The World Bank Policy on Indigenous Peoples

India Consultations on the Approach Paper for Revision of Operational Directive 4.20

S.Satish
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This publication was developed and produced by the Social Development Team, New Delhi Office, India, South Asia Sector Social Development (SASSD), the World Bank. This publication reflects summary of the discussions and recommendations arising from the five regional consultations and a national consultation on the Approach Paper for the revision of Operational Directive 4.20 in India conducted during August through October 1998. This is produced mainly in response to a demand from the participants that they be informed of the deliberations of the consultations held in other parts of the country. This apart, it is hoped that this will serve as: (i) an example of good practice on conducting consultations, to be shared with the colleagues in the Bank; and (ii) a background material for further consultations on the draft Operational Policy and Bank Procedures. The material in this publication can be reproduced with due acknowledgments.

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THE WORLD BANK POLICY ON INDIGENOUS PEOPLES

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Foreword

In 1998 the World Bank decided to re-examine its policy on Indigenous Peoples which had been issued in 1991 as Operational Directive (OD 4.20). One of the objectives of this process of revisiting the policy was to gather a much wider set of views - from governments, civil society, academics and Indigenous Peoples themselves - about what should be the “rules of the game” for interactions between indigenous groups and World Bank-assisted development interventions. It was also recognized that there are great variations in different parts of the world in the situation of indigenous groups, their position as citizens of the nation states which have grown up around their traditional habitats, and the degree to which they have been or desire to be integrated into the “mainstream” cultures surrounding them. The relationship in Latin America, East Asia, Africa, Eastern Europe & Central Asia, Middle East and North Africa and South Asia are all different. Hence, the revised O.D. needs to be cast in a way that takes account of all these regional variations and also reflects the views of the many stakeholders involved.

This is a major challenge—especially for a country as vast and varied as India. The discussions summarized here reflect the efforts of the Social Development Team of the World Bank’s New Delhi office and their NGO partners from five different regions in India to respond to that challenge. The consultations were organized and written up by Suryanarayan Satish, a Social Development specialist in the New Delhi office, under the guidance of Ellen Schaengold who leads the India Social Development Team.

What is presented here are the more or less “unedited” voices of the NGOs, government servants, academicians and members of Indigenous Peoples groups themselves as they respond to the Approach paper (annex 2) drafted by the World Bank to set the framework for revising the policy. No attempt has been made in the main text to reconcile the divergent views here or to come to final conclusions—though some recommendations did emerge (sometimes unanimous and sometimes not) and these have been presented. As the reader will note, there are many problematic areas and contentious issues which have still not been resolved. Some of these go very deep—into the very concept of India as a nation state articulated in the Indian Constitution and played out over the last 50 years since independence in the notion of strong government charged with protection of ‘backward’ groups. Even deeper
is the hierarchical framework which has structured Indian society since Vedic times and which places Indigenous Peoples at the lower end of this hierarchy. The Indian State itself of course, is resolutely secular and through its reservation policy and a whole set of government agencies, has made consistent efforts to ensure full rights and access for all its citizens. Nevertheless, centuries of hierarchy based on caste, gender, religion or ethnic identity do not simply disappear overnight. In contemporary India all these hierarchies are currently in the process of being re-negotiated and often reformulated into other kinds of identities and socio-political groupings. It is clear that even the category “Scheduled Tribes” or ST (used by the Indian Constitution to identify groups classified as “outside” the dominant racial and cultural groups of India) is itself rooted in the traditional hierarchical world view and will need to be contested. The consultations on OD 4.20 and the Approach paper did not deal explicitly with some of these deeper issues, but they do give us a fascinating glimpse of the richness and complexity of the discourse on Indigenous Peoples in India. And they do lay the foundation for the Bank’s engagement in the important discussion which will take place in India over the coming years on the critical issue of how Indigenous People -- as a distinct category of Indian citizen -- are to take part in the development process.

Lynn Bennett
Sector Director
Social Development
South Asia Region
August 13, 1999
Acknowledgments

I owe a debt of gratitude to the following:

(i) to the various people from different walks of life - governments, civil society, academics, media and indigenous people themselves — who generously contributed their time by participating in the consultations and providing their expert views on the approach paper for the revision of the operational directive 4.20;

(ii) local non-government organizations — Vivekananda Girijana Kalyana Kendra, B R Hills, Karnataka; Action Aid, Andhra Pradesh; Rashtriya Gramin Vikas Nidhi, Bhubaneswar, Orissa and Guwahati, North Eastern Region, respectively; and Bihar Institute of Rural Development, Ranchi, Bihar — who responded quickly and aptly to our request for the conduction of the consultations;

(iii) Shelton Davis, Lead Specialist, Social Development, ESSD, LAC Region who was primarily instrumental in initiating these consultations and providing fund support for organizing the consultations as well as for the publication; Gloria Davis, Director, SDV, for the encouragement the author received during his stay in the Headquarters during December 1998 through March 1999; Lynn Bennett, Sector Director, SASSD and Ellen Schaengold, Team Leader, SDT, NDO, SASSD for their guidance, support and contributions, without which the consultations would not have been possible; and

(iv) all my colleagues in the SASSD, both Head Quarters and New Delhi, specially, David Marsden who participated in the Karnataka and Andhra Pradesh consultations; and Zarine Kumar, Alloysius Ocheni and Srihari for the secretarial and logistic help rendered.

S Satish
Chapter 1

Introduction

The World Bank was the first multilateral financial institution to introduce a special policy in order to ensure that the development process fosters full respect for the dignity, human rights, and cultural uniqueness of the indigenous peoples (IPs). The policy was specifically aimed at ensuring that the IPs did not suffer adversely during the development process, specially from Bank-financed projects, and that they received culturally compatible social and economic benefits. To realize these objectives, initially, the policy, as contained in an Operational Directive, was framed in September 1991 (Annex-1). However, with the evolving perspectives, based on its experience in the developmental process, the Bank considered it appropriate to have a fresh look at the policy in 1998. Consequently, a Working Group comprising social and legal experts from the World Bank and the International Finance Corporation (IFC) produced an Approach Paper (Annex-2) outlining a strategy and a set of recommendations for revising OD 4.20.

The Approach Paper broadly recommended the following:

(i) a process for identifying the IPs in accordance with the definitional criteria of the Operational Policy (OD 4.20) with greater emphasis on national and international legal definitions and on consultations with governments, regional and national indigenous organizations, NGOs and academic experts;

(ii) clarifying the minimum standards or conditions which would be required to be met for the Bank to be assured that IPs would not be adversely affected by the Bank-financed development interventions, while adhering to the current policy objectives;

(iii) seeking clarifications in three areas: (a) what would be expected in terms of social analysis, participation and consultation; (b) what is meant by land and natural resource protection; and (c) when indigenous

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1 The Directive describes Bank policies and processing procedures for projects that affect indigenous peoples. It sets out basic definitions, objectives, guidelines for the design and implementation of project provisions or components for indigenous peoples, and processing and documentation requirements.

2 A member of the World Bank Group that supports private sector investments in developing countries.

3 Preparation of the paper led by Shelton Davis, Lead Specialist, Social Development, IAC; S Salman, Sr Counsel, LEGSA; and Eveling Bermudez, ESDVP; the World Bank, Washington DC.
peoples' action plans would be required; and
(iv) specifying ways in which the Bank Group could go beyond protective measures and promote indigenous peoples development, especially within the broader framework of poverty reduction and private sector investments.

In the light of the recommendations contained in the Approach Paper, the Working Group initiated broad consultations to facilitate a revision of the policy (OD 4.20).

Consultations

The consultations were aimed at obtaining the views of concerned individuals and agencies on the Approach Paper, both within and outside the World Bank. This included Bank staff members responsible for ensuring compliance with the Bank policies, as well as various stakeholders in the Bank's Borrower countries. From amongst the stakeholders, the views of IPs and their organizations, government officials responsible for providing services to IPs, academic experts, non-governmental organizations (NGOs), and the private sector were sought.

The main objectives of the consultations were to:

(i) facilitate a better understanding of the World Bank's policy on IPs, both among the Bank's staff members and its Member countries;

(ii) clarify important aspects of the current policy, especially in terms of its applicability to different regions and countries; and

(iii) seek a wide range of views on the Approach Paper.

The consultation process initiated in July 1998 occurred at five levels:

(i) Within the World Bank — Initially, with Social Development and Legal Specialists in each of the World Bank's six regions and IFC and later with the regional operational staff and management teams;

(ii) Within Borrower Countries — Special in-country consultations organized through the Field Offices;

(iii) International Consultations — Through the World Bank Working Group members attending the 1998 Meeting of the UN Working Group on IPs, and the Inter-Agency Technical Consultation Meeting which preceded the Meeting;

(iv) Washington D.C. Consultation — With the assistance of the
Bank Information Center (BIC), the Working Group met with representatives from various NGOs concerned about IPs and the World Bank-financed development projects;


Towards evolving an Indian perspective on revising OD 4.20, the Social Development Team (SDT) in the New Delhi Office (NDO) of the World Bank, India conducted five regional consultations and a national consultation in Delhi between August and October, 1998. A summary of the main conclusions drawn from the consultations is presented in this publication.
Chapter 2

India
Consultations on OD 4.20 Revision

Consultation strategy

Indian consultations comprised five Regional Consultations — one each in Karnataka, Andhra Pradesh, Orissa, Bihar, and the North Eastern Region; and a National Consultation at Delhi. While the latter was organized by the SDT of the NDO independently, the regional consultations were organized in collaboration with local NGOs and each of these consultations was chaired by two persons — one from the government and another from a non-government sector (see Box-1). While the participation in the regional consultations was confined to representatives from the respective regions, the National consultations included participants from other regions hitherto not covered. One representative from each of the regions attended and presented the respective consultation summaries in Delhi. Over 200 participants drawn from various sectors including government, non-government and private and representatives of the consulting organizations, academia and media participated in the consultations. The list of participants is given in Annexure-3.

