Lessons from Inspection Panel cases
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Indigenous peoples and land: 
three broad issues from Panel cases

• How to properly **identify** customary and/or collective rights to land and natural resources?

• How to **avoid or mitigate** impacts on communities’ customary rights?

• When are affected **communities protected** by the Bank’s policy on Indigenous Peoples?
Customary rights and indigenous people in Bank policies: a two-ways connection

• What to do: Respecting customary rights embedded in several policies, but for IP special safeguards apply
  • “... particular attention to the customary rights of the Indigenous Peoples”
  ➢ Panel cases where prescribed safeguards were not applied or ineffective

• For whom: Customary rights one key criterion (of four) for identifying communities covered by Bank’s IP policy
  • A “distinct, vulnerable, social and cultural group” that has “collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories”. Project-harm link
  ➢ Panel cases where triggering of IP policy overlooked
Important policy provisions for project affecting customary land use

- Policy on **Involuntary Resettlement**
  - Covers legally recognized customary rights and also people who occupy land without legal title
  - Covers involuntary restriction of access to legally designated parks and protected areas
  - Requires participatory resettlement aiming at livelihood restoration

- Policies on **EA, Forests, Natural Habitats**
  - Require identification of land rights
  - Require consultation and taking community views into account

- Policy on **Indigenous Peoples**
  - Requires broad community support
  - Requires mitigation of harm and provision of social and economic benefits
Lessons from Panel cases

- Customary rights a **challenging** issue:
  - Commercial interests – population pressure – politically controversial – weak legal frameworks – powerless marginal groups
- WB involvement **appreciated** – but attention to safeguards is critical to manage risks for vulnerable communities
  - Land administration projects – objective to strengthen tenure security
  - Forest concessions – objective to establish sustainable harvesting of forests
Land administration: Honduras and Panama

- Emphasis is on individual titling - dealing with collective land claims lower priority
- Encroachment by non-indigenous users
- Lessons:
  - Creating a fully participatory process of identifying and demarcating collective land
  - A self-standing IPPF provides better safeguards
  - Ensuring broad representation of communities
  - Proper analysis of existing legal provisions and supervision of implementation
Forest concessions: Cambodia and DRC

- Projects failed to recognize and protect communities’ use of forest resources:
  - Illegal felling of resin trees in Cambodia
  - By Pygmy communities in DRC
- Lack of focus on contribution to poverty alleviation
- Lessons:
  - Proper screening for coverage under the IP policy
  - Preparation of IP plans/framework; legal analysis
  - Assessment and valuation of non-timber resources
  - Not rely on EAs prepared by forest companies
Thank You!

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