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ADB Safeguards Policy Update:

In-Country Stakeholder Consultation with Government

Papua New Guinea, 6 September 2022



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Opening Prayer



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Technical Announcements and Acknowledgement of Participants and Rationale for the Session

Jack Stanley, Senior Safeguards Specialist, PARD



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The Safeguard Policy Review and Update Phase 2 consultations provide opportunities for stakeholders to express their views and opinions on ADB's environmental and social safeguards in the most meaningful and safest manner possible.

All stakeholders are encouraged to articulate their inputs and concerns during these consultation sessions. By joining (and as noted in paragraph 47 of the Stakeholder Engagement Plan) stakeholders are consenting to the video and audio recording of these consultations. ADB will prepare consultation summaries for internal use. These will not be disclosed publicly. The purpose of the recordings is only to ensure the accuracy and transparency of proceedings.

Stakeholders wishing to exclude themselves from such recordings are asked to contact the Safeguards Policy Review and Update Secretariat at safeguardsupdate@adb.org within 2 weeks of this session to share their exceptions and exclusions.

Restatement of ADB's Commitment to Meaningful Consultations



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All types of feedback are welcome. These will not be used for the purposes of retaliation, abuse, or any other kind of discrimination.

If you have any issues or concerns on the disclosure, recording, confidentiality, potential risks, abuse, or any kind of discrimination during the consultations, or wish to exclude yourself from the recording of events and discussions, please contact the Secretariat at safeguardsupdate@adb.org.

Agenda

- **Opening Prayer** (5 mins)
- **Technical Announcements and Acknowledgement of Participants and Rationale for the session** (10 mins)
Jack Stanley, Senior Safeguards Officer, PNG Resident Mission (PNRM)
- **Session 4: Presentation: Implementation Issues on Land Acquisition, Involuntary Resettlement and Indigenous Peoples Safeguards in the Pacific** (20 mins)
Taniela Faletau, Safeguards Specialist, PARD
- **Questions, Answers and Discussion** (20 mins)
- **Screen Break** (10 mins)
- **Session 5: Presentation: Land Acquisition, Resettlement and Involuntary Restriction of Access to Land** (20 mins)
Irina Novikova, Principal Social Development Specialist (Safeguards), Safeguards Division (SDSS), Sustainable Development and Climate Change Department (SDCC)
- **Questions, Answers and Discussion** (20 mins)

Agenda

- **Session 6: Presentation: Safeguards for Indigenous Peoples** (20 mins)
Tulsi Charan Bisht, Senior Social Development Specialist (Safeguards), Safeguards Division (SDSS), Sustainable Development and Climate Change Department (SDCC)
- **Questions, Answers and Discussion** (20 mins)
- **Session 7: Plenary Discussion** (40 mins)
Moderated online by: Taniela Faletau/ Facilitated in-country by: Jack Stanley
- **Wrap Up and Closing Remarks** (10 mins)
Bruce Dunn, Director, Safeguards Division (SDSS), Sustainable Development and Climate Change Department (SDCC)
- **Event Evaluation** (5 mins)

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Session 4: Implementation Issues on Land Acquisition, Involuntary Resettlement and Indigenous Peoples Safeguards in the Pacific