Box-1 Consultations Organizers, Chairpersons and Participants

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<th>Chairpersons</th>
<th>Number of participants</th>
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<tr>
<td><strong>Vivekananda Girijana Kalyana Kendra</strong> Karnataka</td>
<td>05-08-1998 B R Hills</td>
<td>*K P Krishnan Additional Secretary Government of Karnataka, Bangalore</td>
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<td><strong>Action Aid</strong> Andhra Pradesh</td>
<td>10-08-1998 Hyderabad</td>
<td>*H Sudarshan Director, VGKK</td>
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<td><strong>Rashtriya Gramin Vikas Nidhi</strong> Orissa</td>
<td>09-09-1998 Bhubaneshwar</td>
<td>*V. Sudarsen, Professor of Anthropology University of Madras, Chennai</td>
<td>24</td>
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<td><strong>Rajamani</strong> Former Secretary, Ministry of Environment &amp; Forests, Govt. of India, Hyderabad.</td>
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<td><strong>Jagadananda</strong> Chief Executive, Centre for Youth and Social Development Bhubaneshwar</td>
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<td>Orissa</td>
<td>Bhubaneshwar</td>
<td>Professor of Anthropology University of Sambalpur, Sambalpur</td>
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<td><strong>Rashtriya Gramin Vikas Nidhi</strong></td>
<td><strong>05-10-1998</strong></td>
<td><em>Natwar Thakkar</em></td>
<td><strong>36</strong></td>
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<tr>
<td>Assam</td>
<td>Guwahati</td>
<td>Nagaland Gandhi Ashram, Guwahati</td>
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<tr>
<td><strong>Bihar Institute of Rural Development</strong></td>
<td><strong>09-10-1998</strong></td>
<td><em>Fr Franklin</em></td>
<td><strong>40</strong></td>
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<tr>
<td>Bihar</td>
<td>Ranchi</td>
<td>Xavier Institute of Social Science, Ranchi</td>
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<td><strong>National Level Consultations</strong></td>
<td><strong>28-10-1998</strong></td>
<td><em>Ellen Schanegold</em></td>
<td><strong>43</strong></td>
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<td>SDT, New Delhi</td>
<td>New Delhi</td>
<td>Team Leader, SDT, New Delhi</td>
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Informed participation is a prelude to successful consultations. While these consultations are the first step in this direction, the Bank felt the need to share information with the local indigenous peoples and the organizations representing them (people’s forum/NGOs). It was indeed very encouraging to see some of these organizations respond very positively and present the views from the grassroots on the approach paper. For example, some participants of the Karnataka consultations sought the views of local tribals through the Tribal Peoples Forum and the Tribal NGO Forum and subsequently fed these views at the National consultations. Similarly, one NGO from Orissa (PREM) brought the representatives of the local tribal forum for the regional consultations which proved immensely useful. Some of the NGOs prepared discussion papers to highlight the local issues for the consultations in Bihar and the North Eastern Region. Three of these NGOs were represented by the following reputed tribal specialists:

1. Sr Gemma Mendes, Chotanagpur Adivasi Sewa Samiti, Hazaribagh, Bihar.
   **Tribal Perspectives on the Approach Paper for revision of Operational Directive 4.20.**

2. Bulu Imam, INTACH, Hazaribagh, Bihar.
   **Identification of Indigenous Peoples in India.**

3. Natwar Thakkar, Nagaland Gandhi Ashram, Guwahati.
   **Tribal situation in North East India: Important Features to Note.**

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* The World Bank provided fund support for this.
The meetings conveyed thanks and appreciation for the consultation process initiated by the World Bank, specially, because it was felt that although consultations with borrower-governments are normal, opportunities for discussions on World Bank policy with NGOs representing IPs, academia, individual experts, project implementing agencies and IPs themselves, are far less frequent. The participants also wished to put on record appreciation of the pro-active role of the New Delhi Office. They expressed a desire that they be informed of the results of the entire exercise, including the final version of the revised Operational Directive. K P Krishnan, Additional Secretary Government of Karnataka, during the Karnataka consultations pointed out that:

"the consultations are expensive, and are taking place at the expense of the citizens of the member countries. Hence, it is imperative that the deliberations are productive and result oriented. At the same time the Bank should ensure mechanisms to keep the participants informed of the feedback as and when the processes are completed."

He also voiced concern about the rising administrative costs of the World Bank which have doubled in the last fifteen years. According to him, this was a result of the changes introduced by the World Bank in the recent times, particularly in the areas of social development, environment and culture which, in his opinion, have not yielded dramatic results. However, the importance of sharing and disseminating views emanating from different regions in the consultation process for a more purposeful revision of OD 4.20 can not be undermined and hence this publication.

This publication presents a summary of the discussions and recommendations in respect of the following four sections as listed in the Approach Paper:

- Identification of Indigenous People
- Policy Objectives and Framework
- Measures and Procedures to Facilitate Policy Implementation
- Promoting Indigenous Peoples’ Development
Chapter 3

Identification of Indigenous People

Terminology

As mentioned in the Approach Paper, one of the difficulties in implementing OD 4.20 has been the identification of IPs. The implications of the term ‘indigenous peoples’ has generated a lot of debate in different parts of the world. However, for India this debate is not very significant because the Indian Constitution has already scheduled groups of people as ‘Scheduled Tribes’ (ST) (see Box-2 and Annex-4). Moreover, it emerged during the consultations that the term ‘Indigenous’ is a misnomer in a multi-cultural and multi-ethnic Indian context. The consultations generally subscribed to the suggested proposal, which provides for the development of an agreed process for identifying people rather than prescribing a definition for them and therefore, the STs could be perceived as synonymous with ‘Indigenous People’ (see Box-3).

Box-2 Tribal Demography

About 68 million persons were enumerated in India as members of the scheduled tribes (1991 census) accounting for 8.08% of the total population. They have been recognized into 461 groups, 74 of which are identified as ‘primitive tribal groups’. The largest number of tribals live in Madhya Pradesh (15.4 million) followed by Orissa (7.03 million), Maharashtra (7.32 million), Gujarat (6.62 million), Rajasthan (5.48 million) and Andhra Pradesh (4.2 million). No tribes have been scheduled in the states of Haryana, Punjab, Delhi and Pondichery. As proportion of the total population, Mizoram has the highest tribal population (94.75%) followed by Nagaland (87.07%). Geographically, the areas of tribal concentration account for about 15% of the country. There are communities ranging in size from less than 100 people (e.g. the Onges of Andaman and Nicobar Islands) to some millions. The largest tribal groups include the Bhils, Gonds, Santhals, Oraons, Mundas, Khonds, Hos, Nagas and Meenas, which account for the bulk of the tribal population.
Box-3 Tribals as Indigenous Peoples

The notion of indigenous peoples in particular, and its application to any one community, which includes the scheduled tribes in the Indian context, is highly questionable. The Indian official position is that the scheduled tribes are part of the biological, linguistic and cultural streams which both the tribals and non-tribals belong to. Moreover, all major ethnic communities, including schedule tribes, have come from outside and hence no community is indigenous. The scheduled tribes, despite being a part of the Indian history, society and culture, are the original settlers in the forests, hills and valleys. They do share with many of the indigenous communities elsewhere a world-view, a way of life, a perception of their relationship to the environment, a notion of rights in land, water and forests.

As regards the appropriate term to denote the STs, it was suggested in these consultations that, one should take into consideration the tribals' own way of defining/identifying/differentiating themselves. The accepted term for use by the tribals is ‘Adivasi’.

translated literally, Adi means First and Vasi means Resident.

Inclusion Versus Exclusion

Though the Indian constitution classifies certain groups of people as scheduled tribes, it is silent on what constitutes a Tribe? In other words, the Constitution of India gives no definition of a tribe. Though the Government of India has prescribed certain criteria for a group to be categorized as a ‘tribe’ (see Box-4), the criteria for inclusion and exclusion of such a group has not been enumerated. Several questions pertaining to such groups remain unanswered who have not been included in the STs.

Box-4 Scheduled Tribes - Definition

According to K S Singh, "in the pre-colonial literature, there were notions of communities inhabiting forests and hills. The notion of a tribe was introduced by colonial administrators, as a part of the universal trend to dichotomize the indigenous peoples and colonizers, the savage and the civilized, the tribals and non-tribals. The profile of the scheduled tribes in India starts with the delineation of tribal traits that stand out, namely relative isolation, backwardness, and cultural autonomy, in relation to the non-tribal populations”.

The notion of scheduled tribe has two aspects: one, it is an administrative, hence political decision; and two, not all tribes are scheduled, i.e., there are some communities similar to the tribes which are outside the ambit of the scheduled tribes.

The first official definition of a tribe that appeared in the Census of India, 1901 reads:

...A tribe as we find it in India is a collection of families or groups of families bearing a common name which as a rule does not denote any specific occupation; generally claiming common descent from a mythical or historical ancestor and occasionally from an animal, but in some parts of the country held together rather by the obligations of blood-feud than by the tradition of kinship; usually speaking the same language and occupying, professing, or claiming to occupy a definite tract of country. A tribe is not necessarily endogamous, that is to say, it is not an invariable rule that a man of a particular tribe must marry a woman of that tribe and cannot marry a woman of different tribe.

Should a reference be made to an 'area' rather than a 'group' as the scheduling is done on a state to state basis? A group scheduled as a 'tribe' in one area (state) may not be so in some other areas. A classical example is that of Lambadas who are tribal in Andhra Pradesh but are notified as non-tribals in the neighboring states. As a result, a large number of people have migrated to Andhra Pradesh to take advantage of the privileges which a ST is entitled to. On the other hand, a claim by a group of fishermen in the same state for their inclusion in the category of STs (as they fulfill the prescribed criteria) is yet to be settled. In Karnataka, the ST population is reported to have increased from about 400,000 in 1980 to nearly two million now. Apparently, this increase is a result of more and more groups being scheduled over a period of time. It also transpired during the Karnataka consultations that as many as 1,200 communities are aspiring to be declared as scheduled castes/tribes.

A significant trend in the recent years has been an attempt made by some communities, relatively advanced socially and economically, to get recognized as scheduled tribes. K S Singh specifically makes a reference to the case of the Gowaris/Gonds in Maharashtra. Some Gowaris, urban well to do cattle herders, went into the tribal area inhabited by the Gonds and became a part of the Gond society. These Gowaris staked their claim as a scheduled tribe, which meant making in-roads into the benefits guaranteed for the Gonds.

7 Ibid.
Another example of communities aspiring to be declared as STs was seen during the Bihar consultations, in the case made by Bulu Imam for including Scheduled Castes (SC) also (along with the STs) under the category of indigenous people. However, a counter argument by an academic expert was that “the Scheduled Castes are more evolved, more exposed to the dominant society; i.e., ‘mainstream culture’ and hence should not be treated at-par with the tribals”. As an illustration, it is pointed out that absenteeism, when a tribal takes up a job, is quite high compared to that of a SC. However, the NGOs from the North Eastern region maintained that the STs are one of the several sub-groups which fall under the umbrella of an IP. They also claimed that the ILO conventions 107 and 169 should form the basis for identifying the IP. This was opposed strongly by the government representatives.

