

Indigenous Peoples

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Indigenous Peoples

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Executive Summary

This report on Indigenous Peoples (IP) is the second in the series of papers to be published by the World's Bank Inspection Panel drawing on the main emerging lessons from its caseload over 22 years. The Panel hopes the study will prove beneficial by highlighting areas where continued improvements can enhance the Bank's and its member countries' approach to ensuring that Indigenous Peoples fully benefit from Bank projects.

The Inspection Panel was created in 1993 by the World Bank's Board of Executive Directors to receive and investigate complaints submitted by people suffering harm allegedly caused by Bank projects. Since then, the Panel has received 111 requests for inspection. Of those, 85 have been registered and 34 investigated.

Nineteen Panel cases have involved Indigenous Peoples' issues. These 18 investigations and one relevant pilot case covered 15 countries in four regions. Consultations and broad community support, social assessments, and customary rights were the issues most represented in these investigations. While all relevant Panel cases were studied as part of this report, a special emphasis was put on drawing lessons from cases within the past decade.

On August 4, 2016, the Board of Executive Directors approved the 2016 Environmental and Social Framework (ESF), which includes Environmental and Social Standard 7 on "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities." The 2016 ESF not being applicable yet, the Panel's emerging lessons presented in this publication were drawn from projects where the Operational Directive (OD 4.20) and Operational Policy/Bank Procedures on Indigenous Peoples (OP/BP 4.10) were applied.

The report's main conclusions from the cases investigated are as follows:

- The Indigenous Peoples Policy is among the more complex of the Bank's safeguards due to the rigorous criteria, sensitivities attached, and the requisite specialized expertise necessary for its full implementation. The fact that a significant percentage of the world's poor are indigenous points to the necessity of giving this policy the importance and significance it deserves.
- Most of the lessons presented in this report relate to the project preparation stage of the project cycle, clearly pointing to the importance of this stage in projects involving Indigenous Peoples. "Getting it right" from the very start is imperative. Improved screening to capture Indigenous Peoples' presence in the project area and the impacts of the project on their interests is needed from the outset, and should include a thorough understanding of their land- and resource-based cultures and livelihoods.
- Greater expertise needs to be deployed to capture the specificities of Indigenous Peoples, their livelihoods, and cultural attachment to lands

and resources. This points to the need for strengthened technical capacity and continued capacity development for relevant Bank staff.

- The World Bank has responded positively to many of the Panel investigations by adjusting its practices and increasing attention to indigenous issues on the part of borrowers. For example, in the Democratic Republic of Congo (DRC), the Panel case led to the recognition of Pygmies as Indigenous Peoples by both the government of the DRC and the World Bank, resulting in new commitments to mainstreaming Indigenous Peoples as a crosscutting theme across activities in the country, as well as community-managed forest concessions granted to IPs. In the Kenya Natural Resource Management Project (NRMP) and as a result of the Panel's investigation, the Bank hosted a dialogue with the government and affected IPs on customary land and resource rights with the aim of addressing legacy issues related to land rights and ownership.

While Panel cases tend to highlight challenging projects where things went wrong, and therefore are not necessarily reflective of the Bank's entire portfolio, the lessons nonetheless are important. This exercise is intended to help build the institutional knowledge base, enhance accountability, foster better results in project outcomes, and ultimately, contribute to more effective development with shared prosperity for all.

Abbreviations

BP	Bank Procedures
DRC	Democratic Republic of Congo
ESF	Environmental and Social Framework
ESIA	Environmental and Social Impact Assessment
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
ILO	International Labour Organization
IP	Indigenous Peoples
IPDP	Indigenous Peoples Development Plan
IPP	Indigenous Peoples Plan
KEEP	Kenya Electricity Expansion Project
KFS	Kenya Forestry Service
NGO	Non-Governmental Organization
NRMP	Natural Resource Management Project (Kenya)
OD	Operational Directive
OMS	Operational Manual Statement
OP	Operational Policy
PAP	Project-Affected People
PBS	Protection of Basic Services Project (Ethiopia)
PDP	Power Development Project (Nepal)
RAPIC	Resettlement Action Plan Implementation Committee
VCDP	Vulnerable Community Development Plan
VMG	Vulnerable and Marginalized Group

Introduction

The Inspection Panel was created in 1993 by the Board of Executive Directors of the World Bank to receive complaints submitted by people suffering harm allegedly caused by World Bank projects.[1] To date, the Panel has received 111 requests for inspection. Of those, 85 have been registered and 34 investigated.

This experience provides important lessons for both the Bank and for the global development community at large. The Panel therefore launched this series of publications to draw the main emerging lessons from its caseload. While Panel cases tend to highlight challenging projects where things went wrong and are not necessarily reflective of the Bank's entire portfolio, the lessons nonetheless are important. This exercise is intended to help build the institutional knowledge base, enhance accountability, foster better results in project outcomes, and, ultimately, contribute to more effective development with shared prosperity for all.

The series is organized around the most recurrent issues in Panel investigations. The first report, published in April 2016, focused on involuntary resettlement. This report, the second in the series, covers Panel cases that focused on Indigenous Peoples' issues. Subsequent reports will cover environmental and social assessment, and issues related to consultation, participation, and disclosure of information.

Currently, there are approximately 370 million self-identified Indigenous Peoples in some 90 countries worldwide. They are among the world's most vulnerable, marginalized, and disadvantaged groups. Despite accounting for less than five percent of the global population, they constitute around 15 percent of the extreme poor, and a substantial proportion of the world's population with insecure access to food. According to the World Bank, while Indigenous Peoples own, occupy, or use a quarter of the world's surface area, they safeguard 80 percent of its remaining biodiversity, and some of the most biologically important lands and waters are intact as a result of Indigenous Peoples' stewardship. Their knowledge and expertise on how to adapt, mitigate, and reduce risks from climate change and natural disasters are considered vital.

Adequately responding to these challenges requires considering Indigenous Peoples as fundamental stakeholders and important partners in the development process. In 1982, the World Bank was the first multilateral financial institution to introduce safeguards benefiting Indigenous Peoples. (See Appendix A for more detail on the Bank's policy evolution.)

Since then, the Bank has undertaken several reviews and evaluations of its Indigenous Peoples Policy, including "Implementation of Operational Directive 4.20 on Indigenous Peoples: An Evaluation of Results" in 2003, and in 2011 "Implementation of World Bank's Indigenous Peoples Policy: A Learning Review." More general reviews have also examined the policy, including a 2010 report by Independent Evaluation Group "Safeguards and

Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience" and the 2014 Internal Audit Department's "Advisory Review of the Bank's Safeguard Management." All these reviews have contributed important information and insights regarding the Bank's implementation of its Indigenous Peoples Policy.

Methods

Emerging lessons were drawn by analyzing the Panel's body of work involving Indigenous Peoples.

1. A complete review of the Panel's database led to the initial identification of the main issues arising in projects involving Indigenous Peoples. Of the Panel's 34 investigated cases, 18 have involved Indigenous Peoples (see Appendix B). While all of these cases were studied for the purposes of this report, emphasis was placed on the lessons from cases within the past 10 years.
2. A systematic identification and classification of issues was undertaken, based on common themes and similarities among the cases. (The main cases studied are summarized in Appendix C.) Although each case is unique, an attempt was made to group findings into general clusters following the principal features of the Indigenous Peoples Policy.
3. Literature review was conducted and discussions were held with internal and external stakeholders and experts. A presentation based on an early version of this paper was shared at the 15th Session of the Permanent Forum on Indigenous Issues in May 2016.

