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Resettlement Thematic Group  
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In response to the World Bank's request for input on OP/BP 4.12, the proposed conversion of OD 4.30, "Involuntary Resettlement," the Indian Law Resource Center respectfully submits the following comments. For more than 20 years, the Center has helped indigenous peoples of the Americas to secure their rights and protect their cultures. Our intention is to aid the Bank in crafting policies and procedures that respect the rights of indigenous peoples and ensure that Bank-supported projects will benefit rather than harm indigenous communities.

The special relationship between indigenous peoples and their traditional lands makes involuntary resettlement particularly devastating to them. The Bank has recognized this relationship in OD 4.20 ("Indigenous Peoples"), which states that indigenous peoples often have "a close attachment to ancestral territories and to the natural resources in the[] areas" they use and occupy. (OD 4.20 para. 5(a)). Just months ago, in a statement delivered at the United Nations, a Bank spokesperson emphasized the Bank's recognition that "there is a very sacred, spiritual and unique relationship between the land and [indigenous] people" and that "addressing land access, use and management must be done within the context and the fundamental dimensions of the cosmovision that define the future of indigenous societies." (Statement of Alfredo Sfeir-Younis, Special World Bank Representative to the United Nations, ECOSOC, Geneva, July 28, 1999).

Given this unique relationship, the Bank should guard against any changes in its policies, procedures, and advocated practices that might indicate increased tolerance of or support for involuntary resettlement, particularly where indigenous peoples are concerned. For this reason, the strong language of OD 4.30 para. 2 outlining the expected adverse impacts of resettlement should be restored. OP/BP 4.12 retains only a watered-down version of this text in the Notes, weakening restraints on resettlement.

To adequately protect the lands of indigenous peoples, OP/BP 4.12 must apply to the broad range of situations in which project-affected people are effectively resettled. This includes displacement from traditional lands not officially recognized by a borrower's domestic legal regime and displacement from lands traditionally used and occupied, whether or not permanent residences have not been established on such lands. For example, the OP must recognize the importance of traditional subsistence activities and sacred sites to indigenous communities.

OD 4.30 emphasized that "[I]and, housing, infrastructure, and other compensation should be provided to the adversely affected... indigenous groups... who may have usufruct or customary rights to the land or other resources taken for the project" and stated that "[resettlement] plans

should contain provisions for conducting land surveys and regularizing land tenure in the earliest stages of project development.” (OD 4.30 paras. 3, 17). OP/BP 4.12 contains no such protections against inadequate domestic land tenure standards and expressly excludes from its protections those displaced persons who have neither formal legal rights nor “a claim” to such rights under domestic law. (OP/BP 4.12 para. 13). The domestic indigenous rights laws of many countries fail to meet international legal standards in this regard.

In addition, the OP creates a separate and inferior set of protections for peoples displaced by the creation of parks and protected areas. Many of the world’s pristine environments remain ecologically vibrant precisely because indigenous peoples have occupied them, used them sustainably, and fought to keep national governments, extractive industries, and others from despoiling them. For this reason, the adverse effects of park and protected area projects will in many instances fall upon indigenous peoples, who in many cases have both preserved and relied on the land and resources sought to be “protected.” The OP should not allow borrowers to threaten the rights of such peoples merely because the project at issue is a park or protected area.

Thus, for example, OP 4.12 para. 8 should be revised to provide the same degree of advance protection to persons displaced by parks and protected area projects (i.e. those defined in para. 2(b)) as is provided to other project affected persons (i.e. those defined in para. 2(a)). In addition, OP/BP 4.12 para. 9 should not release borrowers from the responsibility of providing land-based resettlement options to displaced persons with land-based livelihoods where “the provision of land would adversely affect the sustainability of the park or protected area.”

Increasingly, international law recognizes and affirms the right of indigenous peoples to the lands they traditionally use and occupy. This law must be respected regardless of whether domestic legal regimes properly protect such rights. (See ILO Convention 169 on Indigenous and Tribal Peoples, 1989, Arts. 7, 13-19). Instead of recognizing and embracing these international advances, OP/BP 4.12 diminishes the extent to which indigenous land rights will be recognized and protected by the Bank when domestic legal regimes fail to do so. This must be corrected to offer higher, not lower, standards of protection for indigenous peoples’ lands. Language to this effect from OD 4.30 should be strengthened and added to OP/BP 4.12, and language expressly denying these rights should be removed.

Similarly, the OP should carry forward the Bank policy favoring land for land exchanges over cash compensation for displaced persons. Land is a vital resource for indigenous cultures, and cash, in most cases, cannot sufficiently compensate indigenous peoples for the damage done when traditional lands are expropriated. Indeed, in the United States and many other countries, confiscatory land “purchases” have been undertaken as a mechanism to destroy indigenous cultures and assimilate indigenous peoples. Moreover, few countries have laws and legal mechanisms in place to guarantee that compensation for takings of indigenous lands is truly fair and in keeping with a non-discriminatory public purpose. For these reasons, OP/BP 4.12 should be revised to emphasize a preference for land-based compensation and to require that cash compensation be offered as a substitute only in exceptional cases.

Finally, the OP should be revised to strengthen the Bank’s role in monitoring and evaluating resettlement plans. The Bank must be able to step in and provide practical remedies when

resettlement projects go awry. As numerous commentators have noted, reliance on borrowers to monitor and evaluate resettlement planning and implementation adversely impacts project-affected people.

We appreciate the opportunity to comment on OP/BP 4.12 and urge the Bank to commit to further review of the OP and consultation with indigenous peoples, NGOs and other stakeholders.

Sincerely,

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