

Report No. 77959-KE

**The Inspection Panel** 

**Report and Recommendation**

**KENYA: Natural Resource  
Management Project (P095050)**

**May 29, 2013**



# The Inspection Panel

## Report and Recommendation On Request for Inspection

### Kenya: Natural Resource Management Project (P095050)

#### A. Introduction

1. In accordance with the Resolution (hereinafter “the Resolution”)<sup>1</sup> establishing the Inspection Panel (hereinafter “the Panel”), the purpose of this Report and Recommendation on Request for Inspection (hereinafter “the Report”) is to make a recommendation to the Board of Executive Directors (hereinafter the Board”) as to whether the Panel should investigate the matters alleged in this Request related to the above-mentioned project. The Panel’s recommendation is based on its consideration of the technical eligibility of the Request and its assessment of other factors as reflected in the Resolution.
2. This Report begins with a description of the Project subject of the Request for Inspection (Section B) and continues with summaries of the written Request as received by the Panel on January 14, 2013 (Section C) and of the Management Response to the Request submitted on March 15, 2013 (Section D) followed by the Panel’s review (Section E). The Panel’s determination of the technical eligibility of the Request, in accordance with the 1999 Clarification to the Resolution,<sup>2</sup> is set out in Section E (1) below. Section E (2) provides the Panel’s observations on other factors considered before making its recommendation to the Board. The Panel’s recommendation on whether an investigation of the matters alleged in the Request is warranted is presented in Section F.
3. On January 14, 2013, the Inspection Panel received a Request for Inspection (hereafter “the Request”) related to the Kenya: Natural Resource Management Project (NRMP or “the Project”). The Request was sent by individuals from Sengwer communities who “*live and represent others who live*” in the following four areas of the Cherangany Hills

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<sup>1</sup> International Bank for Reconstruction and Development (Resolution IBRD 93-10) and International Development Association (Resolution 93-6), “The World Bank Inspection Panel”, September 22, 1993 (hereinafter “the Resolution”), ¶. 19. Available at:

<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf>

<sup>2</sup> “1999 Clarification of the Board’s Second Review of the Inspection Panel”, April 1999 (hereinafter “the 1999 Clarification”). Available at:

<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1999ClarificationoftheBoard.pdf>

in the western highlands of Kenya, namely the Kapolet Forest (in Trans-Nzoia District), Talau and Kaiapos (in West Pokot District), and Empoput<sup>3</sup> Forest (in Marakwet District). The Requesters have asked that their identities be kept confidential.

4. The Panel registered the Request and notified the Board and Management on January 30, 2013. Management submitted the Management Response on March 15, 2013<sup>4</sup>, after requesting an extension of the original submission deadline.
5. The Panel's Report and Recommendation was originally due on April 15, 2013 and the Panel had initially scheduled its visit to Kenya in mid-March. However, due to general elections taking place in Kenya in early March, the World Bank Country Office, through the Kenya Emergency Management Team, decided to suspend all missions to Kenya and subsequently to restrict them to essential missions. In light of this, the Panel delayed its visit and requested a postponement of its deadline for the completion of the Report and Recommendation until May 24, 2013.

## **B. The Project**

6. The NRMP is a Specific Investment Loan (SIL) approved by the Board on March 27, 2007. It became effective in December 2007 shortly before the 2007 general elections, which delayed the start of implementation until April 2008.<sup>5</sup> The Project was restructured in 2011, as described below. At the time of the receipt of the Request, the Project was 62.59% disbursed.
7. The original Project's development objective (PDO) was to enhance "*institutional capacity to manage water and forest resources, reduce the incidence and severity of water shocks such as drought, floods and water shortage in river catchments and improve the livelihoods of communities participating in the co-management of water and forest resources.*"<sup>6</sup> The Project provide for four components: 1) Water Resources Management and Irrigation; 2) Management of Forest Resources; 3) Livelihood Investments in Upper Tana Catchment, and 4) Management and Monitoring and Evaluation.
8. Component 2 – Management of Forest Resources – is the subject of the Request. This component, in its original conception, sought to operationalize the newly enacted Forest Act of 2005 by assisting in creating a transparent and accountable regulatory and institutional framework in forest resources management, from an exclusive Government conservation model to joint management with local communities and the private sector. Among the subcomponents were: supporting activities to transform the Forest Department into an accountable and semi-autonomous Kenya Forest Service (KFS) with

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<sup>3</sup> "Empoput forest" is also referred to as "Embobut". Both terms are used in this Report.

<sup>4</sup> Management Response to Request for Inspection Panel Review of the Kenya: Natural Resource Management Project (P095050), dated March 8, 2013.

<sup>5</sup> Management Response, ¶ 10.

