enhancement Fund (USD 35 million of which the World Bank contribution is USD 10 million).

Sub-program A, the provision of Basic Service Block Grants to *woredas*,³ is the main reason behind the Requesters concerns. Through this Sub-component financial support is provided for "*recurrent (salaries, operations and maintenance) expenditures in the five basic service sectors (education, health, agriculture, water and sanitation, and rural roads) at local levels.*" According to the PAD, the Basic Service Block Grants are disbursed from the federal level to the regions, and from the regions to the *woredas*. Within Ethiopia's federal administrative structure, the Government provides "*un-*

³ "*Woredas*" constitute the third level in Ethiopia's decentralized administrative structure, which includes the following tiers: regions, zones and *woredas*.

earmarked block-grant financing” through regional governments, which in turn provide block grants to *woreda* administrations.

According to Annex 6 of the PAD of PBS III (Operational Risk Assessment Framework), over the last year and a half the issue of “*villagization*” has emerged as an issue of concern. It states that a “*villagization*” program in the developing regions of Benishangul-Gumuz, Gambella, Somali and Afar “*has relocated more than 100,000 households to village clusters at the professed purpose of ensuring their access to basic services.*” According to the PAD, it has been alleged by human rights groups that the manner in which the relocation has taken place was coercive.

According to the PAD none of the safeguard policies were triggered. The environmental category for PBS III is determined to be C. The Integrated Safeguard Data Sheet, clearly states that as far as the Involuntary Resettlement Policy is concerned, “*this project does not involve land acquisition leading to involuntary resettlement or restrictions of access to resources or livelihoods.*” The PAD adds that in PBS I and PBS II the Environmental Assessment and Involuntary Resettlement Policies were triggered because of small infrastructure works provided through “*a pilot Local Investment Grant (LIG), which was a Specific Purpose Grant from the Federal Government to selected woredas for capital investments in the five basic services sectors.*” The LIG component is not included in PBS III.

The Request

The Request states that the Requesters, Anuak indigenous peoples, have been harmed by the Bank-supported PBS Program as a result of World Bank’s non-compliance with its policies and procedures because the PBS Program is “*contributing directly to the Ethiopian Government’s Villagization Program in the Gambella Region*”.

The Request states that under the Villagization Program, Anuak people are being forced to leave their ancestral lands, which is then leased to investors. The letter states that “*these mass evictions have been carried out under the pretext of providing better services and improving the livelihoods of communities*” but in reality, in the new sites where they were forcibly moved, the Requesters found infertile land, and no schools, clinics or other basic services. The Request adds that the Villagization Program has been implemented by Government workers whose salaries are paid under the PBS Program. The Request also states that some of these workers indeed opposed the implementation of the Villagization Program and because of that have been the targets of arrests, beating, torture and killing.

The Request states that the concerns of the Requesters have been brought to the attention of the Bank Management who, according to the Request, stated that the Bank has nothing to do with the harm suffered by the Requesters. In addition, the Request reports that Bank staff clarified to them that PBS III will be presented to the Board without applying the Indigenous Peoples and the Involuntary Resettlement policy. The Requesters are unsatisfied with the Bank’s response and request the Panel to carry out an investigation of the matters raised in the Request for Inspection.

The Request's claims are further elaborated in the Annex, which forms part of the Request, titled "Policy and Legal Analysis of the Ethiopia PBS Request for Inspection", a summary of which follows.

The Annex to the Request describes the Requesters as Anuak indigenous peoples with a "unique language and culture" who are "intimately tied to the land and rivers of Gambella". There are two Anuak clans: the "Lul", upland forest dwellers who practice shifting cultivation (they work a parcel of land for a number of years before moving to a different area), and the "Openo" who are riverside Anuak practicing more sedentary agriculture and fishing.

Linkage between the PBS Program and the Villagization Program. According to the Annex, the PBS Program "aims to increase decentralized delivery of basic services [and is] designed to provide discretionary fund to sub-national governments." The Annex adds that in Gambella the regional government's program for improving access to basic services is the so-called "Villagization Program Action Plan," which started during phase II of the PBS Program. Under a three year plan the Villagization Program was to be implemented in all *woredas* of Gambella and 45,000 households were to be resettled in new villages where basic services, such as schools, clinics, water schemes, infrastructures, would be provided.

