

JAMES D. WOLFENSOHN
President

September 28, 2001

MEMORANDUM TO THE EXECUTIVE DIRECTORS

Operational Policy on Involuntary Resettlement, Draft OP/BP 4.12

Attached is the draft OP/BP 4.12, *Involuntary Resettlement*, converted from the current Bank policy on involuntary resettlement, OD 4.30. The draft policy has been prepared as part of the ongoing process of conversion of all operational policies of the World Bank Group to the OP/BP format.

The emphasis of the revisions – as the policy conversion process requires – is on removing ambiguities and taking lessons of implementation into account, without changing the key objectives and principles of the policy. The revised resettlement policy and procedures provide an improved framework for increasing the development impact of Bank operations, without imposing significant additional requirements on our borrowers. I believe that the stated objectives of the conversion process have been fully achieved and that the revised policy will help sharpen the focus on protecting those affected by resettlement in Bank-assisted projects.

The draft OP/BP 4.12 has been prepared based on extensive review and consultations with internal and external stakeholders. Internally, consultations were held with staff from different Networks and regions as well as from LEG; external consultations involved borrower government agencies in twelve borrower countries as well as NGOs. Key recommendations of OED's 1997 evaluation of involuntary resettlement in Bank projects have been incorporated.

The draft policy was discussed at three CODE meetings: in June, 1999, before external consultations were initiated, and twice after external consultations were completed and a revised draft was prepared, in January and March, 2001. CODE raised some issues at the January, 2001 meeting, proposed a few modifications in the draft and requested additional consultations with CODE members. The draft policy, revised on the basis of these consultations, was discussed and endorsed by CODE at its meeting on March 12, 2001.

The true test of a policy lies in its implementation. To strengthen implementation, we have streamlined procedures and augmented Bank capacity to successfully implement safeguard policies. The Quality Assurance and Compliance Unit (QACU) in ESSD has been strengthened and is facilitating harmonization of good practice approaches across all regions of the Bank. A Safeguard Policies Help Desk has been established and modifications have been made in project documentation to ensure adequate attention to safeguard policies in project design and implementation. ESSD is developing a resettlement sourcebook that will provide further guidance on application and implementation of the policy in different sectors and contexts. The sourcebook, to be based on the final version of the OP/BP 4.12, is expected to be issued within three months of issuance of the OP/BP. We are also moving, in the next phase of our agenda on safeguard policies, to increasingly work with our borrowers on strengthening national policy and

institutional frameworks to address safeguard issues, based on an appreciation of the local context.

I recommend that the Executive Directors approve the policy content of the attached draft. Once approved, the experience of implementation of the policy would be reviewed after a period of two years.

James D. Wolfensohn
President
By Zhang Shengman

A handwritten signature in black ink, appearing to be 'ZS', written over the printed name 'Zhang Shengman'.

OP/BP 4.12, *Involuntary Resettlement*
Background Note on the Conversion Process

I. Background

1. As part of the ongoing exercise to convert Operational Directives (ODs) into Operational Policies and Bank Procedures (OPs/BPs), the conversion of OD 4.30, *Involuntary Resettlement*, into OP/BP 4.12 was initiated in September 1996. The new OP removes ambiguities in the current OD, takes into account important policy clarifications provided by the Operational Policy Committee (OPC), and incorporates key findings of OED studies on resettlement.

2. An earlier draft of the policy was submitted to the Board of Directors for approval in September 1998, but was withdrawn to build a stronger internal consensus on the scope of the policy. To build this consensus, the Managing Directors established two committees: a Technical Committee comprised of operational staff from various sectors and chaired by the Director, Social Development Department, and a Steering Committee comprised of selected network / family heads and LEG and chaired by the Vice President, ESSD. The mandate of the Steering Committee was to address issues that could not be resolved at the technical level and to oversee the conversion process.

3. A revised draft was discussed by CODE in June, 1999, and endorsed to proceed to the stage of external consultations. The draft, including translations in eleven languages, was posted on the Bank's external website between July and November, 1999, in order to facilitate review and feedback from local NGOs, civil society, and organizations of displaced persons. Consultations were also held with the governments of fourteen borrowing countries, at least two in each of the six Bank regions.