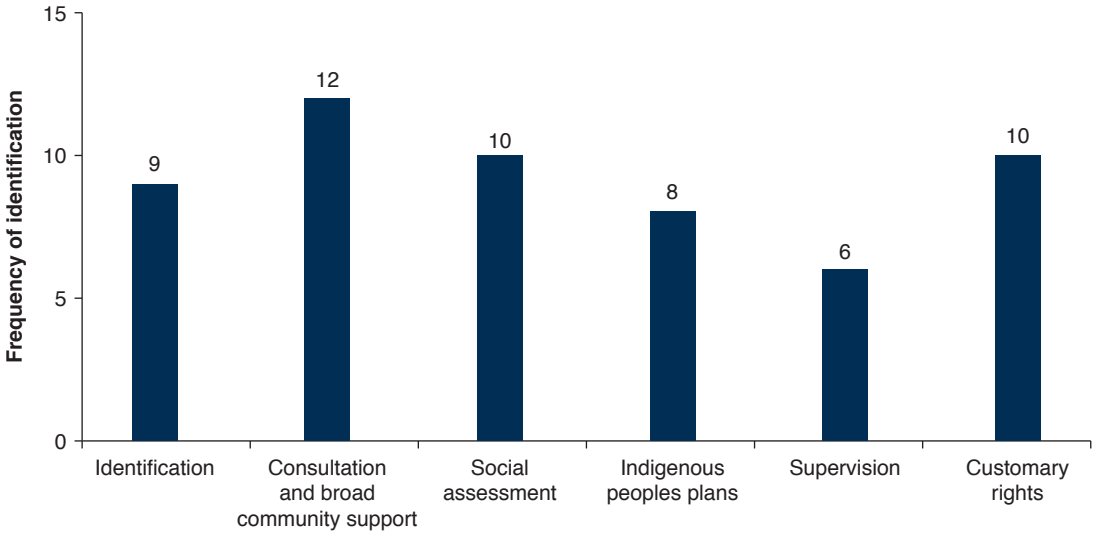
Results

The subset of 19 cases relevant to Indigenous Peoples provides a wide sample. It spans more than 22 years and covers 15 countries in four regions. The most represented issue is consultation/broad community support (12 cases), followed by social assessment (10 cases) and customary rights (10 cases).

Figure 1 shows the frequency of the main issues found in Panel investigations of cases involving Indigenous Peoples and forms the basis for the emerging lessons presented in this report.

The results of the analysis are presented in the following sections, which include examples from Panel cases. These results are presented in sequence based on the project cycle and following the main steps required to plan and implement projects involving Indigenous Peoples.

FIGURE 1 Frequency of Issues Identified in Indigenous Peoples' Cases



Note: 18 investigations and 1 pilot.



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Project Preparation

Lesson 1: A Proper Process of Identification and the Use of Appropriate Terminology Helps Protect IP Rights and Ensure that IPs Benefit from Project Outcomes

Early identification of the presence of Indigenous Peoples is indispensable to ensure that development projects fully respect Indigenous Peoples' rights. Panel investigations found instances of failure to properly identify the presence of Indigenous Peoples, which therefore resulted in non-triggering of the policy. It should be noted that borrower governments frequently show reluctance to recognize project-affected people (PAPs) as Indigenous Peoples.

Proper Assessment when Project-Affected People Qualify as Indigenous Peoples in Accordance with the Policy

Panel cases have shown that the classification of groups as Indigenous Peoples is a complex process; the failure to identify IPs when present often stems from inadequate screening exercises, domestic resistance to the concept of IPs, and the lack of specialized expertise. It is often difficult to ascertain whether a certain group possesses the distinguishing characteristics under

the policy. Qualified social scientists with expertise in social and cultural groups and Indigenous Peoples' rights should be consulted alongside the PAPs to make the technical judgment of whether they are IPs under Bank policy. Anthropologists with knowledge of the specific histories, cultures and politics of indigenous groups can supplement the Bank's work and assist in determining whether IPs are present in the project area. In addition, the Panel noted that when the Bank applied a "functional equivalent" methodology the approach mostly failed to provide the protections afforded by applying the policy.

Examples. The Kenya Electricity Expansion Project (KEEP) financed the construction of a geothermal plant that required the relocation of four Maasai villages. The Panel learned that at the time of project preparation it was not Bank practice to consider pastoralists such as the Massai under the Indigenous Peoples Policy, even though they met the policy criteria.[2] The community was unable to engage in fully informed consultations, as interviews and project materials were not made available in the indigenous Maa language. The resettlement plan did not take into account the Maasai peoples' attachment to their indigenous land, ancestral territory, and its resources. The Panel concluded that if the Maasai had been properly identified as Indigenous Peoples and offered the protections afforded under the policy, some of the harm caused by the project may have been avoided or mitigated.

In the case of the Ethiopia Protection of Basic Services Project III (PBS III), the Requesters claimed that the Bank project contributed directly to the government's villagization program, causing harm to Anuak Indigenous Peoples' lands, livelihood, and well-being. Bank Management indicated that the Indigenous Peoples Policy was not applied to Bank operations in Ethiopia before 2013 because of the country's concern that the policy was not compatible with its Constitution. Management also noted that it followed a "functional equivalent" approach so that the project included the main features of OP 4.10 even if the policy was not triggered. The Panel acknowledged the difficult context in which PBS III was prepared and the concerns expressed by the government regarding the definition of Indigenous Peoples but found no evidence that the functional equivalence approach was effectively applied. As a result, livelihoods, well-being and access to basic services, which are closely tied to the Anuak's access to land and natural resources, were not taken into account in the preparation of the project.

In its investigation of the two operations in DRC related to forestry, the Panel found that the appropriate screening had not been carried out in the early stages to determine the potential presence of Indigenous Peoples and thus failed to identify the existence of Pygmy[3] communities in areas affected by the activities financed under the operations. This failure was detrimental to Pygmy communities' interests, and to ensuring that the IPs would not be harmed but would benefit from actions affecting the forests and forest concessions. The Panel observed that most of the Pygmy people satisfy the policy criteria, with the possible exception of the language criterion, and concluded

that Pygmies in DRC should be considered as Indigenous Peoples under Bank policy.

Applying Alternative Terminologies for IPs without Diluting the Standard of Protection Afforded by the Policy

Bank policy recognizes there is no single definition that encompasses all Indigenous Peoples and their diversity, and it notes that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. The Panel has noted that while the policy adopts a pragmatic approach to the term Indigenous Peoples, consideration needs to be given to the terms preferred by project-affected IPs through effective consultation with them. Regardless of the term used in a specific national context, the concerned community must enjoy the same level of protection provided by the policy. Meaningful compliance with the policy calls for more consideration to be given to a community's attachment to a particular designation through greater consultation and ensuring that the use of any other designation does not dilute the full customary rights of Indigenous Peoples as enshrined in the Bank's policy.

Examples. Following the restructuring of the Natural Resource Management Project in Kenya there was a shift from using the term Indigenous Peoples to "vulnerable and marginalized groups" (VMGs). The Panel found that the use of the term VMGs instead of Indigenous Peoples does not in itself amount to non-compliance with OP/BP 4.10 because the policy does not require use of the term Indigenous Peoples to ensure protection of the rights included therein. At the same time, the Panel noted that for the Cherangany-Sengwer the term Indigenous Peoples is central to their self-identity and therefore crucial for the protection of their customary rights.

The Nepal Power Development Project, on the other hand, illustrates the proper interpretation of the policy in this context. The project correctly opted for a "mixed communities" approach given the prevalence of indigenous, Dalit and other vulnerable communities in the project area. The Panel recognized that where communities are mixed or different social and ethnic groups live in close proximity to each other, it would not be desirable from a development perspective to give benefits only to IPs and thereby create inequities for other poor and marginal social groups. The Panel therefore found this to be in compliance with the policy.