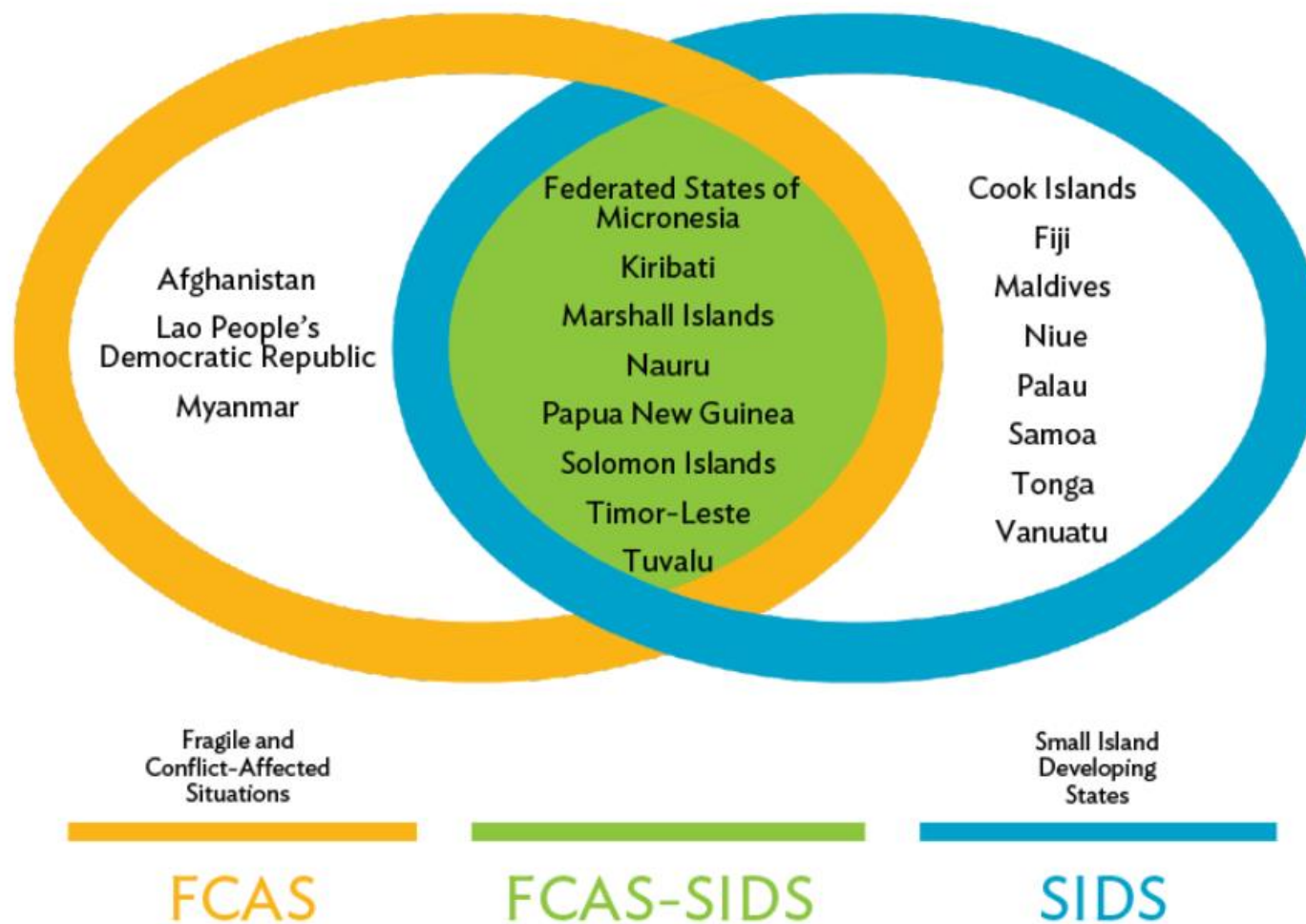
Taniela Faletau, Safeguards Specialist, PARD



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ADB FCAS-Classified DMCs and the SIDS



Fragile and Conflict-Affected Situations (FCAS) and Small Island Developing States (SIDS)



Geographic challenges

High vulnerability to natural hazard and climate change

Concentrated economies; vulnerable to exogenous shock

Political instability and/or conflict

Weak governance, social and infra service provision

Involuntary Resettlement Safeguards in the Pacific

- ADB policy seeks to avoid, minimize, restore and improve.
- In the Pacific, obtaining access to land can be one of the most difficult. This difficulty reflects two linked constraints.
 - Scarce resource
 - Communally owned
- Legal authority to take land, however governments rarely resort to formal legal expropriation.
 - Social opposition
 - Process
- PNG context



