



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

October 10, 2001

Via facsimile

Ms. Carole Brookins, Executive Director
The World Bank
1818 H Street, NW
Washington, DC 20433

Re: Revisions to Resettlement Policy

Dear Ms. Brookins:

In these challenging and difficult times, the Board of Executive Directors now has an opportunity to strengthen and clarify protections for some of the most vulnerable people on Earth. As stated by President Wolfensohn recently, “The greatest long-term challenge for the global community in building a better world is that of fighting poverty and promoting inclusion worldwide.”ⁱ Involuntary resettlement carries very high risks of impoverishment, especially for poor and marginalized communities.ⁱⁱ There is now an opportunity for the Board to promote inclusion and fight poverty, by authorizing certain changes to the draft resettlement policy.

On October 23rd, the Board of Executive Directors is scheduled to discuss the proposed conversion of OD (Operational Directive) 4.30 into OP/BP (Operational Policy/Bank Practice) 4.12. Management is asking the Board to approve the draft OP/BP. However, the revised policy has not yet undergone a full Board discussion, and we respectfully submit that before giving its approval to the draft policy, the Board should require additional modifications to the policy.

CIEL fully recognizes the long history of revisions to this policy; indeed, we have been commenting on the process since 1996. We also acknowledge that several of the concerns articulated by civil society and Board members about earlier drafts of the policy have been remedied. However, as acknowledged in Management’s cover memo, there are still several outstanding issues that have not yet been adequately addressed in the draft policy.

I hope that you will take the time to read the following letter prior to forming an opinion on whether to approve or modify the draft OP/BP. These suggestions are offered in the spirit of helping to improve the Bank’s capacity to effectively implement the resettlement policy.

- 1. Indigenous Peoples. While on the one hand professing concern for the impacts of resettlement projects on indigenous peoples, the draft OP/BP also introduces new language, not found in the OD, which undermines the rights of indigenous peoples.**

The last two sentences of OP para. nine (formerly footnote 15, in the July draft) should be deleted. The first sentence is fine, and should remain: "Bank experience has shown that resettlement of indigenous peoples with traditional land-based modes of production is particularly complex and may have significant adverse impacts on their cultural survival."ⁱⁱⁱ The rest of OP para. 9, however, read carefully, is implicitly permissive of the forcible displacement of indigenous peoples even in situations where it threatens their cultural survival, and even if replacement land is not offered.^{iv} Ironically, Bank Management claims that this new language was developed in response to Board concerns about resettlement impacts on indigenous peoples.^v

Management's proposed language, however, does not require that Bank staff do anything more in the context of indigenous peoples than is already required for all involuntary displacement: i.e. avoidance and striving for land-based alternatives. As drafted, para. 9 does not address the special issues at stake when indigenous peoples are displaced – it does not recognize that indigenous communities have suffered disproportionate losses from development-induced displacement; that even in the best of situations they lack negotiating strength vis-à-vis project authorities; and that indigenous peoples often have distinct rights that are recognized under domestic and international law, rights that must be observed and respected by the World Bank and national governments.

Management's proposed language could be viewed as a Trojan horse, one that professes concern for indigenous peoples but which in fact risks taking the Bank several steps backwards, because the proposed language departs from established and emerging principles of international law and the standards of international development organizations (including the Inter-American Development Bank and the World Commission on Dams). We therefore propose that the Board should delete the last two sentences of Paragraph 9, which add no value and carry significant risk. Ideally, those sentences would be replaced with the following language:

"For this reason, the Bank will finance projects involving the resettlement of indigenous peoples or other ethnic minority communities only if the Bank can ascertain that: (a) the resettlement will take place only after the indigenous peoples have given their free and informed consent; and (b) the compensation package includes land-based resettlement; and (c) the compensation package incorporates other culturally compatible social and economic benefits."^{vi}

2. The draft OP fails to address the issue of Voluntary Resettlement, and people who are "voluntarily" resettled in World Bank projects will have no rights under World Bank policy.