<sup>6</sup> Financing Agreement, (Natural Resource Management Project) between Republic of Kenya and International Development Association, dated May 7, 2007 Credit No. 4277-KE, Schedule 1.

training, sensitization, equipment etc.; identifying partnership models for community participation and benefit sharing in the forest sector; realigning and demarcating boundaries in selected gazetted forests; supporting the effective implementation of the Resettlement Policy Framework and developing and implementing Resettlement Action Plans.<sup>7</sup> An Indigenous Peoples Planning Framework (IPPF) was developed because of the presence of Ogiek and Sengwer Indigenous Peoples in the Project areas (Mount Elgon and the Cherangany Hills, respectively) to ensure that they would not be adversely affected by the Project and measures would be developed to mitigate potential impacts. Management states in the Management Response that the original Project Appraisal Document (PAD) and the Financing Agreement do not refer to the Cherangany Hills as a Project area. However, given that the area was included in the IPPF “*the Bank took the position that it was part of the Project intervention area.*”<sup>8</sup>

9. On June 10, 2011, the Project was restructured and the development objective was redefined to: “*improve the management of water and forest resources in selected districts.*”<sup>9</sup> Among other things, the restructuring revised and simplified the Project Development Objectives, revised the results framework, and reallocated around 21 percent of Project funds. The restructuring also formalized the fact that the Cherangany Hills were part of the Project area and this allowed the reallocation of fund towards implementation of activities in that area.
10. Management states that the restructuring allowed adjusting Project outcomes to those that could realistically be achieved during the life of the Project. With the restructuring Management acknowledged that resolving comprehensive land issues was beyond the remit of the Project, and thus clarified to the Board that the Project “*would not be able to implement the land related commitments, i.e. 1) hasten the provision of titles for land presently occupied and used by the communities in the Project areas including support for necessary steps, such as land survey, demarcation and registration of titles; 2) establish a comprehensive strategy to rehabilitate livelihoods of evicted people to the level of December 2002; and 3) offer assistance within the land restitution process to indigenous peoples to claim all lands over which they have lost control between 1895 and 2002.*”<sup>10</sup>
11. Through the restructuring Management states that three enhancements were introduced: 1) assist the Government to implement a livelihood and rural development program focused on indigenous peoples and forest communities through Project-financed Vulnerable and Marginalized Group Plans (VMGPs); 2) provide technical assistance for a strategy to improve forest management “*to cover integration of guidelines for vulnerable and marginalized communities*” and 3) strengthen the decentralized structure of community forest associations and other local groups.<sup>11</sup> The restructuring also called for the update of the Process Framework (PF) and the preparation of the VMGPs. The

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<sup>7</sup> Financing Agreement, Schedule 1.

<sup>8</sup> Management Response, ¶ 31.

<sup>9</sup> Amendment to Financing Agreement, July 7, 2011, ¶ 1.

<sup>10</sup> Management Response, ¶ 28.

<sup>11</sup> Management Response, ¶ 13.

restructuring paper thus states that “*in accordance with the IPPF, the restructured project will support preparation and implementation of what would be equivalent to IPPs in Kenya, called Vulnerable and Marginalized Group Plans (VMGPs).*”<sup>12</sup>

**12. Financing and Implementation Arrangement.** The Project is financed by an IDA Credit in an amount equivalent to forty six million Special Drawing Rights (SDR 46,000,000) (around USD 68.5 million). It is scheduled to close on June 30, 2013. The Project is implemented through the Ministry of Water and Irrigation and the Ministry of Environment and Natural Resources. The Forest Resources Component is managed by KFS which appointed a National Project Coordinator.

### C. The Request

13. What follows is a summary of the allegations included in the written Request received by the Panel. The full Request is attached to this Report as Annex I.

14. The Requesters state that they have suffered harm as a result of the Bank’s “*failures and omissions*” in the Project. The alleged harms are described below.

15. According to the Request, KFS has burned over 500 houses and property in Empoput forest since 2007 in the process of carrying out forceful evictions. The Requesters state that the Empoput forest is part of the ancestral land of the Sengwer people as an ethnic minority hunter-gatherer people. They state that the Government planned to resettle the Sengwer from Empoput forest without carrying out free, prior informed consultations and that these resettlement plans “*go against World Bank Operational Policy 4.12 on involuntary resettlement.*”

16. In addition, KFS arrested in 2009 45 Sengwer people in the Kapolet forest because of illegal farming in the forest without permits. The Requesters state that the Kapolet forest has been Sengwer ancestral home since “*time immemorial*”, although the British government had the forest gazetted “*through discriminatory forest preservation policies [that] led to forceful eviction and displacement of Sengwer families [...]*” When the guards entered the forest to make these arrests they also shot at people and one woman was hit in the back and later treated at the Kitale district hospital. This dispute between Sengwer people and KFS staff in Kapolet arose as a result of an historical land dispute. The Request indicates that the British Government first recognized that Sengwer people lived in the forest by creating an administrative unit called Kipsirat, but later gazetted this part of the forest and evicted the Sengwer residing there. In 1997, according to the Request,

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<sup>12</sup> Restructuring Paper on a Proposed Project Restructuring of the Natural Resource Management Project, approved March 27, 2007, to the Republic of Kenya, June 10, 2011 (hereinafter “Project Paper”). The Project Paper adds that “*given particularities with respect to the term Indigenous Peoples in Kenya, the new Constitution of Kenya uses the term ‘vulnerable and marginalized groups’ (VMGs). Since adoption of the Constitution in 2010, the GoK [Government of Kenya] has requested that project instruments related to the implementation of OP 4.10 use the constitutionally-sanctioned terminology. OP 4.10 contemplates that different terminology may be applied in different countries without affecting the application or substance of the policy. It states: ‘Indigenous Peoples may be referred to in different countries by such terms as indigenous ethnic minorities; aboriginals, hill tribes, minority nationalities, scheduled tribes, or tribal groups.’*”

the President of Kenya “*directed the provincial administration to settle members of Sengwer community on Kapolet forest*” and divided this settlement in two phases. Phase I according to the Request involved 489 families that were settled in Kapolet, though no legal documents have been issued yet.