4. These consultations generated about 300 substantive comments. A number of important modifications in the draft policy resulted from the comments received. There were also some suggestions that were not accepted. Some of them involved substantial policy changes that went beyond the scope of the current exercise, while others pointed to the need for providing further clarifications to the commenters. A document summarizing the results of the external consultations is available on file. It lists the substantive comments received, indicates those that were accepted, and provides reasons for not accepting those that were not. The main comments received and the responses provided are summarized in Section IV below.

5. The revised draft was discussed by the Bank's Operational Policies Committee (OPC) in April, 2000 and was unanimously endorsed by all regions and networks. Networks and regions expressed satisfaction on the extent and quality of consultations with internal stakeholders. The revised draft policy was discussed with CODE in January, 2001 and again in March, 2001. Based on CODE's suggestion at the January meeting, detailed consultations were held with all CODE members in January and February, 2001. The draft policy, revised based on comments received during these consultations, was

endorsed by CODE on March 12, 2001. CODE also approved Management's proposal to post the revised draft on the Bank's external web site along with a summary of consultations with external stakeholders. CODE suggested that any useful, clarificatory suggestions made by external stakeholders after the revised draft was posted on the web may be taken into account in finalizing the policy. A number of comments on the revised draft were received, including a few that suggested major changes in the current policy and were clearly beyond the scope of the present exercise. Nonetheless, some of the comments on clarifying the language were incorporated into the attached revised draft.

II. Comparison with OD 4.30

6. The draft OP/BP 4.12, *Involuntary Resettlement*, contains the following key changes in comparison with OD 4.30. A more detailed "comparison matrix" is provided in Attachment III. The draft policy:

i) *clarifies that the policy covers only direct economic and social impacts caused by "involuntary taking of land" or "restriction of access to legally designated parks and protected areas" under Bank-assisted projects. (Para 3 of the OP).*

While indirect impacts that do not result from land taking or restriction of access to parks and protected areas may sometimes be significant, it was felt that the resettlement policy is not an appropriate instrument to address the entire range of socioeconomic impacts on people affected by Bank projects. The policy proposes that in case of adverse indirect social or economic impacts, it is good practice for the borrower to undertake a social assessment and implement measures to minimize and mitigate adverse social impacts, particularly upon poor and vulnerable groups. The policy also recognizes that there may be other environmental, social and economic impacts, not resulting from land taking, that may be identified and addressed through the Environmental Assessments and other project reports and instruments.

ii) *clarifies that the livelihoods and standards of living of displaced persons should be improved or at least restored, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher (Para 2 (c) of the OP).* This clarification helps address the situation where standards of living start declining after a project is announced, due to decrease in productive investments in the "soon to be abandoned" project area. Similarly, if the local economy is growing, the above provision helps reflect, in the "baseline" standards of living that need to be restored, the economic growth that takes place from the time of project initiation to actual displacement.

iii) *clarifies that in case of projects that restrict access to legally designated parks and protected areas, the objectives of the policy should be achieved in a manner that maintains the sustainability of the park or protected area (Para 7, 21 of the OP).* In discussions with staff working on natural resources projects, it was evident that measures to mitigate adverse impacts resulting from restriction of access to parks and protected areas can be best designed during actual project

implementation. The policy, therefore, requires that the borrower submit to the Bank, as a condition of project appraisal, a “process framework” that describes how the displaced persons will participate in the design of the required mitigation measures during project preparation as well as implementation. Detailed implementation plans acceptable to the Bank will be prepared during project implementation before the restrictions of access actually take effect.