Lesson 2: Free, Prior, and Informed Consultations Leading to Broad Community Support are Central to Protecting Indigenous Peoples and Their Rights

An effective and extended consultation process provides Indigenous Peoples with opportunities to actively participate in decision making for projects that may impact them negatively or positively, and to have their views reflected in

project design and implementation arrangements. Panel investigations have found particular instances of non-compliance with the policy with respect to: (i) consulting with individuals or segments of the community who are not the legitimate representatives chosen by the indigenous community; (ii) not providing information to Indigenous Peoples in a culturally appropriate manner, form, and language, thereby reducing their opportunities to influence project design and implementation; and (iii) assuming that an agreement to discuss the project and an early interest in it constitutes broad community support. These weaknesses emerge from the challenges that projects encounter because of the complexities of social organizations in indigenous societies, and the common existence of conflicts for leadership within these communities, making it difficult to properly identify legitimate representation.

Indigenous Peoples' Consultation and Participation Should be Inclusive and Involve Representative Institutions and Decision-Making Processes

It is necessary to establish a consultation and participation process that includes Indigenous Peoples' traditional decision-making institutions or processes and adequately reflects the ways IPs have chosen to represent themselves or express their views. In some situations, Indigenous Peoples' representation may be contested; competing institutions with diverging views may be making claims for representation or might not have decision-making powers over certain issues. In these situations, Panel experience illustrates the need for an inclusive process where institutions with legitimate claims to representation are identified and consulted. Efforts should also be made to map Indigenous Peoples' decision-making processes and not focus only on representative institutions that may not have the power to make decision on certain issues. If IPs are not adequately included in the design and implementation of the consultation procedures, the process is not likely to enjoy the support of the IPs and may therefore suffer from limited effectiveness.

Examples. In the Kenya Electricity Expansion Project, the Panel considered the Resettlement Action Plan Implementation Committee (RAPIC) to be a well-intentioned effort, consistent with Bank policy, to achieve broad representation of the project-affected communities including women, youth, the elderly, and people with disabilities. The Panel noted, however, that the RAPIC did not sufficiently accommodate the traditional authority structure of the Maasai. Whereas decision making and conflict resolution within their society is usually derived from the power of the Elders, their traditional authority structure was sidelined from RAPIC membership, with the unintended consequence of marginalizing them and thus contributing to both inter- and intra-community tensions.

In the Honduras Land Administration case, the Panel considered the creation of the Mesa Regional to unite leaders and representatives of each Garífuna community to establish consultations with and engage the participation of affected people to be consistent with Bank policy. However, the

Panel found that a consultation framework in which the leading representative bodies of the Garífuna people are not included and do not give support and guidance cannot ensure genuine representation as required by the policy. The Panel expressed its concern that the Mesa Regional had put in place a parallel system at odds with the way the Garífuna people have represented themselves over the years to secure their rights over land.

Full Disclosure of Project Information in Culturally Appropriate Form, Manner, and Language

A necessary feature of effective consultation is the full disclosure of information about the project, including potential negative impacts in a culturally appropriate form, manner, and language. In the absence of such comprehensive disclosure about all aspects of the project, it is difficult to ascertain if broad community support has been achieved.

Examples. In the Nepal Power Development Project, project-affected people generally, but IPs in particular, had minimal knowledge of the transmission line's impact because project-related documents were not disclosed in a form and manner accessible to them. English language implementation documents were originally disclosed in hard copy at the local project office, and on the implementing agency's website seven years after project approval. The Panel also found that while Indigenous Peoples in the project area could understand the Nepali language, they were unable to communicate adequately in Nepali and needed to use their indigenous language/s for clarity. This distinction was not acknowledged in project documents and Management failed to make modifications in project implementation, particularly with regards to disclosure, consultation, and participation. A Nepali translation of the Vulnerable Community Development Plan (VCDP) was made available eight years after the original English documents were developed, but translations into indigenous languages were still not available. This lack of sustained communication and consultation during project preparation and implementation contributed to the spread of misinformation about the transmission line and played an important role in creating opposition to the project.

Along with ensuring appropriate access to information, the Panel also notes the importance of facilitating the participation of IPs through different means. In a recent Pilot case in Paraguay, the Requesters claimed that their rights of consultation and participation in the project were severely undermined because the contract for a non-governmental organization (NGO) hired as a service provider to ensure adequate means to carry out consultations and other activities was discontinued due to legal issues regarding transfer of funds. Thus, the Requesters could not meet, attend training, participate in the project, or monitor it. After close consultations with the Panel, the Requesters and Management agreed to process this case under the Panel's Pilot approach to allow the implementation of an Action Plan by Management. The Action Plan to, among other things, hire an NGO as a long-term service provider was successfully implemented and the Requesters' concerns were resolved.

Ensuring Broad Community Support for the Project and its Objectives

While Bank policy requires Indigenous Peoples' broad community support for the project objectives and for proposed project activities, Panel cases have confirmed that broad community support can only be established based on the process of free, prior, and informed consultation as the policy requires. Panel cases have shown that equating agreement to discuss the project and an early interest in it as synonymous with broad community support can be an erroneous assumption.

Example. In the Papua New Guinea Smallholder Agriculture Development Project, the majority of smallholders in the project area expressed interest in oil palm production as a means to obtain extra income. However, they also complained about a variety of complications relating to oil palm production, ranging from unfair imposition of levies, abysmal road conditions hampering transportation of produce, lack of opportunities for income diversification, and a failure to receive what they considered to be a fair share of profits. The Panel found no evidence of how broad community support had been achieved. The widespread interest among smallholders in growing more oil palm depended on certain conditions, and this case illustrated that community interest in growing oil palm was not equal to broad community support for the project. In fact, the very issues aired during local consultations became the subject of the complaint to the Panel.

Lesson 3: Comprehensive Assessments are Necessary to Understand Potential Impacts on Indigenous Peoples

The Bank's Indigenous Peoples Policy requires a social assessment to understand both the potential positive and negative impacts of a project on Indigenous Peoples. Key elements of a social assessment include information on the social, cultural, and political characteristics of the affected IPs, and a review of the legal, policy, and institutional framework applicable to them.

Comprehensive Social Assessments are Essential for Analyzing Both Benefits and Harm

Where social assessments are absent or inadequate, adverse impacts are often not well understood and therefore difficult to avoid or mitigate. These assessments need to be comprehensive, including robust baseline information. Without such, a conclusion may be reached that affected Indigenous Peoples are homogenous, even when this is not the case. Social assessment should particularly focus on documenting customary rights held by the concerned communities over land and resources. Finally, without a comprehensive assessment, the resulting consultation framework may not be culturally appropriate, leading to a weak identification of potential project impacts, both positive and negative.

Examples. The absence of a social assessment for the Cambodia Forest Concession Management and Control Pilot Project (and subsequent lack of early consultation with project-affected communities) greatly reduced the project's ability to identify critical concerns of Indigenous Peoples. These concerns were central to their livelihoods and included access to resin tapping, local community ownership of trees, and community forestry initiatives.

In the Papua New Guinea Smallholder Agriculture Development Project, the Panel found that the social assessment did not contain sufficient information on IPs' customary leadership, decision-making structures, and conflict-resolution processes. For example, the Beneficiaries Assessment of the project noted that in both provinces affected by the project, the indigenous ethnic/language groups are relatively homogenous in terms of culture, social organization, and land tenure systems, but there was no evidence in support of this conclusion. The Panel found that stating that the ethnic groups were relatively homogeneous ignored the differences arising from patrilineal and matrilineal lineage systems, which may have had consequences in terms of ownership and management of land and customary decision-making processes. Consequently, this reduced Indigenous Peoples' opportunities to influence the proposed project design, mitigation measures, and resulting benefits.

Assessing Legal and Policy Frameworks and Implementation Capacity

Panel cases have shown weaknesses in the implementation of the policy arising from insufficient understanding of legal, policy, and institutional frameworks of borrower countries. The proper assessment of legal and policy frameworks enables the project to identify gaps in these frameworks early on, devise appropriate mitigation measures, and avoid unnecessary complications during implementation. Panel cases have also revealed the need for enhanced understanding of Indigenous Peoples' issues by borrower countries. The policy has been instrumental in drawing the attention of many government officials to Indigenous Peoples' issues for the first time.