Questions were also raised during the Karnataka and Andhra Pradesh consultations on how to deal with those acculturated into the dominant society, as well as those who have left their ancestral homes and migrated to urban areas. The Karnataka consultation participants felt strongly that there should be a recognition of the implications of labeling of the migrants. It is also important to recognize the stigma attached to particular labels given to particular groups, which includes the politics of gaining (or losing) ST status. Under these circumstances enumerated above, it was recommended during the consultations that a set of functional criteria and an institutional arrangement to put the identification into effect are essential.

**Functional Criteria**

For the identification of IPs, the Approach Paper (Para-7) suggested determining the presence of several functional criteria, in varying degrees, among specified cultural groups, including ‘primarily subsistence-oriented production’. As regards this functional criterion, the Karnataka consultations emphasized the need to enlarge the scope of the word ‘subsistence-oriented production’. The use of this word was thought to be giving the impression that reference was being made to ‘agriculture’ exclusively. It was suggested that the word ‘subsistence-oriented production’ should be replaced and due weightage be given to simple technologies, low literacy levels, pre-agricultural production and its small scale as well as the period of continued dwelling in the tribal habitat.

Prof Ningiah, Chairperson, Anthropology Department, University of Mysore, advised that the views of the Anthropologists in India should be taken into account while reviewing the criteria for

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8 Covered in detail in the paper by Bulu Imam, INTACH, Hazaribagh, Bihar written exclusively for the Bihar consultation. A full text of the paper is available on request from the Social Development Team in New Delhi.
9 Conventions of the International Labor Organizations concerning Indigenous Peoples and Tribal Peoples in independent countries of 1957 and 1989 respectively.
10 The Indian government has not ratified the ILO Convention 169, and, it is understood this is one of the issues the NGOs in the northeast, in particular from Arunachal Pradesh, are fighting for.
identification of IPs. The criteria should include:

- Tribal habitat and its isolation;
- tracing their origin to the oldest sections of the population;
- a dialect without a script;
- distinct cultural features including a primitive/animistic religious belief;
- a specific name for identity;
- subsistence level production with few or no links with the market; and
- relatively a higher status accorded to women.

Even among those tribals who are scheduled, there are significant socio-economic differences and therefore, while some STs are in fact able to control resources to the disadvantage of others, yet there are others at the bottom of the social ladder who are often excluded from receiving benefits. In view of this, it was suggested that rather than treating STs as homogeneous group, a recognition should be made of the different levels of livelihood security amongst them, and the more vulnerable sections should be identified and treated accordingly (see Box-5).

**Box- 5 Vulnerability**

Vulnerability reflects specific social and historical characteristics of groups of people that make them particularly susceptible to risks posed by state-driven or private sector-financed development projects. These characteristics may include:

(a) conditions of extreme poverty and deprivation;
(b) forms of ethnic cultural or gender discrimination;
(c) strong dependency on natural resources for subsistence and livelihood; and
(d) lack of access to political power and decision making.
It emerged during the consultations that the notion of tribal women being better off as compared to their non-tribal counterparts, is a myth which underscores the vulnerability of the tribal women. It was felt that there is a need to ensure that gender issues associated with the treatment meted out to the tribals are taken into account and this should find a place in the OD.

The participants at Orissa and North Eastern consultations emphasized the need for a different approach for identification of the IPs in the scheduled areas (see Box-6).

**Box-6 The Fifth and Sixth Schedule**

Towards safeguarding the tribals’ interests, the Indian constitution recognizes two distinct tribal territories under its Article 244. The first is the Scheduled Area where the provision of the **Fifth Schedule** applies over large areas of tribal middle India. The other is the **Sixth Schedule**, which applies to the administration in the tribal areas in the states of Assam, Meghalaya, Tripura and Nagaland in North Eastern India. This reflects the uniqueness of the ‘tribal’ factor within the national framework and the intentions of the constitution makers to secure political rights for tribals.

**Recommendations at consultations**

**Terminology.** As regards the appropriate term to denote the STs, it was suggested to use, Adivasi, a term accepted and used by the tribals for defining/identifying/differentiating themselves.

**Identification.** While subscribing to the suggestion made in the approach paper for the development of an agreed process for identifying people covered by the OD rather than prescribing a definition for them and therefore the consultations recommended, specially from the Bank’s operational perspective, that STs could be perceived as synonymous with ‘Indigenous Peoples’.

**Vulnerability.** Given the significant socio-economic differences even among the STs, it was suggested that rather than treating them as homogenous group, a recognition should be made of the different levels of livelihood security amongst them and the more vulnerable sections should be identified and treated accordingly.

**Gender.** As the notion of the tribal women being better-off as compared to their non-tribal counterparts, is a myth (which underscores the vulnerability of the tribal women), a need was expressed to ensure that gender issues associated with the treatment meted out to the tribals are taken into account...
and this should find a place in the OD.

**Tribal unit.** For identifying the basic social unit of the tribals, it was generally recommended that the tribals' own definitions of the family/hearth should be taken note of. As regards the scheduled areas in Orissa, it was suggested that the basic decision making unit should be a Palli or a hamlet (several Pallis make up a village) to fully safeguard the interests of tribals, in terms of both protection and development.

**Identification of IPs in scheduled areas.** As regards identification for the scheduled areas, the Orissa consultations recommended a multi-stage process. To start with, a set of criteria prescribed by the Government of India to enable categorization of a group as a ‘tribe’ scheduled in the constitution could serve as the first level of identification. The second level of identification should be based on the constitutional provision of a distinct tribal territory where the provisions of the fifth/sixth schedule operate (see Box-6) and only those living in the scheduled tribal territories be considered as ‘tribals’. As a third and final level of identification, a time dimension has to be attached — viz., a resident of the scheduled area should have lived there for a minimum number of years.
Policy Framework and Objectives

Scope of the policy

In the consultations, it transpired that owing to the size and diversity of India, one single policy can not even be applied to the entire country, leave alone the whole world. National and regional guidelines are, therefore, essential to address local issues which could be framed in accordance with the classification made for the delineation and governance of the tribal areas viz., Fifth Scheduled Area, Sixth Scheduled Area and Non-Scheduled Areas.

In Orissa, the participants expressed the view that the 73rd Amendment to the Indian constitution and the consequent Orissa Panchayat Raj Act should alone be the basis for the policy framework (see Box-7). In the newly introduced chapter, special provisions for Panchayats in the scheduled areas are meant to advance the objective of strengthening the local self government. They also secure for the people an effective decision making process concerning policies and administration ensuring the primary role of the institutions of local self government. Whenever there is a doubt, they lean in favor of the tribals’ autonomy and participation, particularly as a community in the Gram Sabha (Village Assembly), to strengthen their customs and tradition. Several participants from Orissa were of the view that the basic decision making unit should, however, be the traditional tribal unit (Palli) as the Gram Sabha itself would not suffice.

Box-7 The 73rd Amendment

The 73rd Amendment to the Constitution of India has provisions for setting up effective three-tier Panchayat Raj (local self government) institutions at village, block and district levels as part of a major endeavor to decentralize authority and devolve power concerning development schemes. The major elements of the provision of the 73rd Amendment to the Indian Constitution and the consequent Orissa Panchayat Raj Act as brought to the fore in the consultations assert that the Gram Sabha:

(i) is the final authority in so far as issuing a ‘caste/tribe certificate’; that is, in identifying a person/family as belonging to a particular group;

(ii) is competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community, resources and customary mode of dispute resolution; and

(iii) has the responsibility for guiding the social and economic development.
As regards land acquisition and mining, it is mandatory under the amended Orissa Panchayati Raj Act that the Gram Sabha shall be consulted before any of the following could be effected: (i) acquisition of land by any Land Authority under any law whatsoever authorizing acquisition of land; (ii) purchase of land through private negotiation for any development project whatsoever as also for any non-agricultural purpose, or otherwise; (iii) before settling or rehabilitating persons affected in any way by such projects; and (iv) initiating any activity in respect of minor minerals, including the grant of prospecting license and lease for working through auction or otherwise as also exploitation by the government or any other authority or person within a Gram Panchayat area and its neighborhood.

At the North Eastern consultations, the participants highlighted the inefficacy of the Approach Paper by pointing out the uniqueness of the region, specially in terms of the governance (as provided by the constitution), demography and socio-economic composition. It is noteworthy that the constitution also provides for a Sixth Schedule as well as an Inner Line Permit which covers the North Eastern Region (see Box-8). Four of the seven north-eastern states – Arunachal Pradesh, Meghalaya, Mizoram and Nagaland are predominantly inhabited by tribals and are governed by the constitutionally elected leaders of the local population. In the remaining three states – Assam, Manipur and Tripura – the population is mixed; they are both tribals and non-tribals. The tribal population in these states is sizeable, and inhabits a compact and contiguous area. In many cases, separate districts are created covering the population of a particular tribe. Most of these districts are governed by the 6th schedule; that is, they are autonomous. Thus, tribals are in a majority. Moreover, not only is literacy rate very high among most tribal groups, higher education too is quite common. The proportion of tribals in government jobs also is high with most households having at least one member working in the government. Economic exploitation by non-local people and non-tribals in the northeast is negligiible. Lastly, governance is as per the norms of customary laws, which vary substantially across villages/groups.

Box- 8 Sixth Schedule and Inner Line Permit

This policy that operates in parts of the north eastern region (applicable to the tribal areas in Assam, Meghalaya, Tripura and Mizoram), embodies the notion of self-management of...
resources and exercises a substantial measure of autonomy which includes powers to legislate. The Regional and the District Councils of the tribal areas are empowered to make laws with respect to:

a) Land: the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purpose of agriculture or grazing or for residential or other non-agricultural purposes; b) Forest: the management of any forest not being a reserved forest; c) Water-course: the use of any canal or water-course for the purpose of agriculture; d) Shifting cultivation: the regulation of the practice of Jhum; e) Establishment of village or town and its administration; f) Appointment of, or succession to, chiefs or headmen; g) Inheritance of property; h) Marriage, divorce and matters relating to any other social custom.