17. The Requesters state that Phase II and the demarcation of Sengwer land was stopped so 97 Sengwer families who were to be settled under Phase II moved to the land they thought belonged to them but were arrested and charged with encroachment in the forest. The Request indicates that this case related to arrested community members is pending in the Kitale Courts since 2009 and has cost the communities hundreds of thousands of Kenya Shillings in legal fees and other expenses.
18. The Requesters also argue that the Bank violated its policies by adopting the use of the term “Vulnerable and Marginalized Groups” instead of “Indigenous Peoples” without carrying out free, prior informed consultations with the people. This, they claim, is a violation of the indigenous people’s rights as stipulated in international treaties and in the Bank policy on Indigenous Peoples, OP 4.10.
19. The Requesters also believe that the IPPF prepared under the Project should be implemented but they were told by Kenyan authorities that it is merely a Memorandum of Understanding.
20. Further the Requesters feel that the Bank has not carried out its supervisory obligations even when the rights of the Sengwer were being violated. They state that they have written a number of letters to the Bank and had meetings with Bank staff but were not satisfied by the explanations.
21. The Request concludes with a number of recommendations including; that the Government recognizes the rights of the Sengwer to live in their ancestral home in Kapolet and Empoput forest, and that it compensates the families whose houses and property were destroyed, and those who were arrested in Kapolet and the woman who was shot. They also recommend that the Government recognizes the use of the term “indigenous peoples” as it did during Project preparation and that the Bank suspends funding for the REDD program to the Government until these violations noted above are addressed.

#### **D. The Management Response**

22. A summary of Management Response follows, and a copy is attached to this Report as Annex II.
23. Management does not believe that non compliance by the Bank has caused harm to the Requesters and notes that the incidents described in the Request were not caused or aggravated by the Project nor supported by it. Rather the complaints are aimed towards the GoK and related to issues beyond the Project. Management believes that, in a very difficult context and sector with many operational challenges, the Bank has helped to

address issues raised by the Requesters and has worked with the stakeholders to support a solution to such issues.

24. In general, Management notes that the Project has been “*challenging from the outset and is characterized by tension over historic land issues, longstanding grievances of indigenous communities and unresolved conflicts between those communities and the Kenya Forest Service (KFS)*”.<sup>13</sup> It adds that, because the original Project design was “overly ambitious” with respect to resolving land and forest conflicts, after the restructuring there have been difficulties in distinguishing between project activities and activities outside the scope of the Project, and the boundaries of the Bank’s safeguard obligations have become at times blurred. In fact, the Response claims that many complaints including in the Request go beyond the Project and should be directed to the GoK and are not related to the Project, including the evictions incidents described in the Request, which, according to Management, occurred before the Project became operational. Nevertheless, Management also acknowledges that the Project’s IPPF “*may have raised unrealistic expectations*” that “*may have contributed to the Request for Inspection.*”<sup>14</sup>
25. **Land rights issues.** The Response notes that the Sengwer people have asserted ancestral rights to live and use the forest without restrictions, while successive governments have prioritized the protection of forests by gazetting them. This has created conflicts that have intensified in recent years with an increasing pressure on Kenya’s forests. Many evictions of Sengwer people from the forests were carried out since 1980s. Management adds that during this period there has been an “*emerging recognition by both the Government and the Sengwer that a permanent solution to this problem will require the resettlement of forest-dwelling Sengwer to suitable land outside the gazetted forest,*”<sup>15</sup> albeit with an agreement on rules regarding access to forests. Management notes that attempts to find these solutions have so far stalled.
26. The Response states that the policy and legal framework changed in recent years with the enactment of the Forest Act in 2005 and of the National Land Policy, which are more conducive to solving the land issues. The Response indicates that the Project was originally designed in this context to support the resolution of land issues as it is described in the IPPF and the PAD through participatory boundary demarcation, clarification of land claims, support for resettlement and assistance to develop a National Resettlement Policy. However, as Project implementation started, it became clear, according to Management, that some of these activities, especially those related to solving land rights issues, were “*far too ambitious*”<sup>16</sup> and beyond the scope and time frame of the NRM Project. The restructuring of the Project, therefore, defined what kind of contributions the Project could realistically make to the larger agenda, and included activities such as the development of the VMGPs, capacity building and sensitization of KFS staff and establishment of the grievance redress mechanism.

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<sup>13</sup> Management Response, p. viii.

<sup>14</sup> Management Response, p. viii.

<sup>15</sup> Management Response, ¶ 20.

<sup>16</sup> Management Response, ¶ 22.