This omission ignores the fact that "voluntary resettlement" is being increasingly funded by the Bank, and also ignores the hard-learned lessons of last year's highly controversial China Western Poverty Reduction Project. The CWPRP would have involved Bank support for the "voluntary" resettlement of tens of thousands of Chinese farmers, who in turn would have involuntarily displaced thousands of local inhabitants (including Tibetan and Mongol herders). It is important to recall that even in that high-profile project, the Bank never publicly released the Voluntary Settlement Plan (because it is not required to by Bank policy), did not appropriately consider the impact of the voluntary resettlers on the host communities, and failed to prepare an Involuntary Resettlement plan in accordance with Bank policy. This project should serve as a warning call on the need for minimum standards in Bank projects involving voluntary resettlement.

With the resettlement policy now under the final stages of revision, the Board should seize this opportunity to clarify standards for Bank-supported voluntary resettlement projects. This is a win-win situation. Providing standards on voluntary resettlement will empower and encourage Bank staff to support voluntary resettlement, and would ensure basic disclosure of information, participation and supervision, all of which are likely to improve project quality and help facilitate the Bank's development objectives. It should be preferable to all parties to operate in a manner that includes voluntary agreements based on informed choice, and to evolve away from the contentious model of forcible evictions.

In commenting on earlier drafts of the OP, Board members have repeatedly requested that Management define voluntary resettlement, but Management has thus far refused to provide this definition in the policy. In response to queries from Board members and numerous public comments, Management defined "voluntary resettlement" as follows in their Q&A paper: "Resettlement is voluntary only when the affected people have the option to refuse resettlement, and they nevertheless resettle based on informed consent." **The Board should insist that this definition of "voluntary" be included in footnote 7, and that footnote 7 make reference to the OP Resettlement Instruments Annex for basic parameters governing Bank-supported voluntary resettlement projects.**

The point of this exercise is to clarify things, and both the Board and the public have asked for clarification on voluntary resettlement. Thus, the title of the OP Annex should be "Resettlement Instruments," and a new section (presumably Part V) should be added to the Annex defining minimum standards for voluntary resettlement. This modification would not be any more complex than that which has been done for other forms of resettlement instruments (including modification since the July draft to provide more detailed standards for parks-affected people). This Annex is completely new, created for this version of the policy. Since the Bank is already fundamentally altering the OD in this manner, in order to provide greater clarity on resettlement instruments, there is no justifiable argument for excluding voluntary resettlement.

To provide guidance to staff and ensure consistency with Bank standards regarding resettlement, the Annex should elaborate the following minimum standards for Voluntary Resettlement:

1. Define the standards that World Bank staff shall apply to determine whether or not a resettlement program is truly voluntary for all adult members of the household;
2. Require the public release of documents relating to voluntary resettlement, including the resettlement instrument, to affected populations (in a language and manner that is understandable to them) and in the World Bank InfoShop prior to appraisal;
3. Establish that voluntary resettlers are entitled to development benefits and that their standard of living should be improved;
4. Provide rights of participation and consultation for voluntary resettlers in the design and implementation of the voluntary resettlement plan;
5. Include provisions to evaluate and mitigate the impact of voluntary resettlers on host populations and their environment; and
6. Provide standards for Bank supervision and monitoring throughout project implementation.

Such a minimum framework of rights for voluntary resettlement would provide operational guidance to project planners for structuring voluntary resettlement programs, and would create much-needed harmonization between involuntary and voluntary resettlers in terms of disclosure, consultation, and access to development benefits.

- 3. Rettlement as Development: Improvement of Standards of Living.** Need to clarify that the policy objective is improvement in standard of living of displaced persons; need to remove language referring to “restoration” of livelihoods, which has been interpreted by some as limiting the improvement objective.