The Inner Line Permit is a regulation, which prohibits entry of outsiders into certain areas of the North East, as in Arunachal Pradesh, Nagaland and Mizoram, without a Permit. It debars a non-native to acquire any interest in land or the product of land in the area bound by the Permit.

**Policy Framework**

At the consultations, the participants felt that the Operational Directive should be a ‘facilitating and not a constraining document’. They suggested a review of the status (success or otherwise, and its implications) of the compliance of OD 4.20 in the last ten years. According to them, if this review was not done, then revisions would not be based on the crucial experiences of the past and it would seem as if the World Bank was refusing to be critical of its past thinking and actions.

Another significant aspect which emerged during the consultations was the feeling that the policy framework was too general and required to be more focussed. It is lacking in what was described as a “package” — that is, in terms of well-defined objectives and guiding principles. The national consultation at Delhi, in particular, expressed concerns that the approach paper, rather than being pro-active, was ‘mitigation-oriented’. One of the participants, Shobha Raghuram, Dy Director of a Bangalore based NGO, HIVOS, remarked:

“The indigenous people’s policy paper is part of a larger cooperation framework which should be clearly stated so that the context of the policy becoming operational is much clearer. ...the paper appears like an ‘add on’ to the main operations of the Bank. This is why the

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12 Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes in accordance with the law for the time being in force authorizing such acquisition.

13 Unless sanctioned by the Lieutenant Governor or any such officer as he may appoint.
Questions were also raised about the Approach Paper’s use of the phrase, “culturally compatible social and economic benefits”. Once the tribals are removed from their original habitation (widely feared as a result of the Bank’s intervention), they are divested of the natural resources essential for the continued practice of indigenous technical knowledge systems and traditional livelihood strategies. In such cases, ‘culturally compatible’ benefits are impossible. In other words, the tribal ‘culture’ is irreplaceable and inextricably bound to their traditional habitation.

A lot of debate took place on ‘valuing resources’ to decide ‘compensation’, and participants expressed serious concern about the ‘faulty accounting system’ in the Bank financed projects. The natural resources – rivers, hills, vegetation, ambience – supporting the tribals’ livelihoods are not assessed and recorded, and hence neither compensated for, nor internalized into the cost of the project. This amounts to “structural violence” against the tribals. Nirmal Jyotishi, RCDT, Bhubaneshwar, Orissa, raised a question:

“How can a resource (such as land) be valued locally when the project outputs (say, coal) are valued at international prices?”

Shekar Singh of the Indian Institute of Public Administration, New Delhi, was of the opinion that merely addressing issues related to ‘accounting’ was not enough. The compensations should be based upon the ‘Class-Benefit’ and not on ‘Cost-Benefit’ principle. He was of the view that the coal deposits removed from tribal areas in Bihar will eventually produce thermal power for residents in Delhi or Calcutta, and hence, whoever benefits the most should bear the highest cost and whoever suffers the most (tribals) should receive the highest benefit. In most projects, where tribals are associated, they bear the full cost as a result of loss of resources upon which their livelihoods are based. They should thus be the ones to benefit the most. The tribals’ right as First Beneficiaries was emphasized.

At the Orissa consultations, it was pointed out that, for example, when investments are made in an irrigation project and the project is completed, then the major users/beneficiaries are not the farmers but the industrial giants running plants like the thermal power station. Similarly, the infrastructure projects, particularly road constructions taken up with a view to benefit the people of the tribal areas, are subsequently capitalized by the industrialists as they find it convenient to set up their units in...
that area. For example, a Bank supported coal project may subsequently lead to the establishment of a thermal power plant or large mining projects. Moreover, while the irrigation or road projects might have been funded by the Bank complying with the OD 4.20 and the associated OD 4.30, the spin-offs are normally through private initiatives where no body cares to comply with the ODs. How can one ensure that the projects emerging as a result of the Bank funded initiatives do not resort to commercial exploitation of natural, mineral, hydro-carbon and/or cultural resources? [See ref: Para 15 (c)].

At the consultations, various clarifications were sought on the proposed distinction between ‘minimum’ and ‘adequate’ as well as ‘fair’ and ‘unfair’ compensation (para 15 (a) and 15 (c), respectively, of the Approach Paper) during a discussion on the safeguard clauses. A number of questions were raised about the safeguard clauses which have been restricted to establishing ‘minimum’ standards (Para 3 and 14 of the Approach Paper) and it was felt that it amounts to legitimizing reactive and mitigation-oriented approaches. One of these questions, for example, was as to who decides that resettlement is unavoidable and on what basis? The guideline about the preparation of suitable plans for mitigating adverse impacts (Para 9, OD 4.20) by borrower (in effect, the government) itself was also questioned. A related question was about ensuring the transparency in the decision making process. Their concern was that information, as a rule, is never available in tribal dialects. Detailed information, particularly, on the spin-off effects of a project is not made available. Moreover, participants wanted the phrase ‘meaningful consultation’, used in the Approach Paper, to be elaborated further.

When it came to the question of compensation for the Intellectual Property Rights (IPR) and the resource base needed for the continued practice of indigenous technical/knowledge systems, it was felt that though a reference is made about ‘property rights’ in the Approach Paper (Para 20, Annex-2), the statement is only protective and the larger issue has not been addressed at all.

**Recommendations at consultations**

**Guiding Principles.** It was recommended that a policy should have a well-defined objective and be framed in accordance with a set of meaningful basic/guiding principles which should be clearly evident in the policy document. While no concrete suggestions were made as to what should be the objective(s) of the OD, the
following were recommended as basic guiding principles:

- Right to livelihood;
- Right to information;
- In-built provisions for national and regional guidelines;
- Recognition of customary rights, including access and usage;
- Systems for establishing local governance;
- Concept of benefit sharing - class and not cost benefit principles; Tribals' right as first beneficiary;
- Pro-active rather than a reactive and mitigation oriented approach;
- Information sharing for meaningful consultations; consent and not mere consultations;
- Recognition of socio-economic differences within a tribal community and the relative vulnerability of different sub-sections; and
- Gender - women's rights to decision making, aspirations and opportunities.

Tribal Autonomy. During the Karnataka consultations, Dr P K Mishra, formerly working at Anthropological Survey of India, while endorsing Para 13 of the Approach Paper which reads: "......we also recommend a clearer statement in the revised policy of those conditions in which the Bank would not be prepared to finance projects because of their potentially adverse effects on indigenous populations, unless appropriate mitigation measures are taken....", made the following suggestion:

"The Bank would not be prepared to support projects which would restrict self-management at the community level, lessen their command over local resources, ownership of the means of production, the fruits of their own labor, equitable entitlements, and traditional personal liberties."

Indigenous Technical Knowledge Systems and Participation:

As regards the issue of Indigenous Technical Knowledge Systems and Tribals' Participation, Para 15 (c) of the Approach Paper currently reads as follows: "support the commercial exploitation of the natural, mineral, hydrocarbon and/or cultural resources contained in the areas traditionally used or occupied by indigenous peoples unless they participate in the benefits of such activities and receive fair compensation for any harm or damage that might result from such activities" to which the following revision was suggested:

"support the commercial exploitation of the natural, mineral, hydro-carbon and/or cultural
resources contained in the areas traditionally used or occupied or in which the indigenous peoples have knowledge or skills unless they participate in the identification, planning, preparation and implementation of the project and receive fair compensation as decided in consultation with indigenous people's forums (such as Gram Sabha, Tribal Forms, NGO forums) for any harm or damage that might result, from, or to, such activities and, knowledge systems.

Guarding against the Spin-off Effects: The consultations suggested that there should be a Memorandum of Understanding between the World Bank and the borrower governments which should state that no project supporting commercial exploitation of a natural mineral, hydrocarbon and/or cultural resources contained in the areas traditionally used or occupied by tribals would be allowed in those areas for a minimum period of 10 years after the completion of the project.

Jurisdiction: The Karnataka consultation was unanimous in its opinion that the OD should confine itself to the Bank-assisted projects. Statements of a general nature, not applicable exclusively to the Bank financed projects, should essentially be of a positive and advisory nature and should not be concerned with standards applicable to non-Bank financed projects.

It was noted that all projects would have some adverse effect or the other certain sections of the tribal communities and therefore it will be wrong to assume that no one would ever be harmed by the development projects. Hence, the consultations recommended for the deletion of the last sentence in the Para 6 of the existing OD 4.20 which reads: “More specifically, the objective at the center of this directive is to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank financed projects, and that they receive culturally compatible social and economic benefits”.

The participants at the Andhra Pradesh consultations felt that the policy should be in-ambiguous and should not include words and phrases such as: ‘unless’, ‘fair’, ‘culturally compatible’, ‘unavoidable’, ‘adequate’ as they introduce subjectivity and escape-routes, and hence could be subject to abuse.
Chapter 5

Measures and Procedures to Facilitate Policy Implementation

Procedures for addressing consultation and participation

In the course of consultations, while appreciating the positive statements in the Approach Paper, the participants shared their previous experiences of the ‘consultations’ regarding the Bank financed projects/activities and were skeptical about the net outcome of the consultations. Sr Gemma Mendes stated that

"we have had examples of ‘window dressing’ participation, where consultations and seminars are called, but there is no guarantee (and often little probability) of suggestions being given serious consideration, because the feasibility planning has been done already. None the less, the seminar reports are then used as evidence of participation of the affected people. We have had experience of genuine efforts at participation blocked by bureaucracy, the manipulation of consulted groups, and reluctance to share even basic information. To prepare for the Bihar Plateau Development Project, a data base was made of all the villages in the area, which has gone to Washington, is owned by the Bank, and is inaccessible to local researchers”.

Further, while making a specific reference to the revision of Operational Directive on Resettlement OD 4.30, she stated:

"In the name of public consultation, opinions were sought from some selected 50 NGOs worldwide. No attempts were made towards providing a feedback. While claiming to be a revision without substantial changes, [it]: (a) introduced changes in language which significantly changed and weakened the existing OD; (b) restructured the format into three – Operational Policy, Bank Procedures, and Good Practice – moving away from the formerly binding/mandatory policy to the new non-binding good practice”.

At the Karnataka consultations, it was pointed out by the tribals’ NGOs that the Bank’s consultative efforts, while preparing the India
Ecodevelopment Project, were confined merely to interaction with city-based institute type NGOs, completely ignoring the views of local tribals and their representatives. An independent initiative from the local tribals, “the people’s plan”, for managing a national park in which they have been living for a long time, has not been considered while designing the project, thus ignoring the tribals’ needs and aspirations.