27. Following the elections in 2007, the situation worsened because a number of people displaced by post-election violence found refuge in the gazetted forests, including the Cherangany Hills, putting a further strain on natural resources, in particular by reducing water flows in critical water bodies.
28. **Application of OP 4.10.** The Response states that the policy on Indigenous Peoples was triggered with respect Component 2 of the Project because of the presence of Sengwer and Ogiek people in the Project area.<sup>17</sup> An IPPF was developed in 2006 to ensure that communities would not be adversely affected by the Project and measures would be developed to mitigate potential impacts. Management acknowledges that the IPPF “*posed several implementation challenges*” as it included activities that were beyond the scope of the project, would have required multi-agency interventions and were not realistically implementable during Project time. Management indicates that three commitments included in the IPPF were not implementable under the Project: 1) hasten the provision of titles for land presently occupied and used by the communities in the Project areas including support for necessary steps, such as land survey, demarcation and registration of titles; 2) establish a comprehensive strategy to rehabilitate livelihoods of evicted people to the level of December 2002; and 3) offer assistance within the land restitution process to indigenous peoples to claim all lands over which they have lost control between 1895 and 2002. Management states that “[*t]hese measures while desirable on their own account, were not related to the mitigation of anticipated Project impacts*”<sup>18</sup>
29. The Project, as restructured in 2011, would however remain committed to developing Vulnerable and Marginalized Groups Plans (VMGPs)<sup>19</sup> (equivalent to Indigenous Peoples Development Plans – IPPs) to address livelihood needs based on free, prior informed consultations. A Process Framework to address restriction of access to forests and use of forest products was also developed. Management indicates that in consultations it was clarified that the PF would not address land and resettlement issues.
30. **Community Representation.** Management states that some of the difficulties encountered by the Project related to “*a lack of clarity as to the nature of community representation and uncertainty as to how communities as a whole view the status of a number of NGO leaders who claim to speak on their behalf.*”<sup>20</sup> The Response refers to a group called “Elite and Professional Group” who has sent several letters of complaints to the Bank allegedly on behalf of communities. Management also states that when Bank staff sought to validate the Elite Group’s complaints with the communities, these were

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<sup>17</sup> Management Response, ¶ 27. As noted above, Management states in the Management Response that the original Project Appraisal Document (PAD) and the Financing Agreement do not refer to the Cherangany Hills as a Project area. However, given that the area was included in the IPPF the Bank took the position that it was part of the Project intervention area and formalized this position with the Project restructuring.

<sup>18</sup> Management Response, ¶ 28.

<sup>19</sup> Activities eligible under the livelihood program and detailed in the VMGPs include CDD-type of activities, such as livestock breeding, bee keeping, poultry keeping, fish farming etc.). This builds on the Social Assessment undertaken in 2010. Management indicates that the VMGPs supersede the IPPF in the areas they cover.

<sup>20</sup> Management Response, ¶ 33.

not aware of them. In addition, some of the members of this group have been elected into the Project vulnerable and marginalized groups coordination committees, the VMGCCs.

31. According to Management, one concern of this Elite Group is the change from “*indigenous peoples*” to “*vulnerable and marginalized groups*” (VGM) used in Project documents. The change was introduced to use terminology consistent with the new constitution of Kenya, Management maintains, but the use of this term does not diminish the benefits and protection available under OP 4.10 who still applies to the Project.
32. **Evictions.** Management indicates that it has viewed with concern the reports of evictions brought to its attention and responded with diligence. Though evictions were not caused by the Project nor the Project supported any evictions, when it became aware of these incidents Management carried out field verifications, and worked with Government and affected parties to prevent such occurrences and secured a commitment from the GoK to refrain from further evictions that are not consistent with Government’s obligations under safeguard instruments.<sup>21</sup>
33. Evictions from Embobut forest April/May 2009. When the Bank learned of the eviction of 450 families in April/May 2009 it requested information from KFS and received a letter from the community. Management notes that these evictions were not part of NRM activities and were the result of Government action in response to an ongoing dispute over water resources between communities living downstream from Embobut and those living in the forest. The GoK established an Embobut Task Force in June 2009 – not financed by the NRMP, Management notes – to help finding a solution for the evictees. The Task Force identified three categories of people living in Embobut: Sengwer and other groups, landslide victims from the 1960s and permit holders/associates. Those identified as eligible for resettlement were allowed to return to the forest (inside the areas known as glades) pending a final settlement but had to respect a number of restrictions inside the forest.
34. Burning of housing in Embobut July/August 2010. Management states that in September 2009 Sengwer representatives informed the Bank that Sengwer people’s houses and property in Embobut had been destroyed. KFS and affected people’s account of the situation were different but both confirmed the burning of the dwellings. This prompted the Bank to write to the GoK to request “*that the Government comply with social safeguard documents and refrain from carrying out or planning any evictions without following due process*” as “*non compliance could result in remedial action by the Bank*”<sup>22</sup>. Management also sent its own Fact Finding Mission, which found an unclear situation on the ground, but confirmed that the properties were inside the glades, rather than in the forest. KFS later indicated that these burning had been carried out by unauthorized individual KFS staff.

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<sup>21</sup> Management Response, ¶ 59.

<sup>22</sup> Management Response, ¶ 67.