The Bank is missing its chance to convey the degree to which it cares about the improvement in the standards of living of all people, most importantly those affected by Bank projects. The OP should state with greater clarity that basic objective of the resettlement policy is the improvement in the standard of living of people who lose their lands or livelihoods as a result of development-induced displacement. This argument has been consistently advanced since the 1999 comment period, when a broad spectrum of external experts (including not only NGOs and affected communities but also Dinesh Agarwal of the National Thermal Power Corporation, and Thayer Scudder, a noted anthropologist) called on the Bank to abolish the restoration language, which creates too low a threshold, lead to stagnation and impoverishment, and increases social tension and resistance to Bank-financed projects.

In recent meetings, Senior Management acknowledged that the basic objective is improvement in the standard of living of displaced persons.^{vii} This understanding is confirmed by the analysis of the late Ibrahim Shihata, former Vice President and General Counsel of the Bank. In 1991, just after the policy was revised for the last time, Mr. Shihata carefully reviewed the Bank’s charter and its role and obligations as an international development organization and concluded that:

Projects that cause displacement should provide the population adversely affected with clear cut opportunities to share in tangible project benefits. While compensation procedures should restore living standards to where they were before project implementation, *the Bank’s development orientation towards resettlement makes it incumbent upon the borrowers and the Bank to provide resettlers with resettlement tools to improve their living conditions.*^{viii}

And in a 1999 World Bank publication, Michael Cernea, the principle architect of the original World Bank resettlement policy and a leading resettlement expert, clearly stated that “The primary goal of any involuntary resettlement process is to prevent impoverishment and to improve the livelihood of resettlers.”^{ix} In response to multiple and well-articulated arguments in favor of the “improvement” standard and removal of the “restoration” language, the Coordinator of the Resettlement Thematic Group has replied that “we have not been able to accommodate suggestions that would exceed our policy conversion mandate.”^x

However, it is interesting to note that Mr. Shihata also analyzed all of the Bank’s previous changes to the status of the resettlement policy (undertaken in 1980, 1986, 1988 and 1990), and stated that “*In all these subsequent and repeatedly improved versions, the Bank’s resettlement policy took into account the findings of social science research on resettlement and the lessons from the Bank’s own development projects.*” Social science research and the hard lessons from

Bank experience have demonstrated that the “restoration” language included in the OD has undermined the Bank’s overarching goal of improvement in the standard of living of affected peoples.^{xi}

While the cover memo circulated with the latest draft OP/BP says that “Key recommendations of the OED’s 1997 evaluation of involuntary resettlement in Bank projects have been incorporated,” this incorporation has been rather selective. That 1997/1998 OED study explicitly stated that the Bank’s “emphasis should shift from *restoring* income levels, which suggests stagnation at [pre-project] lifestyles, to *improving* income levels, which brings the displaced into the developmental process along with the project’s primary beneficiaries.”^{xii} OED’s comments were made in the context not just of their own review of recent experiences with resettlement in Bank projects, but also based on their analysis of the draft OP/BP 4.12 available at that time.

In sum, the words “or at least to restore them” should be removed from paragraph 2(c) of the OP, so that the emphasis is properly on resettlement with development, instead of involuntary impoverishment. This would not change the objective of the policy, but would provide clarification, and remove a key weakness, making it more likely that the Bank’s development objectives will be achieved.

4. **OED’s Emphasis on Results has Been Contravened in the OP/BP.** In June 1998, OED published an Overview document that summarized the findings of its review of recent resettlement projects. The OED concluded that the main resettlement failures identified in its review could be directly attributable to “*the difficulty in reaching Bank objectives using ‘plans’ rather than ‘results’ as the touchstone of quality management.*”^{xiii} Now, this discredited management practice, which leads to implementation failures, is being incorporated into the OP and BP.