During the Andhra Pradesh consultations, Rajamani, former Secretary to the Government of India, Ministry of Forests and Environment, remarked

“any development intervention in the tribal areas calls for ‘participation’ and ‘decision making’ amongst unequals, and even the voiceless, including flora and fauna, should be heard, and the rights to information should be upheld.”

Some other related questions raised during the consultations included: Who will consult whom? What type of knowledge and/or skill would be required to conduct consultations with the tribals? How could we ensure that those who conduct consultations do possess the required skills? Is it not necessary to prepare the indigenous peoples for the consultations and if it is, how do we do this? Lastly, on the issue of accountability, who should be held accountable and to whom?

Land Tenure and Natural Resources

While acknowledging that Para 20 of the Approach Paper recognizes the customary rights of the indigenous peoples, the participants at the consultations were apprehensive about the narrow definitional domain and the very application of that principle. The Orissa consultations were critical of the Bank induced land acquisition. While the Bank’s economic policy espouses the doctrine of ‘open market’, the tribals’ lands are forcibly acquired by legislation and not subjected to open market bargaining. The value of land/resources lost as a result of such acquisition is never assessed scientifically. Iso Mandal, a tribal participant from Orissa noted:

“My customary rights end when the government’s rights begin. I have a right to collect Mahua (the liquor-fruit) and can continue to do so until the government/private industrialists discover mineral deposits. I have a right to fish in the river, but no rights over the river. I loose my occupation as soon as the river gets polluted by industrial effluents. The indigenous knowledge I have about medicinal plants has no relevance once I am forced to moved out of my native area.”

In view of the above, the participants wanted an additional paragraph on ‘natural resources accounting’ and ‘intellectual prop-

15 The India Ecodevelopment Project being a process-oriented project, it is designed to address these concerns during the implementation.
Indigenous Peoples' Action Plan

It emerged during the consultations that paragraph 21 of the Approach paper on the process for the development of Indigenous Peoples' Action Plans (IPAP) needs to be amplified. Questions were raised as to who would decide whether the projects will have negative or positive impacts, how would these decisions be arrived at and who would monitor these projects? It was felt that it was not clear as to who would be responsible for the preparation of an Indigenous Peoples' Action Plan. Moreover, since, according to the participants, the preparation of an IPAP can not rest solely with the borrower or the project sponsor, the process needs to be well defined so as to make sure that these questions are properly answered.

The Orissa and Bihar consultations were strongly opposed to the idea that IPAP be prepared only when the IP are likely to be affected adversely, and it would not be prepared when the projects are intended to benefit the IPs. It was indicated that 'benefits' as perceived and projected by the Bank's Appraisal Documents are only 'potential' benefits, which may or may not fructify. In a number of cases, the "potential benefits" may boomerang and affect the tribals adversely. In order to move from the 'do-no-harm' to the 'do-good policy', or to be pro-active, it was felt that an IPAP is a must whether the potential affects are negative or positive. At the Bihar consultations, it was pointed out that while planning and implementing the IPAP, special care needs to be taken since it may not be possible for the tribals to adjust to the alternatives provided under the IPAP as quickly as perceived by the planners. Besides, mechanisms for continuous monitoring and mid-course corrections, if required, should also be provided in all IPAPs.

Recommendations at consultations

Consultations. All projects in the tribal areas should, in essence, be pro-tribal, and aimed more at providing basic minimum needs. Projects with potentially adverse affects should not be planned at all. All decisions, including a go ahead for a particular project must be endorsed by the local institutions such as the Gram Sabha and various tribal forums. In view of this, a suggestion was made to remove the word 'or' from the sentence in para-19 (1) of the
Approach Paper which reads as follows:

"consultations have taken place with the affected indigenous populations and/or their representatives during early stages of project preparation and relevant information is provided to them in a culturally and linguistically compatible manner...".

**Customary Rights.** The OD should provide for recognizing 'customary rights' in a much broader way, to include indigenous knowledge, skills, and professions and arrange for compensations thereof. Accordingly, Para 20 (c) of the Approach Paper, should be modified — in particular, the sentence, "if there are no existing legal frameworks for converting customary rights into those of legal ownership..." should be changed, as it implies land-based rights only.

At the NER consultations, it was suggested that the least that the Bank must do is to insist on codifying customary rights as a prerequisite for project identification. Some of the existing alternative arrangements (see Box-9) made for formalizing the customary rights to facilitate developmental intervention should be documented and analyzed. The need to recognize the issue of gender in this context was also highlighted. Even in the case of customary laws, a title deed is normally not in the name of a woman. In one of the northeastern states (Arunachal Pradesh), efforts to formalize the customary laws without due recognition to women's entitlements have met with severe protests by women organizations.

**Box- 9 Resolving the land entitlement issue in Manipur**

Recently, Rashtriya Gramin Vikas Nidhi, a NGO based in northeastern India and the Housing & Development Finance Corporation (HDFC), the India's premier housing finance institution, have jointly developed an alternative institutional arrangement to resolve the land entitlement issue in Manipur (where no individual rights exist) for financing construction of houses. It may be noted that the Commercial Banks normally avoid extending loans in the tribal areas in the North East as individual ownership of land does not exist there. Customarily, either the village community or the village chief owns the lands.

**Natural Resources Accounting and Intellectual Property Regime.** The participants wanted an additional paragraph on 'natural resources accounting' and 'intellectual property regime' to be included in the OD so that the baseline data could take into account the losses likely to be suffered, in terms of natural resources (land, water, vegetation and wildlife) and indigenous knowledge/skills and
practices which support the livelihoods of the indigenous people, while determining the amount of compensations. The consultations recommended the following addition to para 20 in the Approach Paper:

"developing procedures to ensure an appropriate accounting of natural resources, specifically to reflect the value of commercial exploitation and due recognition of intellectual property rights, to enable fair compensation and a share in the benefits thereof."

It was also recommended that for mining, the principle of leasing the land rather than acquiring it should be invoked. Arrangements should be made in such a way that the tribals lease out the lands for a fixed number of years after which the lands should be returned with plans for community based ecological restoration. The restoration should form a part of the overall project.

**Resource Inventorization:**
During the northeastern consultations, concerns were expressed about the fast depleting forest resources in the region and the lack of any effort to conserve them. This problem is further compounded by the rampant conversion of resources which used to be commonly owned property to privately owned property. In the light of these trends, any intervention, it was recommended, should be preceded by:

(a) Preparation of a resource inventory; and

(b) formulation of a natural resource policy detailing regulatory mechanisms, to ensure conservation, development and sustainable utilization.

However, it was also said that if any other OD of the Bank covering these aspects already exists, then a reference should be made to it in OD 4.20.

**Corrupt practices:** In projects related with the tribals, the possibility of corruption acquires a high magnitude because of their innocence and lack of exposure. The need for special efforts to ensure greater transparency, participation of citizen bodies, rigorous monitoring and a continuous exchange of information was emphasized and it was recommended that the OD should make a specific reference to this issue.

**Risk Insurance:** Sr Gemma Mendes emphasized the need for a special reference to the issue of risk insurance in the OD so as to ensure appropriate insurance mechanisms to safeguard tribal interests:

"There is worldwide documentation of tribal societies being impoverished by projects. The risk has been entirely on them, not the local government officials nor the Bank personnel who promote the projects. The issue of risk insurance must be addressed"
Chapter 6

Promoting Indigenous Peoples Development

Development – whose perspective?

There was a general agreement on the section dealing with “Promoting Indigenous Peoples’ Development” in the Approach Paper (para-22). However, objections were raised about the use of the term ‘development’ which, according to the participants, would mean different things to different people. With a view to give effect to the tribal vision of development and progress and to reinforce tribal identity, without imposing an alien model of development, it was recommended that the term ‘development’ be replaced by ‘aspirations’, and the section be captioned, “Indigenous Peoples’ Aspirations”.

While taking the ‘aspirations’ of the tribals into account and their implications for the cultural diversity/integrity, the need to exercise a balance between the two extremes of ‘conservation’ and ‘development’ was recognized during the Andhra Pradesh consultations. Some of the questions raised in this regard were, • Is it feasible to reverse historical patterns of social exclusion?

• Is it realistic and/or feasible to expect the grant of full autonomy to certain sections as advocated in the Approach Paper? Will it not lead to fragmentation and disintegration?

• Can autonomy be granted to that extent?

• How can autonomy be granted when their rights have already been eroded?

Private Sector Participation

There was a mixed response to the idea of private sector participation. While the Bihar consultations welcomed private sector participation, Orissa was strongly against it. Reactions were mixed in the North East and Karnataka. But, there was a general agreement in terms of seeking further clarifications. The discussions were centered on the role that the private sector would have to play viz.:
- Private Sector to address indigenous peoples' issues in private sector led projects.
- Private sector to participate in indigenous business development oriented projects.
- Private sector undertaking indigenous peoples' development on its own for corporate reasons.
- Securing private sector to comply with OD provisions independent of fund support.

**OD Compliance**

Finally, the participants wanted to know as to how the Bank would ensure the compliance of the provisions of the revised OD during the implementation of its projects.
India Consultations - Implications for the World Bank in India

1. In this section, an attempt has been made to highlight the issues of the India consultations which have implications for the Bank in the future preparation and supervision of projects in India affecting Indigenous Peoples.

2. Generally, the consultations confirmed that the Bank has policies in place that can, if implemented sincerely, address the issues related to tribal development in India. Most of the critical comments, and the scope for improvement lies in the operational application of the policy. There appear to be three areas where there is scope for better application of the policy: (i) apply social assessments in preparation of all projects affecting tribals, with focus on livelihood patterns and natural resource use; (ii) site specific Indigenous Peoples Development Plans should be developed so as to reflect fully local issues and challenges for all projects (having an IP element) irrespective of the size of the affected population and regardless of whether the affects are likely to be adverse or not; (iii) there is scope for improving the informed participation of tribals and NGOs in identifying the critical concepts and issues for tribal development during project preparation. Below are some of the specific items that were raised of operational relevance for the India program.

3. Identification of Indigenous Peoples. It emerged at the consultations that identification of the IPs in India is relatively easier than in many other client countries because of well defined constitutional provisions which classify certain groups as 'scheduled tribes' (STs) in an elaborate manner. Thus, from an operational perspective, the Bank can generally treat these scheduled tribes as synonymous with 'Indigenous Peoples', although caution should be exercised, as some groups may be classified as ST in some areas, but not in others. The socio-economic differences amongst the STs also cannot be ignored. Hence, an attempt should be made to classify them into various sub-groups on the basis of their degree of vulnerability. In this context, gender differentiation should be highlighted. Geographi-

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1 At present the OD 4.20 stipulates that: "when the bulk of the direct project beneficiaries are indigenous people, the Bank's concerns are would be addressed by the project itself and the provisions of this OD would thus apply to the project in its entirety."