35. In December 2010, under the proposal for the Project restructuring, Management stressed the need for a moratorium on eviction.<sup>23</sup> The Government confirmed in April 2011 that “*there would be no evictions until alternative settlement was found*” and some authorized persons, including Sengwer, could have access to the forest.<sup>24</sup> With respect to this incident, burning of houses, Management also notes that community members did not express interest in seeking compensation, rather in participating in livelihood activities under the VMGPs prepared under the NRM. They also expressed, according to Management, the willingness to be “*voluntarily and permanently resettled by the Government*”.<sup>25</sup>
36. Actions against alleged forest encroachers in Kapolet in 2009. The Response states that in 2008 Sengwer community members constructed houses and started farming activities in Kapolet forest, as they allegedly felt that “*this part of the forest should have been subdivided and given to them for settlement and for use without any restrictions.*”<sup>26</sup> KFS indicated to the Bank that evictions were carried out to prevent encroachment in Kapolet forest, which is a gazetted forest and thus neither living nor cultivating of crops in it is allowed. During the evictions, 41 members of the communities were arrested and a Sengwer woman was shot. Management states that it requested documentary evidence to verify these facts but the community could not provide any evidence, and Management was not able to meet the shot woman in spite of various attempts. According to Management, the matter is currently in court and the Kenyan judicial system is the appropriate forum for deciding such matters.
37. **Resettlement.** Management emphasizes that “*no resettlement has been planned or financed under the NRMP in Cherangany Hills or in any other forested areas in the Project area. As a consequence, NRMP has not supported the preparation of resettlement plans under the forest component, as erroneously asserted in the Request.*”<sup>27</sup>
38. According to Management Response, when the Requesters refers to resettlement responsibility of the NRM project in the Project area, they may be referring to plans of the Ministry of State for Special Programs (MSSP) to carry out resettlement in Cherangany Hills as part of the resettlement of Internally Displaced Peoples (IDPs). This resettlement, Management asserts, is not financed by the NRM nor does it involve the KFS. Management also indicates that Sengwer people living in Embobut, who have been living in very difficult circumstances for years, are waiting for an “*appropriate and consensual resettlement solution*”, but they understand that it is independent of the NRMP.<sup>28</sup>

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<sup>23</sup> Management Response, ¶ 69

<sup>24</sup> Management Response, ¶ 71.

<sup>25</sup> Management Response, ¶ 72.

<sup>26</sup> Management Response, ¶ 77.

<sup>27</sup> Management Response, ¶ 81.

<sup>28</sup> Management Response, ¶ 83.

39. Management acknowledges that the original Project design provided for the Project to have a direct role in planning and implementing resettlement of those who lived in the gazetted forests or had been subject of evictions but at the time of restructuring it recognized and indicated to the Board that this approach to resettlement was overly ambitious and not implementable under the Project.
40. Though the Project decided that it could not directly support the resettlement, Management chose to support an Inter-ministerial Task Force on Land and Legacy Issues, including indigenous groups as members, which would look at the land rights issues, and to support a Management-initiated dispute resolution approach.
41. **Grievance Redress.** The Response states that two approaches for grievance redress were adopted: a Project-level Grievance Redress Mechanism (GRM) established and managed by KFS and a Management-initiated broader dispute resolution approach parallel to KFS's GRM and managed by the Bank.
42. The Project-level GRM, described in the PF, has been active since May 2011. It is designed to address complaints quickly and at the lowest possible level. Management states that this GRM is based on ideas and opinions of affected people and was developed through consultations that involved 1500 Sengwer and Ogiek people. Its aim is to address claims related to the NRMP implementation.
43. The Management-initiated dispute resolution approach goes beyond the scope of the NRM, Management states. A "*trusted external mediator to support Project stakeholders in resolving disputes*"<sup>29</sup> was involved. This dispute resolution approach supported a Regional Consultation Workshop that took place in Nakuru in March 2012 with the aim of understanding key concerns of the indigenous communities and discuss opportunities to address long standing issues. The result of this workshop was a collective action plan being implemented by all stakeholder groups. Following the workshop, the mediator held a series of meetings in four communities.

#### **E. Panel Review of the Request and Management Response**

44. Chairperson Eimi Watanabe together with Executive Secretary Peter Lallas, and Senior Operations Officer Tatiana Tassoni visited Kenya on May 9-14, 2013. During its visit, the Panel team met with the Requesters and other affected community members in the Kapolet and Empoput forests. It also met with Government officials of the Ministry of Finance and of the National Treasury, Water and Natural Resources. Further, the Panel had two meetings with officials of the Kenya Forest Service. The first meeting in Eldoret, with local officers of the KFS involved in NRM activities. The second meeting took place in Nairobi where the Panel team met with the Director of KFS and the NRM National Coordinator.

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<sup>29</sup> Management Response, ¶ 46.