The Annex states that the "services and facilities supported through PBS are precisely the services and facilities that are supposed to be provided at new settlement sites under the Villagization program". It is argued that it is "therefore apparent that Villagization is the regional governments' principle strategy for achieving the PBS objectives in Gambella", and that the PBS Program provides the means for the Villagization Program because, while public information about the precise funding for Villagization is not available, the PBS Program is the major source of funding for *woredas*. The Requesters, according to the Annex, object to statements by Bank representatives that the Bank does not contribute directly to the Villagization. The Requesters maintain that some of the public servants paid through the PBS Program are charged with implementing the Villagization Program and have testified to a number of organizations that they were ordered to implement the Villagization program in Gambella. The Annex presents some testimonies of these public servants who state that they were threatened in various ways, such as with beatings and detentions, to coerce them into carrying out the Villagization. The Annex thus states that "it does not appear [...] that Bank financial tracking and accountability systems for PBS would detect the diversion of funds towards the implementation of Villagization in the manner described by the Requesters."

Harm Suffered. According to the Annex, the Requesters perceive that the Villagization program, which in their view is supported by the PBS Program, "has been carried out by force and accompanied by gross violations of human rights." The Requesters speak of arbitrary arrests, beatings and assaults leading to deaths, torture, rape and violence, forced displacement, destruction of properties and inhuman conditions at the new villages. The Requesters assert that basic services at the new villages were not provided, and there was little access to food or land suitable for cultivation. Some

Requesters have told stories of people killed through starvation and hunger. In such conditions, many Anuaks fled Ethiopia and sought asylum in Kenya or South Sudan.

Alleged Policies Violations. The Annex goes on to elaborate on the Bank's non-compliance with various policies and alleges that the Bank violated the policies related to Project Appraisal, Indigenous Peoples, Involuntary Resettlement, Project Supervision and Economic Evaluation of Investment Operations.

Economic Evaluation of Investment Operations. After the World Bank and other members of the Development Assistance Group suspended direct budget support to Ethiopia in early 2000s, according to the Annex, the PBS Program was "*designed to replace budget support with a new financing instrument*" to ensure a steady flow of resources for basic services. Therefore, the PBS Program is a "*sector investment lending instrument, which through block grants, leaves almost complete discretion*" to the national and sub-national government on implementation of the project. It is argued that the PBS Program closely resembles direct budget support in that there are no separate bank accounts beyond the initial entry point in Treasury and no separate disbursement or accounting procedures for PBS Program funds. According to the Annex, the choice of lending instrument in the environment in which it was designed and implemented is inappropriate and in non-compliance with OP 10.04 on Economic Evaluation of Investment Operations.

Project Appraisal. According to the Annex, the PAD of PBS II identifies the project risks as substantial with respect to governance and commitment to social accountability, however, the mitigation measures identified in the PAD are inadequate to address the corresponding risks, which have eventually materialized. It is argued that the lack of reference in the PAD to the Villagization Program is "*striking*" because "*coercive*" villagization "*has been used historically in Ethiopia as a means of 'development' of certain populations and in particular to deliver basic services*", and the Bank's diligence in carrying out social and environmental risks analysis has to be called into question.

The Annex adds that the Bank did not fully consider the PBS Program's effects on well-being of people, including marginalized peoples like the Anuak, and that the Bank did not ensure consistency with applicable international agreements, including human rights treaties, to which Ethiopia is a party. Furthermore, the Bank in its risk assessment did not consider institutional issues at regional and *woreda* levels as well as the decision-making processes that could affect the achievement of project objectives, and did not consider the sociological aspects of PBS Program activities.

Application of Safeguards Policies. According to the Annex, Bank representatives justified the non-application of the policies on Indigenous Peoples and Involuntary Resettlement by stating that the main component of PBS Program supports only recurrent expenditures and thus social and environmental policies are not triggered. It is argued that this does not "*negate the Bank's obligations to trigger and comply with relevant safeguards policies*", and that the high level of discretion that the type of instrument used for the PBS Program allows, requires strong measures and oversight by the Bank to ensure that funds are not used in violation of Bank policies and human rights.