2 Further, the Approach Paper recommends that: "where projects do not have adverse impacts but are intended to benefit indigenous peoples, the project design should be socially and culturally compatible with the needs and concerns of the intended beneficiaries and no separate action plan is required."
cal distinctions in terms of habitat zones, areas identified as scheduled/non-scheduled are also critical in the process of identification. This can be achieved through conducting comprehensive Social Assessments at an early stage of project preparation.

4. Consultations and Participation. It has been unanimously expressed that while preparing the Bank financed projects, views of the people likely to be affected by Bank-financed projects are not considered adequately. Nor does sufficient efforts are made to provide sufficient and comprehensible information. It may be useful to formulate explicit guidelines for seeking the views of the tribal groups. Consultations with local bodies and tribal institutions as well as local NGOs should be made a part of preparation of all projects that affect tribal groups. Equally important is to ensure tribal participation, both in planning and implementation of the projects for which they need to be prepared.

5. Natural Resources Accounting. The consultations have emphasized on due accounting of ‘natural resource’ and ‘intellectual property’ while determining the amount of compensation to be awarded, if tribal groups lose, or are restricted in, their customary use of natural resources because of a project. The compensation to be awarded to the tribal groups should cover both the losses tribal groups likely to suffer, in their use of natural resources (land, soil, water, vegetation and wildlife) as well as the value of indigenous knowledge, skills and practices that support their livelihoods. A participatory natural resource use mapping and an appropriate accounting methodology can be developed to address this need. This methodology should ensure that the valuation of the tribal resource use is done in terms of the potential benefits that are derived from such resources (say, land) which the tribal groups stand to lose.

6. Customary Rights. Customary rights have been described not only as the ‘usage’ (land) rights but also as ‘access’ rights (to all the resources, especially in the forests). These rights can be secured by a proper assessment of tribal groups’ degree of dependency and the range of benefits derived from the natural resource use as well as the level of indigenous know-how and skills for securing the benefits. To facilitate this, an inventory of the natural resources in the tribal habitats and records of the use of these resources in the tribal groups’ livelihood patterns as well as the spiritual and cultural significance of the various places within it should be part of any social assessment dealing with tribal groups.

7. Tribal groups’ right as the first beneficiary. To ensure that the tribal groups get their due share of the potential project
benefits, the consultations recommended determining development benefits and any compensations based on the principle that people who suffer most (because of a project) should be the primary beneficiaries of the project. This would mean that the first and the biggest sufferer is the first and the biggest beneficiary.

8. Local governance. The 73rd amendment to the constitution of India, applicable to scheduled areas as well, is aimed at decentralizing authority and devolving power to the institutions of local self governance. While designing a project, this constitutional provision should be taken note of and the participation of these institutions should be ensured.
THE WORLD BANK POLICY ON INDIGENOUS PEOPLES
Annex - 1

Operational Directive 4.20
September 1991

This directive was prepared for the guidance of staff of the World Bank and is not necessarily a complete treatment of the subjects covered.

Indigenous Peoples

Introduction

1. This directive describes Bank’s policies and processing procedures for projects that affect indigenous peoples. It sets out basic definitions, policy objectives, guidelines for the design and implementation of project provisions or components for indigenous peoples, and processing and documentation requirements.

2. The directive provides policy guidance to (a) ensure that indigenous people benefit from development projects, and (b) avoid or mitigate potentially adverse effects on indigenous people caused by Bank-assisted activities. Special action is required where Bank investments affect indigenous peoples, tribes, ethnic minorities, or other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources.

Definitions

3. The terms “indigenous peoples,” “indigenous ethnic minorities,” “tribal groups,” and “scheduled tribes” describe social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process. For the purposes of this directive, “indigenous peoples” is the term that will be used to refer to these groups.

4. Within their national constitutions, statutes, and relevant legislation, many of the Bank’s borrower countries include specific definitional clauses...
and legal frameworks that provide a preliminary basis for identifying indigenous peoples.

5. Because of the varied and changing contexts in which indigenous peoples are found, no single definition can capture their diversity. Indigenous people are commonly among the poorest segments of a population. They engage in economic activities that range from shifting agriculture in or near forests to wage labor or even small-scale market-oriented activities. Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:

(a) a close attachment to ancestral territories and to the natural resources in these areas;

(b) self-identification and identification by others as members of a distinct cultural group;

(c) an indigenous language, often different from the national language;

(d) presence of customary social and political institutions; and

(e) primarily subsistence-oriented production.

Task managers (TMs) must exercise judgment in determining the populations to which this directive applies and should make use of specialized anthropological and sociological experts throughout the project cycle.

**Objective and Policy**

6. The Bank's broad objective towards indigenous people, as for all the people in its member countries, is to ensure that the development process fosters full respect for their dignity, human rights, and cultural uniqueness. More specifically, the objective at the center of this directive is to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits.

7. How to approach indigenous peoples affected by development projects is a controversial issue. Debate is often phrased as a choice between two opposed positions. One pole is to insulate indigenous populations whose cultural and economic practices make it difficult for them to deal with powerful outside groups. The advantages of this approach are the special protections that are provided and the preservation of cultural
distinctiveness; the costs are the benefits foregone from development programs. The other pole argues that indigenous people must be acculturated to dominant society values and economic activities so that they can participate in national development. Here the benefits can include improved social and economic opportunities, but the cost is often the gradual loss of cultural differences.

8. The Bank's policy is that the strategy for addressing the issues pertaining to indigenous peoples must be based on the informed participation of the indigenous people themselves. Thus, identifying local preferences through direct consultation, incorporation of indigenous knowledge into project approaches, and appropriate early use of experienced specialists are core activities for any project that affects indigenous peoples and their rights to natural and economic resources.

9. Cases will occur, especially when dealing with the most isolated groups, where adverse impacts are unavoidable and adequate mitigation plans have not been developed. In such situations, the Bank will not appraise projects until suitable plans are developed by the borrower and reviewed by the Bank. In other cases, indigenous people may wish to be and can be incorporated into the development process. In sum, a full range of positive actions by the borrower must ensure that indigenous people benefit from development investments.

Bank Role

10. The Bank addresses issues on indigenous peoples through (a) country economic and sector work, (b) technical assistance, and (c) investment project components or provisions. Issues concerning indigenous peoples can arise in a variety of sectors that concern the Bank; those involving, for example, agriculture, road construction, forestry, hydropower, mining, tourism, education, and the environment should be carefully screened. Issues related to indigenous peoples are commonly identified through the environmental assessment or social impact assessment processes, and appropriate measures should be taken under environmental mitigation actions (see OD 4.01, Environmental Assessment).

11. Country Economic and Sector Work. Country departments should maintain information on trends in government policies and institutions that deal with indigenous peoples. Issues concerning indigenous peoples should be addressed explicitly in sector and subsector work and brought into the Bank-country dialogue. National development policy frameworks and institutions for indigenous peoples often need to be strengthened in
order to create a stronger basis for designing and processing projects with components dealing with indigenous peoples.

12. Technical Assistance. Technical assistance to develop the borrower's abilities to address issues on indigenous peoples can be provided by the Bank. Technical assistance is normally given within the context of project preparation, but technical assistance may also be needed to strengthen the relevant government institutions or to support development initiatives taken by indigenous people themselves.

13. Investment Projects. For an investment project that affects indigenous peoples, the borrower should prepare an indigenous peoples development plan that is consistent with the Bank's policy. Any project that affects indigenous peoples is expected to include components or provisions that incorporate such a plan. When the bulk of the direct project beneficiaries are indigenous people, the Bank's concerns would be addressed by the project itself and the provisions of this OD would thus apply to the project in its entirety.

Indigenous Peoples Development Plan

Prerequisites

14. Prerequisites of a successful development plan for indigenous peoples are as follows:

(a) The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project.

(b) Studies should make all efforts to anticipate adverse trends likely to be induced by the project and develop the means to avoid or mitigate harm.

(c) The institutions responsible for government interaction with indigenous peoples should possess the social, technical, and legal skills needed for carrying out the proposed development activities. Implementation arrangements should be kept simple. They should normally involve appropriate existing institutions, local organizations, and nongovernment organizations (NGOs) with expertise in matters relating to indigenous peoples.

(d) Local patterns of social organization, religious beliefs, and resource use should be taken into account in the plan's design.
(e) Development activities should support production systems that are well adapted to the needs and environment of indigenous peoples, and should help production systems under stress to attain sustainable levels.

(f) The plan should avoid creating or aggravating the dependency of indigenous people on project entities. Planning should encourage early handover of project management to local people. As needed, the plan should include general education and training in management skills for indigenous people from the onset of the project.

(g) Successful planning for indigenous peoples frequently requires long lead times, as well as arrangements for extended follow-up. Remote or neglected areas where little previous experience is available often require additional research and pilot programs to fine-tune development proposals.

(h) Where effective programs are already functioning, Bank support can take the form of incremental funding to strengthen them rather than the development of entirely new programs.

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15. The development plan should be prepared in tandem with the preparation of the main investment. In many cases, proper protection of the rights of indigenous people will require the implementation of special project components that may lie outside the primary project's objectives. These components can include activities related to health and nutrition, productive infrastructure, linguistic and cultural preservation, entitlement to natural resources, and education. The project component for indigenous peoples development should include the following elements, as needed:

(a) Legal Framework. The plan should contain an assessment of (i) the legal status of the groups covered by this OD, as reflected in the country's constitution, legislation, and subsidiary legislation (regulations, administrative orders, etc.); and (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights. Particular attention should be given to the rights of indigenous peoples to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forests, wildlife, and water) vital to their subsistence and reproduction.
(b) Baseline Data. Baseline data should include (i) accurate, up-to-date maps and aerial photographs of the area of project influence and the areas inhabited by indigenous peoples; (ii) analysis of the social structure and income sources of the population; (iii) inventories of the resources that indigenous people use and technical data on their production systems; and (iv) the relationship of indigenous peoples to other local and national groups. It is particularly important that baseline studies capture the full range of production and marketing activities in which indigenous people are engaged. Site visits by qualified social and technical experts should verify and update secondary sources.