45. The Panel wishes to express its appreciation to all those mentioned above for sharing their views and exchanging information and insights with the Panel. The Panel also wishes to thank the Government of Kenya and the Kenya Forest Service for meeting with the Panel team. The Panel extends its thanks to the Requesters and other affected people who met with the Panel team, and to the present and former Country Directors and staff in the Country Office in Nairobi for meeting with the Panel team, discussing the issues and providing relevant information, and assisting with logistical arrangements.
46. The Panel's review is based on information presented in the Request, on the Management Response, on other documentary evidence, and on information gathered during the site visit, and meetings with Requesters and other affected people, and Bank Management. This review covers the Panel's determination of the technical eligibility of the Request, according to the criteria set forth in the 1999 Clarification (subsection 1), and observations on other factors supporting the Panel's recommendation (subsection 2).

### **1) Determination of Technical Eligibility**

47. The Panel is satisfied that the Request meets all six technical eligibility criteria provided for in paragraph 9 of the 1999 Clarifications.
48. The Panel notes that its confirmation of technical eligibility, which is a set of verifiable facts focusing to a large extent on the content of the Request as articulated by the Requesters, does not involve the Panel's assessment of the substance of the claims made in the Request.
49. Criterion (a): "*The affected party consists of any two or more persons with common interests or concerns and who are in the borrower's territory.*" The Panel confirms that the Requesters live in the borrower's territory and share interests that may be affected by Project activities. The Panel considers the requirement of paragraph 9(a) as met.
50. Criterion (b): "*The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester.*" The Request asserts that failure and omissions of the Bank in the implementation of the NRM have caused them harm. They claim that as a result of the Project activities the rights of the Sengwer people, hunter gatherers living in the Cherangany Hills have been violated. They allege that under the Project, dwellings and property of Sengwer people living in the Empoput forest, which according to the Sengwer is their ancestral home land, have been burned and destroyed. The Requesters add that in Kapolet forest KFS staff, Project implementer, evicted Sengwer people and arrested community members. The Requesters also claim that the change in terminology from indigenous peoples to vulnerable and marginalized groups is in violation of Bank policies and has caused them harm. The Requesters state that Project activities were carried out without free prior informed consultations of the affected indigenous peoples. The Panel is thus satisfied that the requirement of paragraph 9(b) is met.

51. Criterion (c): “*The request does assert that its subject matter has been brought to Management's attention and that, in the Requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures.*” The Requesters brought the issues they raise in the Request for Inspection to the prior attention of the Bank Management in a number of letters and meetings with members of the Project's Task Team over the course of a couple of years. The Requesters believe that the Bank's responses to their complaints do not address their issues adequately. The Panel is satisfied that this criterion has been met.
52. Criterion (d): “*The matter is not related to procurement.*” The Panel is satisfied that the claims with respect to harm and non-compliance included in the Request for Inspection do not raise issues of procurement under the Project and hence this criterion is met.
53. Criterion (e): “*The related loan has not been closed or substantially disbursed.*” At the time of receipt of the Request for Inspection, the loan was about 63% disbursed.
54. Criterion (f): “*The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request.*” The Panel confirms that it has not previously made a recommendation on the subject matter of the Request.

## **2) Observations on Other Factors Supporting the Panel's Recommendation**

55. In making its recommendation to the Board, the Panel also considers whether there is a plausible causal link between the Project and the harm alleged in the Request, and whether alleged harm and non-compliance may be potentially of a serious character. The Panel records its observations on these elements below, noting that the Panel can only make a definitive assessment of the Bank's compliance with its policies and procedures, and any adverse material effect this may have caused, through an investigation. The Panel also takes into account statements of any remedial actions provided by Management to address the matters raised in the Request.
56. The Panel fully appreciates the importance of this Project, which aims to address the critical issue of water scarcity in Kenya by conserving the country's five “*water towers*” – i.e. the mountain forests from where its main rivers originate. The Project is being implemented in the context of Kenya's exponential population growth, from just over 3 million in 1932 when forests were first gazetted by the then Colonial government, to just under 9 million at Independence in 1962, to the current 41 million, among the highest growth rates in the world. The Panel appreciates that this has put tremendous pressure on natural resources, including forests and critical water catchment areas.
57. The Panel also recognizes that this pressure has intensified the vulnerability of communities who have traditionally depended on the forests for their livelihood. Members of Sengwer communities described to the Panel how they have lost access to much of their ancestral lands, and they continue to face severe pressures not only on their

land but on their culture and identity as a people.<sup>30</sup> They also highlighted to the Panel their belief that the recognition of their customary rights should be seen as an important means to support the conservation objectives of the Project, as they traditionally as a people have helped to protect and take care of the forests on which they depend.

58. In this context, the Panel notes the challenging nature of the Project environment including inherent conflicts and tensions over land involving indigenous and local communities who are both poor and vulnerable. For its part, Management described this situation during Project preparation in the PAD, stating that “... *‘encroachment’ of certain forest areas and the process for reclaiming these areas has aggravated the already tense relationship between encroachers and the Government, and made enforcement challenging*”.<sup>31</sup>

59. The Request has to be understood in the context of these challenges, namely how the Project has addressed adverse impacts on forest dwellers in its efforts to strengthen the protection of forest catchment areas. Such impacts can be forced eviction and/or restrictions in access to forest resources. Of importance in this case, is the recognition at the outset of the Project that some of the forest dwellers – or ‘encroachers’ – are ‘indigenous people’ with customary rights to land and resources in Project areas, including Sengwer communities. In this context, the Request raises two key claims, namely that some Sengwer have been forcibly evicted in violation of Bank policy, and that there has been lack of recognition of Sengwer customary rights in execution of the Project. Set forth below are the Panel’s observations on these two core issues of potential harm and non-compliance, including whether there are plausible links between the Project and the alleged harm.