Indigenous Peoples. The Annex states that the policy on Indigenous Peoples OP 4.10 should have been applied to PBS Program, and that the Anuak are indigenous peoples meeting the definition of Indigenous Peoples of OP 4.10. It is argued that *“it was impossible for PBS not to affect Indigenous Peoples. Yet not a single reference is made to Indigenous Peoples in project appraisal documentation.”* As a result, no safeguards guaranteed by the policy, including prior informed consultation leading to broad community support, were applied to protect the interests of the Requesters. The Annex states that if OP 4.10 had been applied, *“PBS funds could not have been used to implement any aspects of villagization as a means to improve access to basic services that required Indigenous Peoples, including the Anuak, to move away from their ancestral lands.”*

Involuntary Resettlement. The Requesters believe that the policy on Involuntary Resettlement should have also been applied to the PBS Program. Had OP 4.12 been triggered, the PBS Program would have required adequate safeguards for the resettlement of people under the Villagization program and would have ensured processes in respect of human rights. They argue that the policy should have been triggered after identifying the risk that regional governments could use PBS Program funds to achieve Villagization program objectives.

Project Supervision. It is argued that when the Bank became aware of the Villagization Action Plan it should have engaged in communication with the federal and regional governments about the plan and its implementation and should have assessed its risks with respect to affected people, including indigenous peoples. Also it is questioned why the *“Good Practice Guidelines and Principles Regarding Resettlement”* issued by the Development Assistance Group were not made a binding requirement of donor support to the PBS Program. In addition, the Requesters report that a World Bank evaluation of the Villagization Program in the Benishangul-Gumuz region was carried out in early 2011. The World Bank team *“found it unnecessary to trigger OP 4.12 determining that there was no evidence that relocation under villagization was involuntary and that Bank funds did not directly contribute to villagization.”* The Annex states that Anuak representatives *“repeatedly called on the Bank to interview Anuak refugees”* who were affected by Villagization but the Bank did not react to this, nor did the Bank make an effort to correct the situation in spite of evidence of Bank funds being used for the Villagization program. This, it is believed, is evidence of non-compliance with the policy on Supervision.

Prior contact with Bank Management. The Annex presents details of the efforts made by the Requesters and their representatives to bring their issues related to the PBS Program to the attention of Bank Management. It also notes that it is difficult for Anuaks in Gambella or those in refugee camps outside Ethiopia to communicate with the Bank, and that Anuaks fear serious reprisals for speaking up and expressing criticism of the Government. A number of letters were sent in August and September 2012 to the Bank, including by Anuak refugees, but no written response was received. Bank representatives met on September 14, 2012 with some of the Requesters and reiterated the Bank’s position: that Bank funds do not contribute to the Villagization program, that no remedies can be offered by the Bank to address the Requesters’ issues other than continuing dialogue with the Government and that the Bank will not apply its policies on Indigenous Peoples and Involuntary Resettlement to the PBS III.

Registration of the Request

The Panel notes that it has verified that the Request meets the basic requirements for registration.

The Request was submitted by at least two people, in relation to a program supported by the World Bank through the Project (PBS III was approved on September 25, 2012, and has not yet reached 95% disbursement). The Request asserts that the Requesters are from the Gambella region of Ethiopia and are affected by the Project. The Request raises issues of harm which may plausibly have resulted from the Project and from alleged actions/omissions of the Bank. The Request is not related to procurement issues. Furthermore, the Request deals with a subject matter on which the Panel has not made a previous recommendation.

Furthermore, the Panel has verified that the Requesters state that they have brought these concerns to the World Bank's attention on several occasions, and that the Request provides detailed information on the interaction with the Bank.

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

OMS 2.20 Project Appraisal
OP/BP 4.10 Indigenous Peoples
OP/BP 4.12 Involuntary Resettlement
OP/BP 10.04 Economic Evaluation of Investment Operations
OP/BP 13.05 Project Supervision

With this notice, I am notifying you that I have, on October 09, 2012, which is also the date of this notice, registered this Request in the Inspection Panel Register.

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"), Bank Management must provide the Panel, by November 07, 2012 a Response to the issues raised in the Request for Inspection. The subject matter that Management must deal with in the 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 Inclusive Development International as the contact for this request.

The Request has been assigned IPN Request Number RQ 12/05.

Yours sincerely,


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Chairperson

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