Compare OED’s critique of an emphasis on plans rather than results, in the paragraph above, with the language of draft OP para. 24 and BP para. 16, both of which measure supervision and project completion by focusing on whether the project has met the “objectives of the resettlement instrument.” The Bank should be evaluating the extent to which the project meets the objectives of the *resettlement policy*, not simply whether the borrower has complied with the terms of the *resettlement plan*. Common sense dictates that even the most well-designed resettlement plan can lead to imperfect implementation, or may need to be adjusted to meet the project and policy objectives. The instrument is just a tool; the policy provides the objectives, and it is compliance with the policy that must be determined by the Bank. What must be supervised and evaluated by Bank staff is not just whether the requirements of the plan have been met (though this would certainly be a part of the inquiry), but whether the development outcomes have been achieved.

Similarly, the OED found that “the weakest part of planning is on economic rehabilitation” -- and yet this key finding has not been reflected in the draft policy. The failures relating to livelihood restoration and economic rehabilitation have also been documented over the years by the Environment Department and the Inspection Panel. Just last year, the World Commission on Dams compiled and analyzed a “knowledge base” of development outcomes of dam projects, and concluded that “those who were resettled have rarely had their livelihoods restored, as resettlement programmes have focused on physical relocation rather than on the economic and social development of the displaced.”^{xiv} These findings should be reflected in para. 11 of the

draft OP, by adding the following sentence “Experience has shown the need for the Bank and affected communities to take an active role in planning, supervising, and monitoring economic rehabilitation.” For the same reason, OP para. 24 and BP para. 16 must be edited to emphasize the Bank’s role in supervision and monitoring, including providing technical assistance to borrowers as necessary, to ensure that the *objectives of the policy* (not just the instrument) are met at the project level.

5. Independent Review of Implementation.

Mr. Wolfensohn’s cover memo calls for a two-year review of the experience of implementation of the resettlement policy. CIEL supports this suggestion, because a review of resettlement implementation is much needed. This review will need to have two purposes: to look at the history of the Bank’s implementation of resettlement policy, evaluating both positive and negative development outcomes; and to monitor the impact of the new OP/BP on the practice of Bank staff. The review needs to be led by and carried out by independent experts with an in-depth knowledge of Bank strengths and weaknesses in order to produce a report of maximum use to the Bank staff in improving its performance. The review should begin immediately and should take place over at least two years. The independent review team should develop recommendations for reform of Bank policy and practice, with an eye towards solving existing problems and improving future performance.

6. Conclusion.

The above comments are offered in hopes that this analysis will help the Board to make policy corrections that will empower the poor, reduce social tension, and move the international community towards the elusive goals of sustainable development and poverty alleviation. Thank you for your time and attention to this important policy issue.

“I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny?”

- Mahatma Gandhi^{xv}

Sincerely,

Dana Clark

Cc: Members of the Board of Executive Directors
James D. Wolfensohn, President and Chairman of the Board
Mr. Ian Johnson, Vice President, ESSD
Mr. Maninder Gill, Resettlement Thematic Coordinator
Mr. Paul O’Neill, Secretary of the Treasury
Mr. Bill Schuerch, US Treasury Department

Dana Clark, Consultant for the Center for International Environmental Law
1416 Peralta Avenue, Berkeley, CA 94702
phone/fax 510.527.5246; email danaclark7@mindspring.com
Internet: <http://www.ciel.org>

ⁱ James Wolfensohn, "Rich Nations Can Remove World Poverty as a Source of Conflict," *International Herald Tribune*, Oct. 6, 2001.

ⁱⁱ See, e.g., The World Bank, *Resettlement and Development, The Bankwide Review of Projects Involving Involuntary Resettlement* (Environment Department, 1994).

ⁱⁱⁱ The paragraph should also require a social assessment to evaluate "the obligations of the country, pertaining to project activities, under relevant domestic and international law regarding indigenous peoples." It should further clarify that "The Bank does not finance projects that would contravene such country obligations, as identified during the social assessment." (This language is modeled on OP 4.01, Environmental Assessment) Paragraph 9 should also have a footnote requiring resettlement planners to consider the rights of indigenous peoples to their lands under both domestic and international law, and should include a reference to OD 4.20.