(iv) highlights the complexities associated with the physical displacement of indigenous peoples practicing traditional, land based modes of production, and requires that the borrower explores all viable alternative project designs to avoid physical displacement of these groups (Para 9 of the OP). The policy introduces language on physical displacement of indigenous peoples, though OD 4.30 did not distinguish between resettlement of indigenous peoples and that of other groups. The policy also requires that if it is not feasible to avoid such displacement, preference should be given to land based resettlement strategies for these groups that are compatible with their cultural preferences and prepared in consultation with them.

v) establishes a Resettlement Committee to provide guidance on the scope and application of the policy (Para 5, of the OP; Para 7 of the BP). During the resettlement policy discussions, it was evident that it would not be possible to anticipate all possible situations that may trigger the resettlement policy. Therefore, it was decided that a Resettlement Committee, chaired by the Vice President, ESSD, and consisting of representatives from Social Development, Legal, and other Networks, would provide guidance on the scope and application of the policy in specific situations.

vi) proposes preparation of policy frameworks, by project appraisal, for projects involving financial intermediaries (FILs) and other projects with multiple subprojects (Paras 27 and 28 of the OP). OD 4.30 required that resettlement policy frameworks be prepared by appraisal for Sector Investment Loans and that detailed resettlement plans be prepared subsequently during implementation, after the specific subproject investments were identified. The draft OP/BP 4.12 extends the application of this provision to FILs and other projects with multiple subprojects.

vii) provides for delegation of authority to approve resettlement plans to a responsible government agency or the financial intermediary without prior Bank review if the agency has demonstrated adequate institutional capacity to review resettlement plans (Para 30 of the OP). This provision is introduced to address situations where projects could have a very large number of subprojects and the government agency / financial intermediary develops adequate capacity to review resettlement plans to ensure their consistency with Bank policy. Such delegation is proposed to be made only after the Bank is satisfied that the agency to whom such review authority is being delegated has adequate capacity to review resettlement plans. These plans would be subject to ex-post reviews by the Bank.

viii) *retains the preference for land-based resettlement strategies for people displaced from land-based livelihoods but also specifies circumstances under which cash compensation may be paid* (Para 11 of the OP). This provision is based on accumulated experience in Bank projects where an increasing proportion of displaced persons do not have land-based livelihoods and routinely participate in markets where a cash option may be appropriate.

ix) *distinguishes between different categories of displaced persons and describes their entitlement to compensation and other resettlement assistance* (Paras 15 and 16 of the OP). The draft policy recognizes that people who have formal legal rights to land or other assets or who have claims to such land and assets may be paid compensation for the land they lose. Those who do not have any rights or claims to such assets under the laws of the country would not be paid compensation but are eligible for “resettlement assistance” provided they occupied the project area prior to the agreed “cut-off” date established for the project. The Resettlement Assistance does not preclude any form of assistance and may consist of land, other assets, cash, employment or other assistance, as appropriate. The draft OP also clarifies that those who encroach on the project area after the cut-off date are not eligible for compensation or any other form of assistance.

x) *requires that the Task Team reviews resettlement planning and implementation during the early stages of resettlement implementation to facilitate a timely response to problems or opportunities that may arise with respect to resettlement* (Para 14 of the BP). This provision was included to respond to the observation of staff that reviewing resettlement implementation as part of project mid-term review is often too late to learn from the lessons of implementation since resettlement measures are usually implemented early during project implementation. A review of resettlement in the initial stages of project implementation would allow the lessons from early implementation to be applied to the rest of the resettlement program.

(xi) *requires that at the time of project completion, the borrower undertakes an assessment to determine whether the objectives of the resettlement have been achieved* (Para 24 of the OP), *and that the Bank’s Implementation Completion Report (ICR) also evaluates the achievement of the objectives of the resettlement instrument* (Para 16 of the BP). This represents a major improvement in the implementation framework in comparison with OD 4.30, by requiring measurement of the extent to which the objectives of the resettlement program have been achieved. If the assessment determines that the objectives have not been achieved, it provides the Bank and the borrower with a basis for discussing future courses of action.

(xii) *includes a detailed definition of the term “replacement cost”* (footnote 11 of the OP, footnote 1 of the Annex).

(xii) *specifies the procedures for disclosure of resettlement instruments, both in the project area and at the Bank’s InfoShop* (Para 22 of the OP, Para 9 of the BP).