#### **i) The issue of evictions and resettlement**

60. The Requesters state that “... *discriminatory forest preservation policies led to forceful eviction and displacement of Sengwer families from the forest (Kapolet) and having the forest gazetted as government forest.*” During its eligibility visit, members of the Kapolet community elaborated on these claims. They claimed, in meeting with the Panel team, that during Project implementation surveyors came to their lands but failed properly to demarcate all the lands that rightfully belong to the community. Subsequently, they contended that 45 members of their community were arrested and charged with encroachment on land which the community believes should be recognized as theirs under the second phase of demarcation, which has not yet occurred.

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<sup>30</sup> The Project IPPF provides background information on the Sengwer. It states that they are former hunter-gatherers who live in certain Districts in and around the Cherangany Hills, and describes their history, livelihoods and current living conditions in the “*operational areas*” (i.e., the areas where the project will become active), including their increased dependence on farming and livestock rearing, but on a limited scale so that it provides incomes of only about one-third of other rural Kenyan households, and lack of political representation. See Indigenous Peoples Planning Framework for the Western Kenya Community Driven Development and Flood Mitigation Project and the Natural Resource Management Project (IPPF), Final Report December 2006, pp. 23-29.

<sup>31</sup> Project Appraisal Document (PAD) on a Proposed Credit in the amount of SDR 46.0 million (US\$ 68.5 million equivalent) to the Government of Kenya for a Natural Resource Management Project, February 26, 2007, p. 13.

61. Furthermore, the Requesters claim that in Empopot forest, Sengwer houses have been burned and property destroyed in several consecutive years during the implementation of the Project. According to the Requesters, over 500 houses were burnt, property was destroyed (food grains, house utensils, beddings, school books, etc.), and 41 members of the community were arrested. During its eligibility visit, the Panel team met Sengwer community members in Empopot forest who have been temporarily settled in seven glades within the forest area. The Panel met them at a gathering place in one of the forest glades. Community members described in detail to the Panel's team instances of forced evictions that the community has faced. They informed the team that the latest incident of burning of houses occurred in April 2013.<sup>32</sup> The Panel was told that community members currently living in the glades are awaiting resettlement into areas outside the Empopot Forest under a program of the Ministry of Special Programmes. The Request claims that "*KFS/NRM Project and Ministry of Special Programmes made plans to resettle Sengwer families living in Empopot Forest without carrying effective and efficient free prior and informed consultations*".
62. Management responds that it "*... has viewed with concern reports of evictions and recently proposed resettlement that have been brought to its attention during Project implementation, and has responded diligently to those reports*". This involved "*carrying out field verifications, notifying Government of its obligations under Project safeguard instruments, and working with both Government and affected parties to prevent recurrences, including securing a fresh commitment from the GoK to refrain from further evictions that are not consistent with those obligations.*"<sup>33</sup>
63. However, Management states that "*any harm that may have stemmed from these evictions was not caused by the Project, nor has the Project supported such evictions*". Management acknowledges that at the time of Project design, it was anticipated that NRMP would play a more direct role in the planning and implementation of resettlement of Project beneficiaries who resided in gazetted forests or had been subject to eviction, but emphasizes that "*no resettlement has been planned or financed under the NRMP in Cherangany Hills or in any other forested areas in the Project area.*"<sup>34</sup> As a consequence, Management states that NRMP has not supported the preparation of resettlement plans under the forest component, as erroneously asserted in the Request.
64. **Panel's review.** The Panel observes that the original Project documentation addressed impacts and risks that may result from Project activities, and possible mitigation measures. The Project's Environmental and Social Management Framework noted that the types of measures under the Project that could trigger the policy on Indigenous Peoples included "*changes in rights to access to forest areas on which indigenous peoples rely on, or resettlement of indigenous peoples residing in environmentally*

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<sup>32</sup> The Panel team was informed differently by the country office staff about this incident, that the people whose houses were burnt were not Sengwer.

<sup>33</sup> Management Response, ¶ 59.

<sup>34</sup> Management Response, ¶ 84.



*sensitive areas to another location*".<sup>35</sup> The original PAD indicated that to address difficulties due to "encroachment" of certain forest areas, "... the project will provide financial resources for compensation and/or resettlement, conflict mitigation approaches and assisting such households with alternative livelihoods." Taking note of earlier evictions, the PAD also stated that the Project took it upon itself "... to assist the Government to address the resettlement issues in the project's area of influence."<sup>36</sup>