Papua New Guinea context

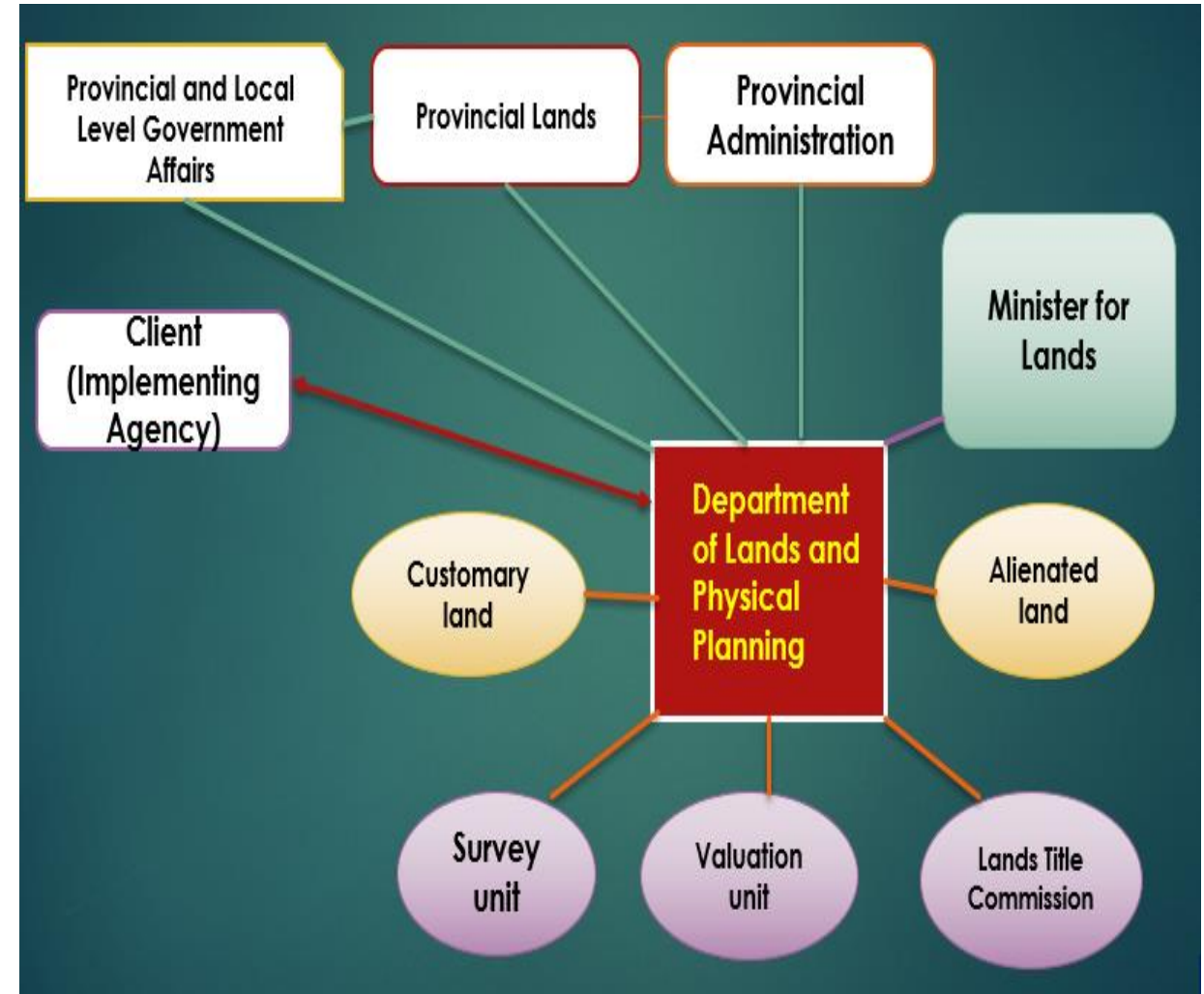
- Background
 - Total land area 452,860 sqkm
 - Land tenure
- Country's safeguard system
 - Land Act 1996
 - Land Group Incorporation Act and Voluntary Customary Land Registration Act
- Land acquisition process



PNG Land Acquisition Process



Land Investigations Report	Certified by Provincial Administrator – in the province
Survey Plan (for each sites)	Certified by Chief Surveyor in Department of Lands and Physical Planning (DLPP)
Valuation Report (signed)	Valuer Generals (DLPP)
Valuation Certificate	Chief Valuer General (DLPP)
Certificate of alienability	Signed by Provincial Affairs Division