III. Changes made as a result of the external consultations.

7. Based on the results of consultations with a broad array of external stakeholders, including borrowing government officials, local and international NGOs, academics, and local organizations of displaced persons, the draft OP/BP was revised in a number of areas. The summary of external consultations, available on file and posted on the Bank's external web site, provides a detailed explanation of these revisions. The key revisions resulting from the consultations are summarized below. The draft OP 4.12 was revised so that it:

i) retains the language from OD 4.30 regarding giving preference to land-based economic rehabilitation for those displaced from land-based livelihoods. In addition, based on the experience that private land is likely to be available for purchase even if public land is not available, the draft OP 4.12 requires that the borrower explore private land purchase options. It also stipulates that if replacement land is not available, the borrower should demonstrate and document the lack of availability of adequate land at a reasonable price (Para 11 of the OP).

ii) notes that environmental, social and economic impacts not resulting from land taking may be identified and addressed through environmental assessments and other project reports and instruments. (footnote 4 in the OP).

iii) clarifies that replacement land and other facilities should be provided under secure tenure, and that the cost of providing replacement housing and land may be deducted from the compensation payable to the displaced persons (footnote 13 in the OP).

(iv) clarifies that in projects in parks and protected areas, the nature of restrictions as well as the type of measures necessary to mitigate adverse impacts, is determined with the participation of displaced persons, both during design and implementation phases of the project (Para 7 of the OP).

(v) describes the duration of a reasonable transition period after resettlement, during which transition assistance should be provided to displaced persons (Para 6 (c) (i) of the OP).

(vi) contains provisions recognizing that physical displacement of indigenous peoples with traditional land based modes of production is particularly complex and should be avoided, to the extent feasible, exploring all viable alternative project designs (Para 9 of the OP).

(vii) clarifies that "resettlement assistance" does not preclude any type of assistance and may consist of land, other assets, cash, employment or other assistance, as appropriate (footnote 20 of the OP).

(viii) clarifies that one of the objectives of conducting an early baseline survey is to identify the people who are eligible for compensation and thereby discourage the inflow, to the project area, of people who are not eligible for compensation (Para 14 of the OP).

(ix) emphasizes that Borrower commitment to, and capacity for, undertaking successful resettlement is a key determinant of Bank involvement in a project. The importance of borrower commitment and capacity was one of the key findings of the 1998 OED review of resettlement in dam projects (Para 18 of the OP).

(x) describes the Bank's responsibility to regularly supervise resettlement implementation and determine compliance with the agreed resettlement instrument (Para 24 of the OP)

(xi) allows submission of an abbreviated plan in situations where fewer than 200 persons are displaced by the project (para 25 of the OP).

8. Based on the comments received during external consultations, the draft OP Annex was revised so that it:

(i) clarifies that socioeconomic surveys are conducted with the involvement of the potentially displaced persons. (para 6 of the Annex)

(ii) incorporates a review of patterns of social organization, including informal systems, as part of the socioeconomic surveys conducted as part of project preparation. (para 6 (b) of the Annex)

(iii) stresses the importance of identifying gaps between local resettlement procedures and Bank policy and of developing mechanisms to bridge the gap. (para 7 (e) of the Annex)

(iv) highlights the importance of resettlement measures being compatible with the cultural preferences of the displaced persons, in addition to being technically and economically feasible. (Para 11 of the Annex)

(v) includes an outline of the Process Framework, the resettlement instrument to be prepared for projects involving restrictions of access to legally designated parks and protected areas (Part IV, Paras 26-27 of the Annex)

9. Based on the results of the external consultations, the draft BP was revised so that it:

(i) stresses the role of Bank staff in helping borrowers find technical solutions that help avoid, or minimize, the need for resettlement. (Para 2 (b), footnote 4 of the BP)

(ii) emphasizes the need for timely provision of adequate counterpart funding for resettlement activities, and arrangements for funding resettlement, if any, outside the jurisdiction of the project implementing agency. (Para 5 (d) of the BP)