(c) Land Tenure. When local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing legal recognition of the customary or traditional land tenure systems of indigenous peoples. Where the traditional lands of indigenous peoples have been brought by law into the domain of the state and where it is inappropriate to convert traditional rights into those of legal ownership, alternative arrangements should be implemented to grant long-term, renewable rights of custodianship and use to indigenous peoples. These steps should be taken before the initiation of other planning steps that may be contingent on recognized land titles.

(d) Strategy for Local Participation. Mechanisms should be devised and maintained for participation by indigenous people in decision making throughout project planning, implementation, and evaluation. Many of the larger groups of indigenous people have their own representative organizations that provide effective channels for communicating local preferences. Traditional leaders occupy pivotal positions for mobilizing people and should be brought into the planning process, with due concern for ensuring genuine representation of the indigenous population.5 No foolproof methods exist, however, to guarantee full local-level participation. Sociological and technical advice provided through the Regional environment divisions (REDs) is often needed to develop mechanisms appropriate for the project area.

(e) Technical Identification of Development or Mitigation Activities. Technical proposals should proceed from on-site research by qualified professionals acceptable to the Bank. Detailed descriptions should be prepared and appraised for such proposed services as education, training, health, credit, and legal assistance. Technical descriptions should be included for the planned investments in productive infrastructure. Plans that draw upon indigenous knowledge are often more successful than those introducing entirely new principles and institutions. For example, the
potential contribution of traditional health providers should be considered in planning delivery systems for health care.

(f) **Institutional Capacity.** The government institutions assigned responsibility for indigenous peoples are often weak. Assessing the track record, capabilities, and needs of those institutions is a fundamental requirement. Organizational issues that need to be addressed through Bank assistance are the (i) availability of funds for investments and field operations; (ii) adequacy of experienced professional staff; (iii) ability of indigenous peoples' own organizations, local administration authorities, and local NGOs to interact with specialized government institutions; (iv) ability of the executing agency to mobilize other agencies involved in the plan's implementation; and (v) adequacy of field presence.

(g) **Implementation Schedule.** Components should include an implementation schedule with benchmarks by which progress can be measured at appropriate intervals. Pilot programs are often needed to provide planning information for phasing the project component for indigenous peoples with the main investment. The plan should pursue the long-term sustainability of project activities subsequent to completion of disbursement.

(h) **Monitoring and Evaluation.** Independent monitoring capacities are usually needed when the institutions responsible for indigenous populations have weak management histories. Monitoring by representatives of indigenous peoples' own organizations can be an efficient way for the project management to absorb the perspectives of indigenous beneficiaries and is encouraged by the Bank. Monitoring units should be staffed by experienced social science professionals, and reporting formats and schedules appropriate to the project's needs should be established. Monitoring and evaluation reports should be reviewed jointly by the senior management of the implementing agency and by the Bank. The evaluation reports should be made available to the public.

(i) **Cost Estimates and Financing Plan.** The plan should include detailed cost estimates for planned activities and investments. The estimates should be broken down into unit costs by project year and linked to a financing plan. Such programs as revolving credit funds that provide indigenous people with investment pools should indicate their accounting procedures and mechanisms for financial transfer and replenishment. It is usually helpful to have as high a share as possible of direct financial participation by the Bank in project components dealing with indigenous peoples.
Project Processing and Documentation

Identification

16. During project identification, the borrower should be informed of the Bank’s policy for indigenous peoples. The approximate number of potentially affected people and their location should be determined and shown on maps of the project area. The legal status of any affected groups should also be discussed. TMs should ascertain the relevant government agencies, and their policies, procedures, programs, and plans for indigenous peoples affected by the proposed project (see paras. 11 and 15(a)). TMs should also initiate anthropological studies necessary to identify local needs and preferences (see para. 15(b)). TMs, in consultation with the REDs, should signal indigenous peoples issues and the overall project strategy in the Initial Executive Project Summary (IEPS).

Preparation

17. If it is agreed in the IEPS meeting that special action is needed, the indigenous peoples development plan or project component should be developed during project preparation. As necessary, the Bank should assist the borrower in preparing terms of reference and should provide specialized technical assistance (see para. 12). Early involvement of anthropologists and local NGOs with expertise in matters related to indigenous peoples is a useful way to identify mechanisms for effective participation and local development opportunities. In a project that involves the land rights of indigenous peoples, the Bank should work with the borrower to clarify the steps needed for putting land tenure on a regular footing as early as possible, since land disputes frequently lead to delays in executing measures that are contingent on proper land titles (see para. 15(c)).

Appraisal

18. The plan for the development component for indigenous peoples should be submitted to the Bank along with the project’s overall feasibility report, prior to project appraisal. Appraisal should assess the adequacy of the plan, the suitability of policies and legal frameworks, the capabilities of the agencies charged with implementing the plan, and the adequacy of the allocated technical, financial, and social resources. Appraisal teams should be satisfied that indigenous people have participated meaningfully in the development of the plan as described in para. 14(a) (also see para. 15(d)). It is particularly important to appraise proposals for regularizing
Implementation and Supervision

19. Supervision planning should make provisions for including the appropriate anthropological, legal, and technical skills in Bank supervision missions during project implementation (see paras. 15(g) and (h), and OD 13.05, Project Supervision). Site visits by TMs and specialists are essential. Midterm and final evaluations should assess progress and recommend corrective actions when necessary.

Documentation

20. The borrower’s commitments for implementing the indigenous peoples development plan should be reflected in the loan documents; legal provisions should provide Bank staff with clear benchmarks that can be monitored during supervision. The Staff Appraisal Report and the Memorandum and Recommendation of the President should summarize the plan or project provisions.

1. “Bank” includes IDA, and “loans” include credits.
2. Displacement of indigenous people can be particularly damaging, and special efforts should be made to avoid it. See OD 4.30, Involuntary Resettlement, for additional policy guidance on resettlement issues involving indigenous people.
3. Regionally specific technical guidelines for preparing indigenous peoples components, and case studies of best practices, are available from the Regional environment divisions (REDs).
A. Introduction

1. The World Bank was the first multilateral financial institution to introduce a special policy for the treatment of indigenous or tribal peoples in development projects. As far back as 1982, the Bank issued Operational Manual Statement (OMS) 2.34 on “Tribal People in Bank-financed Projects,” the purpose of which was to protect the interests of relatively isolated and culturally distinct, indigenous groups in Bank-financed development interventions.

2. In 1991, based upon its experience with OMS 2.34, and also changes in international standards concerning the treatment of indigenous peoples, the Bank issued a revised policy (OD 4.20, Indigenous Peoples). While maintaining the protective measures of the earlier policy, the current policy emphasizes the need for indigenous peoples to participate in and benefit from Bank-financed development projects. It also outlines special procedures for incorporating indigenous peoples’ concerns into Bank-financed investments through the design of Indigenous Peoples Development Plans (IPDPs).

3. The Bank is currently reviewing all of its Operational Policies, in an effort to improve its menu of policies and ensure greater compliance, especially with safeguard policies. Safeguard policies establish minimum standards that all Bank Country Departments and Task Teams must comply with in their investment decisions and operations. The architecture of these policies distinguishes between (i) those aspects of policy and procedures intended to avoid harm or damage to third parties, and for which Bank staff would be expected to comply fully; and, (ii) those positive aspects over which Bank staff would have more discretion.

4. This Paper follows this architecture and recommends a framework for revising OD 4.20. Specifically, the Paper recommends:
a) a process for identifying the populations covered by the Operational Policy that draws upon previous definitional criteria, but gives greater attention to national and international legal definitions and to consultations with governments, regional and national indigenous organizations, NGOs and academic experts;

b) adherence to the current policy objectives of OD 4.20, but more clarification of those minimum standards or conditions which would need to be met in order for the Bank to be assured that indigenous peoples would not experience adverse effects from Bank-financed development interventions;

c) clarification in three areas: what is expected in terms of social analysis, participation and consultation; what is meant by land and natural resource protection; and, when indigenous peoples action plans are required; and,

d) specification of ways in which the Bank Group can go beyond protective measures and promote indigenous peoples development, especially within the broader framework of poverty reduction and private sector investments.

5. This Paper describes in greater detail each of the above recommendations. A major purpose of the Paper is to begin a systematic process of internal and external consultation with relevant stakeholders to facilitate revision of OD 4.20 in line with the new policy architecture of the Bank.

B. Identification of Indigenous Peoples

6. One of the difficulties encountered in implementing OD 4.20 has been the identification and definition of "indigenous peoples." In some of the Bank's regions (e.g., Africa and large parts of Asia), there is a reluctance among Borrower countries to the use of the term "indigenous peoples" because of the general belief that all members of their respective national populations are "indigenous." Where vulnerable indigenous or tribal groups exist, there are also numerous terms used to describe such groups (e.g., "indigenous ethnic minorities," "national minorities," "scheduled tribes," "aboriginal groups," "remote area dwellers," "hill tribes," etc.). These different regional and national contexts and the varying usage of the terms make it difficult to obtain agreement on a common term or definition to identify all of the indigenous or tribal groups covered by the Bank's policy. However, because the terminology is so varied, the term indigenous peoples has come to subsume these different categories and usage, and its use is consistent with current United Nations and academic discussions of the topic.
7. Rather than seek a single universal definition for "indigenous peoples," we recommend that the Bank maintain the current title of its policy but introduce the following process for identifying the population groups within a country or region to which the policy applies:

a) as a preliminary basis, for identifying such populations, review national constitutions, laws, and other relevant legislation in regard to specific definitions and legal frameworks;

b) where appropriate, use ILO Conventions 107 and 169 Concerning Indigenous and Tribal Peoples in Independent Countries, where the Borrower Country has ratified either or both of these Conventions;

c) consult with the government, regional and national indigenous organizations, NGOs, and academic experts who know the ethnic composition of the particular country; and,

d) determine the presence in varying degrees among specified cultural groups of the following functional criteria [para. 5, OD 4.20]:

a close attachment to ancestral territories and to natural resources in these areas;

self-identification and identification by others as members of a distinct cultural group;

often, use of a language different from the national language;

presence of customary social and political institutions;

primarily subsistence-oriented production; and, vulnerability to being disadvantaged as social groups in the development process.