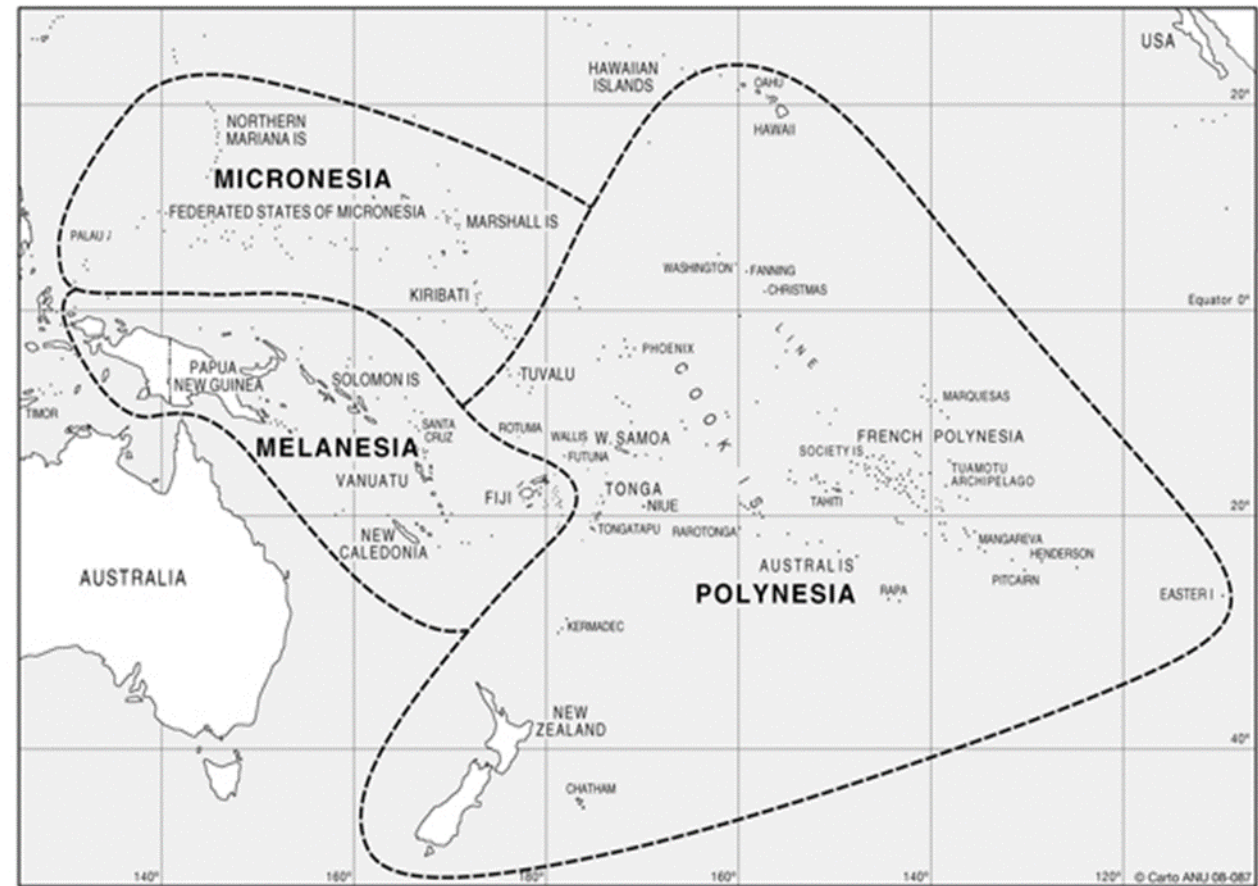
Challenges for Involuntary Resettlement in PNG

- Remote isolated communities
 - Linear and site specific
- Land Legacy issues
 - Individuals, clans and communities
- Land administration issues
 - Certification and approvals
 - Coordination within and between agencies
- Capacity



Geo-cultural subregions

- Three main sub-regions
 - Melanesia
 - Micronesia
 - Polynesia
- IP implications
 - Geography – Has led to an inherent Indigenous bio-cultural heritage link that is determining of cultural diversity.
 - Linguistic patterning - Micronesia and Polynesia are in stark contrast to Melanesia where over more than 1000 distinct dialects are spoken. This diversity in language is also paralleled in some countries by a similar diversity in cultural practices.
 - Shifting value systems – Brought on by modernization and economic development.



Triggering IP in Pacific Island Countries

- A shared identity
 - It is accepted that identity is homogenous across the Pacific with people having a collective attachment to their islands and territories.
- Integration of IP impacts into IR
 - The rights of IPs which are often hereditary in ownership and differ in custom from island to island is recognized and well institutionalized in national laws pertaining to land tenure and ownership of customary land



A special case for Melanesia and PNG

- Modernizing the policy
 - Current IP safeguard practice although perceived adequate for a majority of Pacific DMC's is consistently coming up short in the Melanesian sub-region.
 - Emergent project preparation and implementation risks are increasingly being identified in not triggering IP safeguards with implications on PARD's resources and capacity.
 - Capacity building and strengthening Country safeguard systems and the response to shifting value systems.



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Questions, Answers and Discussion



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10:00

Screen Break



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Session 5: Land Acquisition, Resettlement and Involuntary Restriction of Access to Land

Irina Novikova, Principal Social Development Specialist (Safeguards), SDCC



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ADB Safeguards Policy Statement, 2009 (SPS): Overview

The ADB logo consists of the letters 'ADB' in a white, serif font, centered within a dark blue square.