(iii) requires that if sufficient land is not available in projects involving displaced persons whose livelihoods are land-based and for whom land-based resettlement strategy is the preferred option, the Task Team assesses the evidence of lack of adequate land. (Para 5 (e) of the BP)

(iii) clarifies the role of the Task Team in assessing the need for independent monitoring and evaluation of projects. (Para 10 (f) of the BP)

(iv) highlights the importance of an early review of implementation in forming a basis for discussions with the borrower to improve the resettlement program. (Para 14 of the BP)

IV. Comments not incorporated into the revised draft

10. There were also comments received as part of external consultations that were carefully considered but were not accepted for various reasons. Some represented significant changes to the current policy while others were based on a lack of clear understanding of the scope and intent of the policy. The comments and our respective responses are summarized below.

Objective of the Policy

11. There were a number of comments calling for a revision of the basic objective of the policy from "...improve, or at least restore the livelihoods and standards of living of the displaced persons" to "improving livelihoods and standards of living". This would represent a major change in policy which is beyond the scope of the current, conversion exercise. The Bank's resettlement portfolio increasingly consists of projects that involve minor land taking or physical relocation over very short distances, without involving any economic displacement. Income improvement may not always be a feasible option in such cases. The objective of the policy, as currently written, is designed to promote improvement of incomes and standards of living, with restoration being the "minimum benchmark" by which the resettlement program would be deemed to be satisfactory to the Bank. Moreover, this objective should not be read in isolation from another key objective of the policy which states that "*resettlement activities should be conceived and executed as sustainable development programs, providing sufficient resources to give the displaced persons the opportunity to share in project benefits*" (Section 2 (b) of OP 4.12).

Application of the policy to voluntary resettlement

12. A number of commenters suggested that the Bank's policy on involuntary resettlement should also apply to projects involving voluntary resettlement. However,

since in situations involving voluntary resettlement there is no trigger such as eminent domain or involuntary taking of land, it would be inappropriate to apply the policy to such projects. The policy was never intended for, and has never been applied to situations involving voluntary resettlement. Voluntary resettlement offers people the power of choice to decide whether to move, with full disclosure of associated risks and opportunities. Involuntary resettlement, on the other hand, does not provide the power of choice. Also, while the objective of the voluntary resettlement project is always to improve the livelihoods and standards of living of the migrants, it relies on their aptitudes, technical skills, and risk taking abilities instead of “entitlements” to accomplish this objective. Voluntary migrants need to assess the likelihood of improving their lives at the new location and exercise their option to migrate accordingly. The resettlement sourcebook will discuss clear criteria and guidelines for verifying the voluntary nature of resettlement.

13. A related concern that “informed consent” can be engineered by project agencies is based on a misunderstanding regarding the criteria for classifying resettlement as “voluntary”. The policy clarifies that “informed consent” and “power of choice” are the two criteria which need to be satisfied for resettlement to be declared voluntary (footnote 7 of the OP). Thus, displacement of people to make way for the construction of a dam or a road would always be involuntary since the potentially displaced persons would not have the “power of choice”.

Land-based Resettlement

14. Some commenters have called for a mandatory requirement for land-based livelihood restoration programs for all displaced persons, and believe that the draft OP 4.12 has weakened this requirement. The draft OP retains a preference for land-based resettlement strategies for those displaced from land-based livelihoods, where feasible, as provided in OD 4.30. The Bank’s resettlement policy has never mandated land for land as the exclusive mechanism for improvement of livelihoods. It prescribes land based resettlement for those who are displaced from land based livelihoods. The draft OP maintains this preference but also recognizes that land may not be the appropriate income improvement strategy where: (a) land is not the preferred option of the affected people; (b) the land affected is a small fraction of the total productive assets, and the remainder is economically viable, and (c) active markets for land, housing and labor exist, displaced persons regularly use such markets and there is sufficient supply of land and housing. Thus, the draft OP maintains the intent of OD 4.30 to protect the interests of those displaced from agricultural settings, but attempts to provide alternatives for those who may be able to achieve the objective of income improvement through other means. The draft OP, in fact, vastly increases the likelihood of provision of replacement land by requiring borrowers to explore the possibility of purchasing replacement land using open market mechanisms.