Examples. The Honduras Land Administration Project financed systematic land regularization, titling, and registration of lands, including ethnic lands where the Garífuna Indigenous Peoples lived. The Requesters claimed that the land titling and procedures under the project would result in the loss of their ethnic lands and would favor individual property rights over traditional collective property rights. They also referenced International Labour Organization (ILO) Convention 169, which recognizes the rights of the peoples with respect to the ownership and tenure of the lands they traditionally occupy, as well as the special protection of the natural resources of these lands. The Panel found weaknesses in the legal analysis of the project and found that measures to protect Indigenous Peoples' land rights were insufficient. The Panel also found that changes in the legal framework after the project was approved that were potentially relevant to the collective land rights of the IPs were not adequately analyzed during project implementation.

The Kenya Natural Resource Management Project sought to operationalize a newly enacted Forest Resources Act, which transformed the Forest Department into the Kenya Forest Service (KFS). The Panel found that given the historical mission of the KFS and its predecessor, which had primarily used an enforcement approach, the risks associated with the lack of experience in implementing the project through a community-based approach were insufficiently understood. An in-depth institutional analysis of KFS could have led to a much more robust capacity-building component for supporting KFS, enabling it to make the transition into an organization better prepared to involve Indigenous Peoples in forest management.

Lesson 4: Provisions in Indigenous Peoples Plans (IPPs) are Key to Mitigating Impacts and Generating Long-Term Benefits for Indigenous Peoples

The preparation of an Indigenous Peoples Plan is a key step in project design. An IPP should adequately reflect local realities and outline actions to be taken during project implementation, including strategies for Indigenous Peoples' participation, mitigation measures for adverse impacts, and arrangements for benefit sharing. An IPP also serves as an important trigger for Indigenous Peoples' empowerment to assert their rights and lays a solid foundation for addressing issues even after project closure.

Panel investigations have emphasized the need to develop IPPs when required. Conversely, when the development of an IPP is not required because the main project beneficiaries are Indigenous Peoples, it is still important to integrate elements of an IPP in the project design.

Failure to Develop an IPP when Required

When Indigenous Peoples are present in a project-affected area, an IPP is often required to ensure that the IP community is both appropriately protected from any potential project harm and actively participates in the development and implementation of the project.

Example. In the Panama Land Administration Project, no stand-alone Indigenous Peoples Development Plan (IPDP)[4] was prepared for either the Naso or the Ngäbe peoples on the grounds that the subcomponent of the project dealing with indigenous territories would serve as the IPDP. The Panel investigation found that the lack of a stand-alone IPDP prepared through a participatory process led to adverse consequences, especially for the Ngäbe people. The Panel held that an IPDP based on adequate consultations and studies could have identified and analyzed the conflicts and other risks, including hydroelectric and tourist developments, to the land rights of the Ngäbe and other indigenous groups. The lack of a participatory development principle, normally part of a stand-alone IPDP, prevented the project from

undertaking analytical work of the quality and scope required under Bank policy. Having this could have enabled the Bank to support the IPs in dealing with land-rights-related challenges that subsequently unfolded. The Panel noted that another important consequence of not preparing an IPDP was the lack of distribution of key project information.

Ensuring the Inclusion of IPP Principles and Components in the Project Design even when a Stand-Alone IPP is not Required

When Indigenous Peoples are the primary or sole beneficiaries of a project, the Policy does not require the preparation of an IPP. Even when an IPP is not mandatory, the Policy requires that the substantive elements and provisions of an IPP be taken into account throughout the process of project design and implementation, in particular to ensure that culturally appropriate benefits are afforded to Indigenous Peoples.

Example. In the Papua New Guinea Smallholder Agriculture Development Project, no IPP was prepared since the project in its entirety was designed to benefit Indigenous Peoples. The Panel noted that while the policy does allow for not preparing an IPP under such circumstances, it also requires that the elements of an IPP should be included in the overall project design and, in such cases, the Project Appraisal Document should include a brief summary of how the project complies with the policy. Despite significant economic, financial, and institutional differences between the project areas and the various Indigenous Peoples, the project made no provisions to respond to these differences and to ensure appropriate economic, social, and cultural benefits to the indigenous smallholders. The Panel noted that while the policy provides clear guidance for preparing an IPP, it is less explicit on what would be required in its absence. This shortcoming may lead to a reduced focus on the implementation of policy purpose and objectives when the entire project or project component is intended to benefit Indigenous Peoples.



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Project Implementation

Lesson 5: Active Supervision Enables Proper Responses to Changing Circumstances

Although it can be argued that supervising a project involving Indigenous Peoples is no different from other projects, Panel cases have shown that there is a greater probability that Indigenous Peoples' projects could be more complex and, therefore, the supervision effort must be commensurate with this complexity. The Panel's experience with cases relating to Indigenous Peoples suggests that while progress has been made in ensuring the proper application of the policy, some challenges remain as a result of insufficient attention to supervision. Proper implementation of the policy hinges not only on clear and strong foundations during project design but also on the appropriate allocation of resources for project supervision. In particular, Panel cases have shown the need for staff to be provided with specialized training on Indigenous Peoples' issues and participatory development.

Fully Involving Indigenous Peoples in Project Implementation, especially when Project Circumstances Change

While PAPs may have originally agreed to a project on the basis of a particular set of circumstances, it is crucial to maintain continued consultation with the IP community throughout implementation as circumstances on the ground can often change.

Example. In the Kenya NRMP, the early project documents were developed with the involvement of the indigenous communities and sought to support key issues in line with Indigenous Peoples' needs, including their long-standing historical land claims. The project was later restructured to shift the focus from land rights to livelihood measures, but the restructuring was developed without sufficient consultation of the affected communities. By the time the concerned Cherangany-Sengwer community members were informed of the restructuring, decisions had already been made. This lack of consultation resulted in the loss of support for the project, and subsequent conflicts with the project's implementing agency.

Deploying Specialized Social Specialists throughout Project Implementation

In many circumstances it is advisable to consult with expert anthropologists and social scientists with good understanding of the Indigenous Peoples living in a project area, not only during project design but also throughout implementation. This continued consultation ensures that projects may be regularly updated to reflect the current and changing social circumstances within a given community.

Example. During the implementation of the Panama Land Administration Project, a number of events took place that posed significant risks for the achievement of project objectives relating to IPs, therefore requiring close supervision by the Bank. Such events included an internal dispute of the Naso leadership that undermined the achievement of the Naso *comarca*, the bill for which failed to pass in Parliament twice, the development of non-Bank financed hydroelectric projects in indigenous lands, and the long delays in carrying out land demarcation of both Ngäbe and Naso lands. These critical events and risk factors exacerbated conflicts related to land use, land tenure, and decision-making processes, and also were not identified or promptly acted upon during project supervision. The Panel noted that despite the sensitive nature of indigenous land issues, risks highlighted in the social assessment, and the explicit provisions in the policy, supervision missions did not include a social specialist until project implementation was well underway. Social expertise could have identified the risks of the evolving situation and recommended appropriate actions.



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Long-Term Benefits

Lesson 6: Respecting Customary Rights and Securing Culturally Compatible Benefits Ensures the Long-Term Well-Being of Indigenous Peoples

According to Bank Policy, "customary rights" to lands and resources refers to patterns of long-standing community land and resource usage, occupation, and ownership in accordance with Indigenous Peoples' customary laws, values, customs, and traditions, including seasonal or cyclical use. These Indigenous Peoples' rights are different in nature and scope than those rights afforded as formal legal title to land and resources issued by the state. Customary rights of Indigenous Peoples are important for preserving their livelihoods and their social and cultural identities as distinct peoples, and are crucial to mitigating potential harm.