IR Safeguard Objectives

- 1 **Avoid** involuntary resettlement wherever possible
- 2 **Minimize** involuntary resettlement by exploring project and design alternatives
- 3 **Restore and enhance** the livelihoods of all displaced persons in real terms relative to pre-project levels
- 4 **Improve** the standards of living of the displaced poor and other vulnerable groups

Key Requirements

- **Triggers:** physical and economic displacement related to involuntary land acquisition, involuntary land use restriction, and involuntary restriction of access to resources/legally designated parks and protected areas; impacts can be full/partial, permanent or temporary.
- **Key requirements:**
 - Screening, categorization and assessment of IR impacts
 - IR planning: prepare/update and disclose resettlement plans
 - Stakeholder consultations with displaced persons and GRM
 - Restoration of livelihoods through replacement/compensation for lost assets at replacement cost; no displacement prior to compensation
 - Provision of assistance and support (cash and non-cash)
 - Protections for displaced persons without recognizable legal rights to land
 - Monitoring of resettlement outcomes and disclosure of reports

Independent Evaluation Department (IED): Findings and Recommendations for IR

- 1. Maximize the value added of the IR safeguard beyond compensation.** IED evaluation finds ADB's involuntary Resettlement (IR) safeguards performance to be generally satisfactory; however, it notes a primary reliance on compensation of affected persons with a simultaneous weakness of livelihood restoration and improvement, especially for severely affected poor and vulnerable households. Recommends clearer livelihood restoration provisions and mitigation approaches. Notes weaknesses in stakeholder consultations and disclosure of resettlement plans, and further recommends improved disclosure of safeguards documentation in local languages and improved participation of government staff in consultations.
- 2. Recommends a new integrated approach to risk assessment and categorization.** The use of a numerical threshold of 200 severely affected persons for IR category A projects is judged inadequate and insufficiently risk oriented, as it does not appropriately assess the variable risks within the socio-economic, institutional, and country contexts.
- 3. Recommends enhanced mechanisms to assess social risks in projects and impacts on communities, people and their livelihoods** which do not originate from involuntary land acquisition but may still lead to physical and economic displacement.

Analytical Study Methodology and Processes:



Analytical Study Objective:

- Study objective is to provide informed recommendations for the update of requirements related to land acquisition, land use restriction, and involuntary resettlement.

Analytical Study Methodology:

- Desk based document review - IED Report and ADB Management Response, project documents related to IR safeguards
- Benchmarking with other MFI polices - Comparative analysis with EBRD, IFC, IDB, World Bank
- Stakeholder consultations and workshops - ADB staff, developing member countries (DMCs), Private Sector clients and organizations, civil society organisations.

Objectives and Scope of Application

- ADB shares with other MFIs the objectives of avoiding and minimizing adverse IR impacts.
- Other MFIs include among the policy objectives avoidance of forced eviction, compensation at replacement cost and stakeholder engagement.
- Some MFI include requirements for voluntary land transactions, such as voluntary land donations.
- Some MFIs allow application of the IR standard to livelihood impacts not resulting from land acquisition.

Risk classification and categorization

- Except for ADB, all MFIs adopted a risk-based integrated environmental and social assessment.

Mitigation plans

- All MFIs require preparation of varying types of resettlement planning documents commensurate with the level of displacement.
- All MFIs permit the use of resettlement frameworks for projects without impact assessments prepared before project approval
- ADB limiting the use of frameworks to four finance modalities.

Stakeholder engagement

- All MFIs require disclosure of relevant information about displacement impacts and mitigation measures in local languages and an accessible culturally appropriate manner.
- Some MFIs detail the kind of information required.
- Except for ADB, none of the MFIs explicitly require full disclosure of resettlement documents on their websites.

Monitoring and implementation

- ADB explicitly mandates the public disclosure of monitoring reports on its website.
- To ensure verification of the completion of RP implementation, especially for IR category A, other MFIs may require land acquisition IR completion reports and/or external compliance reviews.
- ADB does not require standalone IR completion audits and reports but mandates ongoing M&E and discloses completion of RP implementation in project completion reports.

Roles and responsibilities

- The division of responsibilities is comparable to ADB.
- MFIs undertake screening, due diligence, supervision, support and capacity building.
- Borrowers implement all requirements for safeguard management of the standards.