15. The draft OP places much more emphasis on the preferences of the displaced persons themselves regarding the resettlement strategies most suitable to their needs rather than promoting some pre-fixed menus of income improvement models to fit

different situations. It also lists three situations where cash compensation may be appropriate (paragraph 11 of the OP). The policy also addresses the concerns raised regarding the adequacy of cash compensation to replace lost assets, by making it an explicit requirement.

Assistance to people without legal rights

16. A number of comments were made regarding the entitlements of those occupying lands without any legal basis for such occupation. Some commenters felt that the rights of such occupants have been diluted in comparison with the provisions of OD 4.30 while others felt that such occupants should not be provided any form of compensation or resettlement assistance. We have clarified that the entitlements of this category of affected people remain the same as those under OD 4.30. The OP promotes recognition of the rights of displaced persons that are recognized under national laws but may not have been formalized due to administrative delays and oversight. It also recognizes the problems caused by insisting on payment of “compensation” to those who cannot be provided compensation under the laws of the country, and provides, instead, for provision of “resettlement assistance” to achieve the objectives of the policy. The OP clarifies that “resettlement assistance” does not preclude any form of assistance and may consist of land, other assets, cash, employment etc. as appropriate.

17. Some of the comments opposed the provision of any form of assistance to those occupying lands without any legal rights. We clarified that persons allowed to occupy public lands without any active efforts to evict them should at least be assisted to restore their livelihoods after displacement. However, the policy does clarify that those who occupy project lands after the well-disseminated cut-off date are not eligible for any form of compensation or other assistance.

Prior, informed consent of indigenous peoples to resettlement

18. A number of external stakeholders have called for a provision for prior, informed consent of indigenous peoples for any project likely to involve their resettlement. Their comments, in effect, calls for giving indigenous peoples who may be affected by a project the right to veto the proposed project design. While the OP goes much further than the current OD 4.30 to include provisions highlighting the complexity of resettlement involving indigenous peoples (Para 9 of the OP), it does not incorporate provisions requiring prior, informed consent of indigenous peoples to resettlement. Instead, it calls for meaningful consultations with and informed participation of all potentially displaced persons in the project design and implementation process. This is consistent with other policies of the Bank which promote the involvement of project affected persons in the development process. The reasons for not including such a provision are the following: the concept of prior, informed consent is very difficult to operationalize; it is not reflected in the legal framework of any country, whether developing or developed; it is contrary to the principle of eminent domain in effect in most countries. While it is very important to know the views of indigenous groups likely to be affected by a project, the draft OP does contain adequate provisions to solicit the reactions of all affected people as part of the

process of meaningful consultations. In cases where local groups may be opposed to a particular design of a project, their opposition would be documented as part of the consultation process, and the prospective borrower would undertake additional discussions with them to redesign the project and minimize adverse impacts. However, there may be situations where physical displacement of affected people, including indigenous groups, could be warranted for reasons of public interest, consistent with the legitimate powers of States. There may also be situations where physical displacement over short distances is desirable as it may help strengthen essential infrastructure of importance to indigenous peoples. It was, therefore, felt that the “difficult to operationalize” blanket provision for prior, informed consent should not be included in the policy and instead, mechanisms to solicit views in a meaningful manner should be included as an integral part of the process of project design.

19. In addition to the provisions for consultations and participation included in the draft policy on involuntary resettlement, similar provisions are also being included in the draft operational policy on Indigenous Peoples (OP/BP 4.10), which is currently at the stage of consultations with external stakeholders. The draft policy requires meaningful consultations of indigenous peoples in project design, and more importantly, requires that the Bank and the Borrower take stock of the results of the consultations to determine whether and how to proceed with further project processing. These provisions provide assurance that the views and reactions of indigenous peoples will be fully taken into account in decisions related to the project.