Projects Must Respect Customary Rights to Land and Natural Resources

Customary or collective attachment to land and natural resources is a key criterion for identifying indigenous communities covered by the policy. In addition to their identification, it is equally important for Bank projects to respect the customary rights of IPs. Understanding the customary rights and

their boundaries is a challenging process. There is increasing pressure and encroachment on indigenous lands primarily from commercial interests in exploiting natural resources on which IPs depend, pressure by non-indigenous users, and political controversies. These issues, together with weak legal frameworks, leave IPs—who are often the most vulnerable and marginalized communities—powerless and unable to defend their rights.

As noted previously in this report, comprehensive and meaningful consultation with affected groups, adequate assessments, and strengthened supervision and monitoring are essential to properly identify customary rights and understand the complexities of ongoing conflicts relating to claims to land and resources. Such steps allow for adequate design and implementation of projects, including projects involving involuntary resettlement of IPs, that ensure that IPs' customary ownership, occupation, and usage rights are protected and respected. The Panel cases show that particular attention is necessary when customary rights can be impacted by projects involving land administration and titling, forests, energy and extractive industries, given that these often overlap with lands occupied by Indigenous Peoples.

Example. In the DRC forest-related operations, the Panel noted that active logging operations imposed adverse impacts and would be incompatible with the customary use of the forest by local and Indigenous Peoples. The Panel observed that the policy should have been applied to the Pygmies and consequently an IPDP should have been developed to assess the legal framework and potential vulnerabilities and issues of importance to the Pygmy people. It could also have determined the need for strengthening local legislation and assistance to the borrower in establishing legal recognition of Pygmy customary or traditional land tenure systems.

Providing Culturally Appropriate Benefits

Example. In the Cambodia Forest Concession Management and Control Pilot Project, the Panel investigation concluded that the project gave primary emphasis to the technical and financial aspects of the forest concession reform, and did not give adequate attention to the vital interests of local communities and IPs in forest resources. The Panel found that the lack of a social assessment specific for the project led to a failure to identify the affected population, adequately consult them, and develop an IPDP. It also meant that the project's social impacts were understated and social safeguards were not applied to the project-affected IPs. In addition, the project failed to identify and investigate the issue of illegal logging of resin trees, upon which IPs depended for livelihood and culture. The Panel noted that the exclusive focus on reforming concessionaires led to the neglect of other approaches to reform the forestry sector, such as community forestry.



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Conclusions

The Inspection Panel's 22 years of experience with indigenous issues provides a rich body of knowledge, with important emerging lessons that can be useful to the World Bank and the development community more broadly. Given the Panel's mandate to respond to complaints from adversely affected communities, the sample of challenging projects discussed in this report may not necessarily represent the Bank's overall experience with the implementation of the Indigenous Peoples Policy.

At the same time, it is worth noting that similar issues have been identified by Bank management and have resulted in significant adjustments to Bank's policy in the new ESF approved by the Board in 2016. Some of the salient features include usage of the term "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities" to encompass the variety of terms that exists in the national context. The framework also specifies circumstances requiring free, prior, and informed consent, in addition to establishing a grievance mechanism for projects involving Indigenous Peoples. (For additional details see Environmental and Social Framework, August 2016.)

The Panel's emerging lessons from Indigenous Peoples' cases are summarized in Table 1.

These emerging lessons provide the foundation for this report's main conclusions.

TABLE 1 Summary of Emerging Lessons from Indigenous Peoples' Cases

Stage in the Project Cycle	Emerging Lessons	Specific Issues
Project preparation	Lesson 1: A proper process of identification and the use of appropriate terminology helps protect IP rights and ensure that IPs benefit from project outcomes	Proper assessment when project-affected peoples qualify as Indigenous Peoples in accordance with the policy
		Applying alternative terminologies for IPs without diluting the standard of protection afforded by the policy
	Lesson 2: Free, prior and informed consultations leading to broad community support are central to protecting Indigenous Peoples and their rights	Indigenous Peoples' consultation and participation should be inclusive and involve representative institutions and decision-making processes
		Full disclosure of project information in culturally appropriate form, manner, and language
		Ensuring broad community support for the project and its objectives
	Lesson 3: Comprehensive assessments are necessary to understand potential impacts on Indigenous Peoples	Comprehensive social assessments are essential for analyzing both benefits and harm
		Assessing legal and policy frameworks and implementation capacity
	Lesson 4: Provisions in Indigenous Peoples Plans are key to mitigating impacts and generating long-term benefits to Indigenous Peoples	Failure to develop an IPP when required
		Ensuring the inclusion of IPP principles and components in the project design even when a stand-alone IPP is not required
Project implementation	Lesson 5: Active supervision enables proper responses to changing circumstances	Fully involving Indigenous Peoples in project implementation, especially when project circumstances change
		Deploying specialized social specialists throughout project implementation
Long-term benefits	Lesson 6: Respecting customary rights and securing culturally compatible benefits ensures the long-term well-being of Indigenous Peoples	Projects must respect customary land and resource rights
		Providing culturally appropriate benefits

First, the Indigenous Peoples Policy is among the more complex of the Bank's safeguards due to the rigorous requirements of OP 4.10, the sensitivities attached, and the requisite specialized expertise necessary for its full implementation. The fact that a significant percentage of the world's poor are indigenous points to the necessity of giving this policy the importance and significance it deserves.

Second, most of the lessons presented in this report relate to the project preparation stage of the project cycle, clearly pointing to the importance of this stage in projects involving Indigenous Peoples. "Getting it right" from the very start is imperative. Improved screening to capture Indigenous Peoples' presence in the project area and the impacts on their interests is needed, and should include a thorough understanding of Indigenous Peoples' land and resource-based cultures and livelihoods.

Third, greater expertise needs to be deployed to capture the specificities of Indigenous Peoples, their livelihoods and attachment to lands and resources.

This points to the need for strengthened technical capacity and continued capacity development for relevant Bank staff.

Fourth, the World Bank has responded positively to many of the Panel investigations, adjusting its practices and increasing attention to indigenous issues on the part of borrowers, often creating legal precedents for the recognition of Indigenous Peoples and their rights to ancestral land, territories, and resources. For example, in the DRC, the Panel case led to the recognition of Pygmies as Indigenous Peoples by both the government of the DRC and the World Bank, with new commitments to mainstreaming Indigenous Peoples as a crosscutting theme across activities in the country, and with community-managed forest concessions granted to IPs. In the Kenya NRMP and as a result of the Panel's investigation, the Bank hosted a dialogue with the government and affected IPs on customary land and resource rights with the aim of addressing legacy issues related to land rights and ownership.

In closing, this study has helped identify the main instances in which challenges arise with indigenous issues, and the Panel hopes that the lessons presented here can help point to areas in which continued improvements can enhance the Bank's development approach to projects involving Indigenous Peoples.

Appendix A

Summary of the World Bank Policies on Indigenous Peoples

The World Bank was the first multilateral financial institution to introduce a standard on Indigenous Peoples. The Bank's first policy on Indigenous Peoples was adopted in 1982 as Operational Manual Statement 2.34 on Tribal People in Bank-Financed Projects (OMS 2.34). This statement focused on tribal people who were considered relatively isolated and required that the design of projects include special measures or components necessary to safeguard their interests and prevent harm. OMS 2.34 introduced the principle of protecting customarily used or occupied land. It stated that the Bank "will not assist development projects that knowingly involve encroachment on traditional territories being used or occupied by tribal people unless adequate safeguards are provided… . 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" (emphasis as per document).

In 1991, the World Bank approved a new Indigenous Peoples Policy: Operational Directive 4.20. This directive was developed in close collaboration with specialists from the ILO and used ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries as a framework. OD 4.20 introduced a requirement to involve project-affected Indigenous Peoples in the decision making for Bank-financed projects and required the preparation of special Indigenous Peoples Development Plans to ensure that Indigenous Peoples participate in and benefit from such projects. OD 4.20 also recognized Indigenous Peoples' close attachment to their lands.