^{iv} The remainder of draft OP para. 9 states: "For this reason, the Bank satisfies itself that the borrower has explored all viable alternative project designs to avoid physical displacement of these groups. Where it is not feasible to avoid such displacement, preference is given to land-based resettlement strategies for these groups that are compatible with their cultural preferences and are prepared in consultation with them."

^v See Matrix summarizing Substantive Comments from Executive Directors, March 6, 2001, note number 50, which states that footnote 15 (now paragraph 9) was designed to address the German Executive Director's concern that the OP should "address the special issues that arise when Indigenous Peoples are displaced." Concerns raised by the US Executive Director about the disproportionate impact of resettlement on indigenous peoples were not addressed. See ED Matrix, note number 62.

^{vi} In its Background Paper, Management has stated that it rejected the call for prior informed consent for indigenous peoples because it would amount to giving indigenous persons "the right to veto the proposed project design." This simplification of the argument ignores the fundamental need to balance negotiating power between indigenous peoples and project planners. The requirement of prior informed consent puts the burden on project planners to design projects that actually meet the development needs and aspirations of indigenous communities. The WCD, which has noted that prior informed consent by indigenous communities is an emerging principle of international law, has recommended a development approach that is "based on 'recognition of rights' and 'assessment of risks' (in particular rights at risk). . . . Most important, involuntary risk bearers must have the legal right to engage with risk takers in a transparent process to ensure that risks and benefits are negotiated on a more equitable basis." WCD, *Dams and Development*, at pp. 206-208. Management's Background Paper also asserts that no countries, whether developed or developing, have adopted prior informed consent. First of all, this assertion ignores the overarching role of international law, which also governs both nation states and international organizations. In addition, Management's assertion is belied by a more careful analysis of the respect for indigenous peoples rights that is enshrined in the laws (including constitutions) of both developed and developing countries. See Marcus Colchester, *Dams, Indigenous Peoples and Ethnic Minorities*, Thematic Review 1.2, prepared as an input to the World Commission on Dams (2000), www.dams.org.

^{vii} Vice President Ian Johnson confirmed the "improvement" objective during a telephone call between Dana Clark of CIEL, Tom Griffiths of the Forest Peoples Programme, Maninder Gill, Resettlement Thematic Group, and Paatii Ofofu-Amaah of the WB Legal Department, April 26, 2001.

^{viii} Ibrahim F.I. Shihata, "Legal Aspects of Involuntary Population Displacement" in *Anthropological Approaches to Involuntary Resettlement: Policy, Practice, and Theory*, Cernea and Guggenheim, eds. (1991) (emphasis added).

^{ix} The World Bank, *The Economics of Involuntary Resettlement*, Michael Cernea, ed., (1999), p.6.

^x Memo from Maninder Gill to Dana Clark, sent via email August 19, 2001 (available at <http://www.ciel.org/Ifi/wbinvolresettle.html>)

^{xi} See, e.g., Thayer Scudder "Critique of Resettlement Draft OP/BP 4.12" (July 28, 1999). Mr. Scudder noted that the "acceptance of restoration undercuts the Bank's emphasis on the resettlement component as a development project." He then outlined a series of "research-based reasons why restoration tends to worsen poverty among resettled households and communities."

^{xii} World Bank, Operations Evaluation Department, "Recent Experience with Involuntary Resettlement," Overview, para. 26 (June 1998) (hereinafter OED Overview) (emphasis in original).

^{xiii} OED Overview, para. 22 (emphasis added).

^{xiv} World Commission on Dams, *Dams and Development*, p. 129 (Nov. 2000) available at www.dams.org

^{xv} This quote appears on the monument to Gandhi located in front of the Indian Embassy in Washington, DC.