Key issues for further consideration



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Architecture and Integration

1. Adoption of a performance standard approach, with binding requirements for Borrowers and ADB, including for staff, with clarification of differential roles and responsibilities for the management of land acquisition and land use restriction (LA/LUR).
2. Adoption of a risk-based approach to screening, scoping and categorization of LA/LUR without a numerical threshold for impact significance.
3. Adoption of an integrated environmental and social impact assessment as an overarching assessment tool to cover all anticipated social risks and impacts of a project, with specific requirements for LA/LUR.

Key issues for further consideration



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Scope of Application

1. To cover both involuntary and voluntary forms of LA/LUR, improve implementation practices and provide clearer guidance
2. To clarify provisions related to land use restriction and restriction on access (regarding both infrastructure and natural resource management related impacts)
3. To clarify provisions for the social impacts of associated facilities, existing facilities, legacy issues and cumulative impacts and their mitigation.
4. To clarify provisions for mitigation of livelihood impacts & asset losses not caused by land acquisition.

Key issues for further consideration



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Strengthening of other provisions

1. To link LA/LUR planning with the readiness of the technical design through either
 - implementation ready land acquisition plans, or
 - a framework approach coupled with enhanced scoping
2. To further clarify LA/LUR related provisions for
 - valuation of lost assets
 - livelihood restoration
 - relocation of non-titled displaced persons
 - vulnerability
 - gender
 - mitigation measures for host communities
 - strengthening of the Borrower's capacity for LA/LUR management
 - external and third-party monitoring and verification

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Questions, Answers and Discussion



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Session 6: Safeguards for Indigenous Peoples

Tulsi Charan Bisht, Senior Social Development Specialist (Safeguards),
SDCC



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Safeguards Requirement 3: Indigenous Peoples Safeguards

- The Asian Development Bank (ADB) recognizes the rights of Indigenous Peoples to direct the course of their own development.
- Special efforts are needed to engage Indigenous Peoples in the planning of development programs that affect them.
- Design and implement projects in a way that fosters full respect for Indigenous Peoples' identity, dignity, human rights, livelihood systems, and cultural uniqueness.
- Receive culturally appropriate social and economic benefits.
- Do not suffer adverse impacts as a result of projects.
- Can participate actively in projects that affect them.

IP Safeguards Update

- More aligned with IP safeguard policies of other MFIs working in the Asia-Pacific Region.
- Improved applicability not avoidance.
- Are applicable in the Pacific DMCs as in case of the other MFIs.

Update Process: Salient Changes (1)



1. IP identification will be based only on 'Distinctiveness' criterion based on four characteristics. 'Vulnerability' is no more required as part of identification process.
2. 'Collective attachment' scope is broadened and now will also include 'areas of seasonal use or occupation', 'nomadic and transhumance routes'.
3. Will also apply in case of 'assimilation', 'mainstreaming' and 'loss of collective attachment due to forced severance, conflict, government resettlement programs, assimilationist policies, dispossession, urbanization'.
4. IP safeguards will be applicable whenever Indigenous Peoples are present in or have collective attachment to a project area.

Update Process: Salient Changes (2)



Introducing **Free, Prior and Informed Consent (FPIC)**

- FPIC is treated as highest standard on IP safeguards and majority of the MFIs have adopted FPIC.
- Current requirements are Broad Community Support (BCS) in three specific circumstances.
- Three circumstances are broadened – ‘adverse impacts on land and resources’; ‘relocation of Indigenous Peoples’ and ‘significant impact on cultural heritage’.
- FPIC applies to project design, implementation and outcomes.
- Does not require unanimity.
- Requirement to document ‘processes’ and ‘outcomes’ of the FPIC including agreements reached and disagreements as well.
- Subprojects for which FPIC could not be achieved, these will not be financed by ADB and there would not be any adverse impacts on IP whose consent could not be obtained.

Update Process: Salient Changes (3)



- Recognizing customary land rights (in absence of legal title as defined by the DMC laws).
- Payment of compensation to IP for the customary land.
- GRM to include components of community conflict resolution mechanism where possible.

Other Issues:

- Challenges of implementing IP safeguards in FCAS/SIDS context.

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Questions, Answers and Discussion



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Session 7: Plenary Discussion

1. What are your views on the findings and key recommendations for involuntary resettlement and on Indigenous Peoples
2. Are the recommended policy direction on social safeguards fit for purpose for the Pacific region context or the Papua New Guinea country context?
3. Does Papua New Guinea have adequate capacities to implement the recommended safeguard requirements?



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Wrap Up and Closing Remarks



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Event Evaluation



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Please send us your feedback and suggestions:

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safeguardsupdate@adb.org



Thank You