The directive introduced new key concepts and provisions including the full respect of Indigenous Peoples' "dignity, human rights, and cultural uniqueness." It required their "informed participation" in the development process and that they receive "culturally compatible social and economic benefits" from Bank-supported projects. Most importantly to Indigenous Peoples, OD 4.20 contained a provision aimed at advising and assisting borrowers "in establishing legal recognition of the customary or traditional land tenure systems of Indigenous Peoples" or, where traditional lands have already been brought into state domain, arrangements "to grant long-term, renewable rights of custodianship and use to Indigenous Peoples" over such lands.

The Operational Policy/Bank Procedures on Indigenous Peoples, OP/BP 4.10, replaced OD 4.20 in 2005. OP/BP 4.10 retained the requirements to avoid adverse impacts and ensure culturally appropriate benefits and strengthened them in a number of areas, including giving Indigenous Peoples a

stronger voice and participation. Indeed, OP/BP 4.10 requires free, prior and informed consultation and broad community support of the affected Indigenous Peoples for the proposed project.

Similar to the Bank's earlier Indigenous Peoples policies, OP/BP 4.10 recognizes that Indigenous Peoples, by virtue of their dependence on their customary land and resources, are vulnerable to different types of risks and levels of impacts from development projects, including loss of identity, culture, and customary livelihoods.

The policy seeks to address systemic problems that Indigenous Peoples face in the enjoyment of their human rights in ways that are consistent with their specific cultural characteristics and their own expressed wishes, and states as its main objective to ensure a development process that fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples. The policy also establishes two other objectives: (i) to avoid potentially adverse effects on Indigenous Peoples; and (ii) when avoidance of adverse impacts is not possible, to minimize, mitigate, or compensate for such effects. Importantly, Bank-financed projects should also be designed to ensure that Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive.

The policy introduced a screening requirement to determine whether "Indigenous Peoples are present in, or have collective attachment to, the project area." There is no universally accepted definition of Indigenous Peoples, and OP/BP 4.10 does not provide one. As part of the screening process, the policy uses the term Indigenous Peoples generically—referring to distinct, vulnerable, social and cultural groups that in varying degrees, self-identify as indigenous and are recognized as such, have a collective attachment to land and natural resources, have customary institutions that are separate and distinct, and possess an indigenous language. Such screening criteria are applicable regardless of whether the borrower's legal framework recognizes such people as indigenous.

As part of project design and implementation, the policy requires the documentation and assertion of "free, prior and informed consultation" resulting "in broad community support to the project by the affected Indigenous Peoples." The consultation process needs to be culturally appropriate, meaningful and in good faith, resulting in a collective decision-making process regarding the different stages of the project. The consultation process includes making use of indigenous languages, allowing time for consensus building, and selecting appropriate venues to facilitate the articulation by Indigenous Peoples of their views and preferences. Broad community support is neither defined nor quantified. The Bank, however, needs to review the process and the outcome to pass a value judgment on whether it is satisfied that the affected Indigenous Peoples' communities did provide broad support to the project. The Bank does not proceed further with project processing if it is unable to ascertain that such support exists.

OP/BP 4.10 also introduced requirements to establish procedures for the protection of Indigenous Peoples' rights to lands and resources under

customary use or occupation. This is in cases where a project either involves (i) establishing the legal recognition of rights to lands by Indigenous Peoples, or (ii) the acquisition of lands they traditionally own or customarily use or occupy. Such procedures for the legal recognition of such ownership, occupation, or usage need to be set forth as part of an action plan included in an IPP.

Finally, OP/BP 4.10 introduced the concept of benefits sharing from the commercial development of natural resources (such as minerals, hydrocarbon resources, forests, water, or hunting/fishing grounds) present on lands or territories Indigenous Peoples traditionally owned, or customarily used or occupied. Borrowers are required to include in the IPP arrangements enabling the Indigenous Peoples to receive, in a culturally appropriate manner, benefits, compensation and rights to due process at least equivalent to which any landowner with full legal title to the land would be entitled in the case of commercial development on their land.

The recently approved ESF[5] includes a standard applicable to Indigenous Peoples in which it recognizes the rights of Indigenous Peoples to free, prior and informed consent. This is the case when development projects will "(i) have adverse impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (ii) cause relocation [of Indigenous Peoples] from land and natural resources subject to traditional ownership or under customary use or occupation; or (iii) have significant impacts on [their] cultural heritage that is material to [their] identity and/or cultural, ceremonial, or spiritual aspects."

The 2016 ESF is not yet in force. Hence, the Panel's lessons are drawn solely based on projects where OD 4.20 and OP/BP 4.10 were applied.

Appendix B

List of Panel Cases Analyzed

Case Number	Year of Receipt	Project Title
1	1994	Nepal: Arun III Hydroelectric Project
10	1997	India: NTPC I Power Generation Project
16	1999	China: Western Poverty Reduction Project
23	2001	India: Coal Sector Mitigation Project and Coal Sector Rehabilitation Project
24	2001	Uganda: Third Power Project, Fourth Power Project, and Proposed Bujagali Hydropower Project
27	2002	Cameroon: Petroleum Development and Pipeline Project, and Petroleum Environment Capacity Enhancement Project
31	2004	Colombia: Cartagena Water Supply, Sewerage and Environmental Project
34	2004	Pakistan: National Drainage Program Project
36	2005	Cambodia: Forest Concession Management and Control Pilot Project
37	2005	Democratic Republic Of Congo: Transitional Support for Economic Recovery Credit and Emergency Economic and Social Reunification Support Project
38	2006	Honduras: Land Administration Project
44	2007	Uganda: Private Power Generation Project
53/56	2009	Panama: Land Administration Project
62	2009	Papua New Guinea: Smallholder Agriculture Development Project
82	2012	Ethiopia: Protection of Basic Services Program Phase II Additional Financing and Promoting Basic Services Phase III Project
84	2013	Kenya: Natural Resource Management Project
87	2013	Nepal: Power Development Project
95	2014	Paraguay: Sustainable Agriculture and Rural Development Project (Pilot – Not Registered)
97	2014	Kenya: Electricity Expansion Project

Appendix C

Summary of the Main Cases Studied

For more information and to access the public documents for all Inspection Panel cases, please visit "Panel Cases" at http://ewebapps.worldbank.org/apps/ip/Pages/AllPanelCases.aspx.

Cambodia Forest Concession Management and Control Pilot Project

The project was a technical assistance operation aimed at demonstrating and improving the effectiveness of a comprehensive set of forest management and operational guidelines and control procedures in forest concession areas. It also aimed to establish an effective forest crime monitoring and prevention capability. The Requesters, who depend on the forests for their livelihoods, tapping resin and collecting forest products to sell, claimed among other things that the project was supporting the interests of logging concessionaires with track records of illegal logging and human rights abuses. A core concern related to serious depletion caused by intensified logging of resin-producing trees from which Indigenous Peoples and local communities derive a major source of income. In its Investigation Report, the Panel noted that forests are particularly important for Indigenous Peoples, who live in the more remote and isolated regions of the country. Forests comprise their cultural and spiritual home, and are the basis of their economic identity. The Panel's investigation, as it related to Indigenous Peoples, determined that in project design, the Bank focused nearly exclusively on reforming forestry concessions, and did not comply with various provisions of the applicable Bank policies, including the safeguard policies pertaining to the protection of Indigenous Peoples and the environment in the preparation and implementation of the project. The Panel found that the project did not give adequate attention to the vital interests of local communities and Indigenous Peoples in forest resources, and to the contested nature of the forest domain. The Panel also questioned the choice of instrument, which was not well suited for this type of operation. Bank Management recognized that project preparation could have more effectively documented and drawn on available environmental and social information, and that the project would have benefited from broader consultation with local communities and other stakeholders, including Indigenous Peoples. Bank Management agreed with the Panel on the deficiencies of the management plans prepared by the forest concessionaries, and acknowledged that the project overestimated the willingness and the capacity of the concessionaires and the government to carry out their responsibilities in an effective manner.