8. The above process would be used to determine the specific cultural groups, if any, to which the policy would apply in each particular country and specific Bank-financed operations. Where appropriate, the country dialogue and economic and sector work should address the identification of such cultural groups on a general basis so as to avoid the need for project-by-project identification. For a specific operation, the identification would be carried out as early as possible during project preparation. The identification process, including the criteria used and the results, would be
evaluated by the Bank's social and legal specialists and would have to be acceptable to the Bank

C. Policy Objectives and Framework

Past and Existing Framework

9. As far back as 1982, in issuing its first policy on the treatment of tribal people (OMS2.34), the Bank recognized that special measures were needed to safeguard these populations against the potentially damaging effects of externally-promoted developments. OMS 2.34 noted that “Experience has shown that, unless special measures are adopted, tribal people are more likely to be harmed than helped by development projects that are intended for beneficiaries other than themselves. Therefore, whenever tribal peoples may be affected, the design of projects should include measures or components necessary to safeguard their interests and, whenever feasible, to enhance their well-being.” The same document stated that, “The Bank will assist projects only when satisfied that the Borrower or relevant government agency supports and can implement measures that will effectively safeguard the integrity and well-being of the tribal people” [paras. 4 and 5, OMS 2.34, February, 1982].

10. Like OMS 2.34, OD 4.20 maintained much of the focus on safeguarding the interests and cultures of these populations when faced by outside-induced developments. The OD notes that the terms “indigenous peoples,” “indigenous ethnic minorities,” “tribal groups,” and “scheduled tribes” describe social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process” [para. 3, OD 4.20]. It also states that, “Special action is required when Bank investments affect indigenous peoples, tribes, ethnic minorities, or other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources” [para. 2, OD 4.20].

11. OD 4.20 also states that the “Bank's broad objectives towards indigenous people, as for all people in its member countries, is to ensure that the development process fosters full respect for their dignity, human rights, and cultural uniqueness.” “The objective at the center of this directive,” it goes on to state, “is to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits” [para. 6, OD 4.20].
12. This emphasis upon safeguarding indigenous peoples and their cultures from the potentially adverse effects of development projects is also noted in other parts of the OD, including the statement that the Bank will not appraise projects until the Borrower prepares “suitable plans” for mitigating adverse impacts, especially on “the most isolated groups” [para. 9, OD 4.20]; and, the statement in the section concerning the prerequisites for such plans, which reads: “Studies should make all efforts to anticipate adverse trends [emphasis in original] likely to be induced by the project and develop the means to avoid or mitigate harm” [para. 14 (b), OD 4.20].

13. We recommend that the revised policy maintain the current policy objectives, as stated in paras. 2 and 6 of OD 4.20. However, to safeguard indigenous peoples and their cultures and prevent adverse effects from Bank-financed development interventions, we also recommend a clearer statement in the revised policy of those conditions in which the Bank would not be prepared to finance projects because of their potentially adverse effects on indigenous populations, unless appropriate mitigation measures are taken, as specified below.

**Minimum Safeguard Conditions**

14. To ensure that minimum standards are maintained, we propose that the revised policy contain a general safeguard clause to the effect that the Bank will not appraise any project affecting indigenous peoples unless potential adverse impacts are identified through disclosure of relevant information and meaningful consultation with the affected population and suitable mitigation measures are developed by the Borrower and are acceptable to the Bank [para. 9, OD 4.20].

15. More specifically, the revised policy should also clarify that the Bank would not assist any development interventions that:

- a) knowingly involve encroachment on the traditional lands or territories being used or occupied by indigenous peoples, unless adequate safeguard measures are provided [para. 5, OMS 2.34 and paras. 15 (a) and (c), OD 4.20; and para. 20 below];

- b) remove indigenous peoples from their traditional lands or territories, unless such resettlement is demonstrated to be unavoidable, provides the affected population with culturally-compatible alternative lands and livelihoods, and is carried out in strict compliance with Bank policy [OD 4.30, on Involuntary Resettlement, to be reissued as OP/BP 4.12]; or,
c) support the commercial exploitation of the natural, mineral, hydro-carbon and/or cultural resources contained in the areas traditionally used or occupied by indigenous peoples unless they participate in the benefits of such activities and receive fair compensation for any harm or damage that might result from such activities.

16. As noted, the general safeguard clause and points (a) and (b) above do not go beyond current practice. The inclusion of point (c) results from the growing trend toward the commercial utilization of the natural, mineral, hydro-carbon and/or cultural resources contained on lands occupied or used by indigenous peoples, and the need to clarify the minimum conditions which would need to exist for the Bank Group to support such activities.

D. Measures and Procedures to Facilitate Policy Implementation

Procedures for Addressing Social and Cultural Aspects, Consultation and Participation

17. To safeguard the interests of indigenous peoples, Task teams will need to deal more systematically with social and cultural aspects of project design and ensure that borrowers incorporate informed participation through meaningful consultation with affected indigenous populations into all phases of the project cycle. For this reason, we recommend that the revised policy require that the following social and cultural aspects be addressed in projects affecting indigenous peoples:

a) identification of social groups or populations affected by the project;

b) identification of any potential adverse social and cultural impacts on these groups;

c) provision of meaningful consultation mechanisms and participatory strategies;

d) assessment, with key stakeholders, of the social issues, institutional constraints and areas of potential social risks or conflicts, including those related to land tenure and natural resources;

e) development of measures for avoiding, minimizing or mitigating adverse social impacts; and,
f) design of project interventions that are socially and culturally compatible.

18. With reference to point (c) above, we recommend, following current policy (OD 4.20, para. 8), that strategies for addressing issues pertaining to indigenous peoples under Bank-financed projects be agreed upon with the Borrower and be based upon the informed participation of the affected indigenous population. This would entail the identification of local preferences through direct consultation, incorporation of indigenous knowledge into project approaches, and appropriate early use of experienced specialists as core activities for any project that affects indigenous peoples.

19. We further recommend that, at a minimum, the following two criteria (not specified in current policies) be used to assess whether there has been meaningful consultation with affected indigenous populations in the preparation of Bank-financed operations:

a) consultations have taken place with the affected indigenous populations and/or their representatives during early stages of project preparation and relevant information is provided to them in a culturally and linguistically compatible manner; and,

b) consultations with government agencies, local NGOs, and national and local indigenous organizations that are working for the welfare of indigenous peoples have been conducted prior to appraisal.

Land Tenure and Natural Resources

20. Where Bank-financed projects potentially affect the lands and natural resources of indigenous peoples, measures should be taken to ensure that the land and territorial security of affected indigenous populations and their customary rights of use and access to natural resources are not adversely affected [paras. 15 (a) and (c) above, and paras. 15 (a) and (c) of the OD 4.20]. Specifically, where the project affects the lands and territories of indigenous peoples or entails the commercial exploitation of their natural, mineral, hydro-carbon and/or cultural resources, the following measures should be taken:

a) an analysis of legislative and constitutional frameworks should be conducted early in the project preparation process to assess whether existing legal frameworks, or lack thereof, could adversely affect indigenous peoples;
b) if potentially adverse impacts are identified, the analysis should specify what legal safeguards or measures, including regularization of customary rights and/or compensation arrangements, would be introduced by the Borrower or project sponsor to avoid, minimize or mitigate such impacts; and

c) if there are no existing legal frameworks for converting customary rights into those of legal ownership, it should describe what alternative arrangements would be introduced by the Borrower or project sponsor to grant long-term renewable custodianship and use to the affected populations.

With the exception of compensation arrangements, each of the above are included in the sections dealing with legal framework and land tenure in the current OD.

**Indigenous Peoples Action Plans**

21. Last, where there could be potentially adverse effects on indigenous peoples, the Borrower or project sponsor should prepare Indigenous Peoples Action Plans. This is consistent with current Bank policy. The purposes of such action plans should be to avoid, minimize or mitigate adverse effects [para. 14 above and paras. 9, 13, 14 and 15, OD 4.20]. However, in contrast to current policy, which calls for a single format for such plans, we recommend that the revised policy provide that these action plans can be prepared as stand-alone documents, be folded into broader Community Action Plans, form part of the Social Mitigation Plans that often accompany environmental assessments, or be incorporated as targeting strategies or components in the project design. Such design flexibility is needed to accommodate different project circumstances, including those where there are other populations in the project area, besides indigenous peoples, who might be adversely affected by a Bank-financed project. Where projects do not have adverse impacts but are intended to benefit indigenous peoples, the project design should be socially and culturally compatible with the needs and concerns of the intended beneficiaries and no separate action plan is required [see Section E below].
E. Promoting Indigenous Peoples Development

Strategies for Including Indigenous Peoples in Development

22. In certain country contexts, pro-active approaches may be needed to redress historical patterns of social exclusion of indigenous peoples and to create the conditions for their sustainable development. In this regard, the revised policy should indicate that beyond compliance with safeguard measures, some Country Departments may wish to give priority to more positive development interventions in agreement with concerned governments, which:

a) are based on indigenous peoples needs, preferences, potential and willingness to participate and, therefore, improve their well-being;

b) promote the informed participation of indigenous peoples themselves in the planning, implementation and evaluation of development interventions;

c) build indigenous peoples capacity for self-development, based primarily upon their own social and cultural assets;

d) take into account local patterns of social organization, culture, religious beliefs, production systems and resource use in national and local poverty-reduction strategies;

e) support legal and administrative measures to protect indigenous peoples lands and resources; and,

f) improve the abilities of governmental agencies and non-governmental organizations to address development issues related to indigenous peoples.

Partnerships with the Private Sector

23. Given the increasing role of private sector investments in economic development, the revised policy should also indicate the important role which private companies can play in directly assisting indigenous communities or supporting governments in the provision of such assistance. In many countries, private sector operators are seeking ways to clarify their roles and responsibilities when indigenous communities are affected by their activities.
24. While private sector operators have no mandate to strengthen national policy or legal frameworks relating to indigenous peoples, they look to the Bank Group for guidance on their roles and responsibilities in complying with Bank Group policies. Therefore, the revised policy should state that, depending upon country and project contexts, the Bank Group is willing to facilitate collaborative approaches among private sector operators, government agencies and indigenous communities for purposes of avoiding, mitigating or minimizing the potentially adverse impacts of private sector activities, and/or for promoting indigenous peoples development.
Annex - 3

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## Demographic Information about General and Tribal Population in India (1991 Census)

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<thead>
<tr>
<th>State/UT's</th>
<th>Population ('000)</th>
<th>Tribal Population as % of General Population</th>
<th>Tribal Population as % of Total Population</th>
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