Democratic Republic of Congo Transitional Support for Economic Recovery Operation and Emergency Economic and Social Reunification Support Project

The operations contained components designed to address the problem of illegal logging and improve governance in the natural resources sector of the DRC. The Requesters raised concerns that the forest sector reform activities, including the implementation of a new commercial forest concession system, could cause harm to the forests where they live and upon which they depend for subsistence, forcing them to change their way of life and resulting in social conflict. In addition to providing material benefit, the forest also provides spiritual purpose and a foundation of the cultural identity of the Pygmy people, an indigenous community that has lived in the area for millennia. Furthermore, the Requesters claimed they had not been given information or consulted regarding the operations, the implementation of which would violate the rights of the Pygmy to occupy their ancestral lands, manage their resources using traditional practices, and protect their cultural and spiritual values. Despite the presence of the indigenous Pygmy people in the project area, the Panel found that the Bank did not apply the policy. While between 250,000 and 600,000 Pygmy people live in the DRC, Bank documents did not mention the presence of the Pygmy people or address potential risks to them. The Panel found that failures to carry out appropriate screening to determine the possible presence of Indigenous Peoples, to trigger the Indigenous Peoples Policy, and to subsequently prepare an IPDP was in non-compliance with Bank policy. The Panel also found that the project documents did not identify the cultural and spiritual value of the forest areas to the Pygmy peoples and did not provide appropriate measures to avoid harm to these areas, both of which were in non-compliance with Bank policy. If the Pygmy people had been identified accurately as Indigenous Peoples and an IPDP developed, it would have provided a better policy framework for the needs of the Pygmy people and potential measures that could have been taken to address potential vulnerabilities and harm caused by the operations.

Honduras Land Administration Project

The project aimed to facilitate implementation of the government reform strategy to address insecurity of land tenure in the country through the establishment and operation of an integrated decentralized land administration system as part of a broader reform program. One of the project components provided for systematic land regularization, titling and registration of lands, including municipal lands, urban and rural areas, forests, protected areas, and ethnic lands. The Requesters claimed that the project did not take into account the rights and interests of the Garífuna people and that the land titling and procedures under the project would ultimately cause the loss of their rights

over parts of their ethnic lands and the demise of collective property held by Garífuna communities in favor of individual property. The Requesters claimed that the IPDP prepared by the Bank failed to adequately consider the legal status of the IPs in the project area and the potential harm of the project on the community. The Panel noted important positive features in the IPDP, including budget allocations for training local community leaders on national laws and arbitrators and conciliators to help protect the IPs from any potential invasions of their territory. However, the Panel also noted concern that the IPDP did not adequately propose means of conflict resolution among the Garífuna people. Furthermore, the Panel found that multiple conflict-resolution procedures were identified in the IPDP and the Property Law and concluded that there was a need for greater clarification and consultation with the affected communities as to which procedures should apply.

Panama Land Administration Project

The project contained two main components that sought to advance private land titling and administration in the country and to establish and consolidate indigenous territories for the Naso and Ngäbe Indigenous Peoples in Panama. The Naso Requesters claimed that the project failed to support their wish to establish a *comarca* over which they have collective land rights and administrative authority and failed to properly recognize and consult with the legitimate leader of the Naso people. The Naso people had been trying to obtain a *comarca* since 1973, viewing the issue of obtaining such authority over their ancestral lands as crucial for their survival. The Ngäbe Requesters argued that the project failed to take necessary actions to protect and consolidate Ngäbe territories in the Annex Areas (territories outside the core area of the Ngäbe *comarca*) and instead proposed improper land delimitations resulting from a flawed consultation process. The project did not prepare stand-alone IPDPs for either the Naso or the Ngäbe peoples on the grounds that the subcomponent of the project dealing with indigenous territories would serve as the IPDP. The Panel found that the lack of a stand-alone IPDP was not in accordance with Bank policy. With particular regard to the Ngäbe people, the Panel held the view than an adequate IPDP could have identified the critical importance of Annex Areas and helped mitigate the risks the project posed to them. Concerning the complaints about inadequate consultation, the Panel found that Management had completed a good faith attempt to consult with the two factions that arose within the Naso internal political body during project implementation, making the consultation meaningful and consistent with the policy. Nevertheless, the Panel noted the protracted time lapse that occurred before Management responded to the schism within the Naso people's internal political body. Additionally, the Panel found that the methodology for determining the boundaries of the Annex Areas included consultation with only the main leaders of the Ngäbe, making it in non-compliance with the policy.

Papua New Guinea Smallholder Agriculture Development Project

The project sought to improve the livelihoods and raise the income of smallholders living in the Oro and West New Britain provinces involved in oil palm production. The Requesters claimed that the project, which would enable smallholders to plant additional oil palm through infilling, neither reduced poverty nor improved living standards. The consequences of the project's infilling, they claimed, included soil erosion, pollution of waterways and deforestation, and conversion of land that provides vital social, economic, and cultural resources for the communities. The Requesters raised the complaint that the PAPs, as Indigenous Peoples and customary landowners, were not properly consulted in the project design and implementation and they did not receive culturally appropriate disclosure of documents. Regarding the issues of consultation and broad community support, the Panel team found that many of the community members were not conversant in English or Tok Pisin, sometimes requiring multiple translators to be able to translate between English and the local language. This diversity of language contributed to a number of consultation and communication challenges. Furthermore, project consultations were conducted with representatives of the Growers Association, but smallholders, women and their customary leaders were not consulted. The Panel team was shown a pile of more than 1,000 application forms for infilling that were considered to be indicative of some sort of community demand for the project. However, the Panel asserted that this gesture of widespread community interest in growing oil palm could not be equated with broad community support for the project. Despite voicing an interest in using oil palm as a viable means for increasing income and improving livelihoods, nearly all smallholders with whom the Panel team spoke complained about non-transparent and one-sided imposition of levies, a lack of opportunities for income diversification, irregular "fresh fruit bunch" collection, and a failure to receive their fair share of profit because of the pricing formula. The Panel was unable to find any project documents that demonstrated how broad community support was reached, and found that the Indigenous Peoples' widespread interest in the project was contingent on a particular set of circumstances.

Ethiopia Protection of Basic Services Program Phase II Additional Financing and Promoting Basic Services Phase III Project[6]

The objective of the Ethiopia PBS III Project was to contribute to the higher-level objective of expanding access and improving the quality of basic services by funding block grants that ensure adequate staffing and operations, and by strengthening the capacity, transparency, accountability, and financial

management of governments at the regional and local authority levels. The Requesters stated that the Anuak Indigenous Peoples had been harmed, claiming that the Bank project contributed directly to the government's villagization program in the Gambella Region, which, according to the Request, forced Anuak people to leave their ancestral lands under the pretext of providing better services and improving the livelihoods of communities.

The Panel concluded that the involuntary taking of land and use of force and intimidation were not consequences of PBS, but found that the Bank did not fully assess and mitigate the risks arising from the government's implementation of villagization. Management indicated to the Panel that OP 4.10 was not applied to Bank operations in Ethiopia before 2013, including the PBS III project, because of the government's concern that the policy was not compatible with the Ethiopian Constitution and the country context. The Panel acknowledged the difficult context in which PBS III was prepared and the concerns expressed by the government regarding the definition of Indigenous Peoples and the application of the related policy in the Ethiopian context. The Panel also noted Management's indication that prior to December 2012, Bank operations, including PBS III, followed the approach known as "functional equivalence" instead of applying the policy. The Panel, however, found no evidence in project documents that the functional equivalence approach was effectively applied to PBS III.

Kenya Natural Resource Management Project

In 2005, the government enacted a Forests Act that sought to establish further protections and regulations for the forests sector. Among the policy changes was the establishment of the Kenya Forest Service to replace the Forestry Department. The Bank's Natural Resource Management Project sought to assist the government in operationalizing the Forests Act, specifically by undertaking activities such as: creating a transparent and accountable regulatory framework for forest resources management; realigning and demarcating boundaries in selected forests; identifying models for community participation and benefit sharing; supporting the implementation of a resettlement policy framework; and developing and implementing resettlement action plans. The Requesters claimed that as a direct result of the NRMP, the Sengwer, an indigenous group and ethnic minority, were forcefully evicted from ancestral lands, inadequately consulted and provided options for resettlement, and harmed by a change in official designation from Indigenous Peoples to "vulnerable and marginalized groups." The Requesters claimed that KFS, in addition to carrying out forceful evictions, had burned over 500 houses and property in Embobut Forest, the ancestral lands of the Sengwer, and had arrested 45 Sengwer people because of allegedly illegal farming in the forest without permits. The Panel highlighted the challenges resulting from the implementation of activities, such as resettlement, that would have required multi-agency interventions and yet, under the NRMP, were solely

designated to KFS. The Panel found that given the historical mission of KFS, which primarily used a compliance and enforcement approach, the risks associated with the lack of experience and institutional capacity in carrying out such a project were not fully understood. As such, these oversights resulted in harm to the Indigenous Peoples living in the Embobout Forest that could have been avoided.

The Panel found that the use of the term VMGs instead of Indigenous Peoples does not in itself amount to non-compliance with OP/BP 4.10 because the policy does not require its use to ensure protection of the rights included therein. At the same time, the Panel noted that for the Cherangany-Sengwer the term Indigenous Peoples is central to their self-identity and therefore crucial for the protection of their customary rights. The Panel fully recognized the complexity of applying the term Indigenous Peoples to many communities, particularly when, according to Management, the government of Kenya has already expressed its position about these designations. Nonetheless, it is the Panel's view that meaningful compliance with the Indigenous Peoples Policy calls for more consideration to be given to a community's attachment to a particular designation through greater consultation and ensuring that the use of any other designation does not dilute the full customary rights of IPs as enshrined in OP 4.10.

Nepal Power Development Project

The project sought to develop Nepal's hydropower potential, improve access to electricity services, and promote private participation in the power sector so as to improve its efficiency. The Requesters, 103 families of both Indigenous and non-Indigenous Peoples living in the Sindhuli District in Nepal, made several claims of harm related to the project. The Requesters opposed the alignment of a power transmission line, which they claimed would cause a devaluation of their land, a loss in agricultural production, and potential displacement. In addition, the Requesters alleged inadequate consultation and disclosure and a project failure to appropriately identify projected-affected Indigenous Peoples. The Requesters believed that Management, as per the Bank's Indigenous Peoples Policy, should have prepared an IPDP given the presence of Indigenous Peoples in the project area. In lieu of preparing an IPDP, Management prepared a VCDP, which the Requesters believed to be inadequate, misidentifying some indigenous groups and not taking into account their precise needs and preferences. They further emphasized that the IPs in Sindhuli have traditionally relied on their land for subsistence and income and that an IPDP would have better anticipated potential project harm to their indigenous lands and livelihoods than a VCDP. The Panel found that given the prevalence of a mixture of indigenous, Dalit, and other vulnerable communities in the project area, Management's decision to apply a "mixed communities" approach and institute a VCDP rather than an IPDP was in compliance with Bank policy. The Panel recognized that in such an

instance where communities of mixed social and ethnic groups live in close proximity, giving benefits only to IPs would create undesirable inequities for the other non-indigenous marginal social groups. Regarding the Requesters' allegations of inadequate consultation and disclosure, the Panel found that IPs in the project area could understand the Nepali language but needed to communicate in their native language for clarity. Project documents did not acknowledge the specific linguistic needs of IPs, and the Panel found the consultations during project preparation and implementation were inadequate.

Paraguay Sustainable Agriculture and Rural Development Project

The project aimed to improve the quality of life of small-scale farmers and indigenous communities in the project area by strengthening community organization and self-governance, improving natural resources management, and enhancing the socioeconomic conditions of farmers and communities. The Requesters claimed that their rights of consultation and participation in the project were severely undermined because the contract for an NGO, which was hired as a service provider to ensure adequate means to carry out consultations and other activities, was discontinued due to legal issues regarding transfer of funds. As a result, the Requesters could not meet, attend training, participate in the project, or monitor it. Management in this case acknowledged the issue and explained that a series of actions were in place that would lead to the resumption of consultations as quickly as possible. The Requesters told the Panel that they were seeking a quick and simple solution to their just demands, rather than a potentially lengthy investigation. After close consultations with the Panel, both Requesters and Management agreed to process this case under the Pilot approach to allow the implementation of an Action Plan. Within three months, the Panel was informed that the Action Plan had been successfully implemented and the Requesters' concerns fully addressed.

Kenya Electricity Expansion Project

The project financed the construction of a geothermal plant that required the relocation of four Maasai villages. The Panel recognized the many positive aspects of this resettlement (land-for-land option, infrastructure investment, and a well-intended inclusive consultation mechanism) but confirmed claims that some of the most vulnerable people, especially Indigenous Peoples, experienced harm and impoverishment during the resettlement process. The Panel determined that the failure to apply the Indigenous Peoples Policy to the Maasai people impacted the PAPs and that some of the adverse effects caused by resettlement might have been avoided or mitigated had the IP policy been triggered. The Panel found that without the application of the IP

policy, interviews with members of the local community were not conducted in Maa, the language of the community, and project materials were not translated into Maa language. As a result, PAPs did not have the opportunity to engage in fully informed consultations. The Panel also found a lack of resettlement plans that took into account the Maasai peoples' attachment to their indigenous land, ancestral territory, and its resources. In addition, the Panel considered the Resettlement Action Plan Implementation Committee to be a well-intentioned effort, consistent with Bank policy, to achieve broad representation of the project-affected communities including women, youth, the elderly, and people with disabilities. The Panel noted, however, that the RAPIC did not sufficiently accommodate the traditional authority structure of the Maasai. Whereas decision making and conflict resolution within their society is usually derived from the power of the Elders, their traditional authority structure was sidelined from RAPIC membership, with the unintended consequence of marginalizing them and thereby contributing to both inter- and intra-community tensions.

Notes

1. The Inspection Panel's mandate covers projects financed by the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). The Compliance Advisor Ombudsman handles complaints related to projects financed by the International Finance Corporation and the Multilateral Investment Guarantee Agency. In this report, the World Bank (or Bank) refers to IBRD and IDA only.
2. In 2011 Bank Management started to consider pastoralists in Africa as Indigenous Peoples when the policy criteria are met.
3. The name "Pygmy" derives from a Greek word meaning the measure of length from elbow to the fist, and is used to refer to people of short stature, encompassing different Indigenous Peoples groups such as the Baka, Bakola, Effe, Aka and others. Because of its pejorative connotation, both anthropologists and the Indigenous themselves avoided the term. However, it has recently been used again by Indigenous Peoples, particularly in the context of establishing their identity.
4. Operational Policy/Bank Procedures on Indigenous Peoples, OP/BP 4.10, was adopted in 2005, replacing the earlier Operational Directive 4.20 (1991). OP 4.10 changes the terminology from Indigenous Peoples Development Plan to Indigenous Peoples Plan and Indigenous Peoples Policy Framework. For the sake of consistency with the Bank policies, this publication uses the term Indigenous Peoples Plan with reference to OP 4.10, and Indigenous Peoples Development Plan with investigations assessing Bank compliance with OD 4.20.
5. The relevant standard, Environmental and Social Standard 7 (ESS 7), is titled "Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities." The full set of ESF, including ESS7, is available at http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/the_esf_clean_final_for_public_disclosure_post_board_august_4.pdf.
6. The Request also refers to Protection of Basic Services Program Phase II – Additional Financing (P121727). However, at the time the Request for Inspection was received, PBS II-AF was about 97 percent disbursed and thus did not qualify for the Panel's investigation, which therefore focused on PBS III.

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