65. The Panel further notes that Project documents presented for the Project Restructuring in 2011 also address the risk of evictions and the possibility of "relocation" of forest dwellers. The Project Paper noted that "[a]lthough the GoK has assured the Bank that no evictions and relocations will take place until applicable safeguards instruments satisfactory to the Bank (including a Vulnerable and Marginalized Groups Plan, Process Framework and where displacement is envisaged a Resettlement Action Plan), have been developed and disclosed, there is still the risk that evictions may occur".<sup>37</sup> The Integrated Safeguards Data sheet at Restructuring indicated that when relocation and displacement are to be undertaken, the RPF provides the guidelines for development of Resettlement Action Plans (RAPs).
66. The Panel also notes that one of the activities planned under the Project is "[r]ealigning and demarcating boundaries in selected gazetted forests".<sup>38</sup> This component was not changed when the Project was restructured. The Panel further notes that boundary demarcation activities will "include development of biophysical, social and legal criteria for determining what areas remain gazetted forests and which are degazetted".<sup>39</sup> The Panel considers that this determination may in turn have an impact on the rights of people living inside the demarcated boundaries or in other ways depend on the forests for their livelihood, including their customary rights. It may also raise the possibility of taking actions to resettle those living within the forest boundaries.
67. The Panel views positively that Management took a number of actions when they began to receive news of forcible evictions and burning of houses. For example, Management action led to the Government issuing a moratorium on evictions in Empoput until a permanent solution is found, and to an assurance that some authorized communities, including Sengwer people, can have access to the forest. In recognition of the increasing prominence of conflicts over access to and use of forest land, the Panel further notes Management's support to the Government Inter-ministerial Task Force on Land and Legacy Issues, to provide a more solid foundation for a resolution of these issues.

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<sup>35</sup> See Environmental and Social Management Framework for the Western Kenya Community-driven Development and Flood Mitigation Project, and the Natural Resources Management Project, Final Report, July 20, 2006, p. 32.

<sup>36</sup> PAD, 20.

<sup>37</sup> Project Paper, ¶ 36 (Risks). See also ¶ 31 where it states, in relation to the Project's environmental categorization, that in spite of the complexities in addressing issues related to the indigenous peoples, "and possibly, involuntary resettlement, a change in category is not considered warranted at this time".

<sup>38</sup> Financing Agreement, Schedule 1.

<sup>39</sup> PAD, p. 41.

68. Management states that incidents of burning of houses in Empoput in 2010 prompted the Bank to write to the GoK to request “*that the Government comply with social safeguard documents and refrain from carrying out or planning any evictions without following due process*” as “*non compliance could result in remedial action by the Bank*”.<sup>40</sup> The MoF responded by instructing the line ministries responsible for implementing the NRMP to comply with the requirements set forth in the Bank’s letter. This indicates that the manner in which resettlement of forest dwellers is carried out is a matter of policy compliance under the Project.
69. The Panel further notes that the Project has also provided support to the KFS to build their capacity, including sensitization training, and to advise them on carrying out their duties. This has included support for actions to address and resolve land use issues and possible encroachment within demarcated forest lands. During its field visit, the Panel heard from government authorities who confirmed their understanding that Bank safeguard policies applied to activities relating to the relocation of affected communities living within forest areas covered by the Project, including those in Kapolet and Empoput forests. The authorities also described an evolution in their approach to addressing the issues of relocation and land use rights during the years of the Project, reflecting on the importance of both the conservation objectives of the Project (especially in light of the serious issues of water scarcity) and the objectives of addressing the rights of the affected peoples and communities.
70. The Panel further heard conflicting accounts of what is happening in the field under the Project, including an incident concerning the burning of houses in April 2013. People the Panel met in Empoput expressed concern about continuing evictions and burnings of their homes. In Kapolet forest, the Panel has received conflicting information about the extent to which realigning and/or demarcating boundaries has occurred under the Project, and may have been a trigger for actions to move or resettle Sengwer people residing inside those boundaries. The Panel was also informed that land for resettlement of the Empoput communities has already been purchased. During its meeting in Empoput forest, however, community members did not seem to be aware of critical information and facts in relation to this process.
71. The Requesters state that they feel that the Bank failed to carry out its supervisory role. They are particularly concerned about actions that occurred during the initial years of project implementation, and state that even after Management intervened to seek a moratorium on evictions the communities have continued to experience pressures and interventions which Management has not followed up on. The Panel notes that, in addition to the question of adequacy of supervision, OP 4.10 requires the Project to take measures not only to mitigate, minimize or compensate for adverse effects, but also to avoid potentially adverse effects on the indigenous peoples communities. The Policy also requires broad community support before any relocation takes place.
72. In light of the above, the Panel considers there are plausible linkages between activities under the Project and the concerns of the people relating to eviction and resettlement.

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<sup>40</sup> Management Response, ¶ 67.

The Request raises serious issues as to whether Bank safeguard policies have been met in respect to these concerns, and whether any such non-compliance may result in material adverse effects for the affected people and communities.

**ii) The issue of customary rights**

73. The Requesters ask for the recognition, respect and protection of “*the rights of Sengwer forest indigenous peoples to live within their ancestral homes in Kapolet and Empopot Forests.*” They contend that actions taken during project implementation have failed to safeguard their customary rights in these forests, in non-compliance with Bank policy. They want the Project to ensure that Government recognizes the rights of the Sengwer to live in their ancestral home in Kapolet and Empopot forests.
74. The Requesters consider that the original IPPF prepared for the Project was an important document in helping to shape the Project in a way that would recognize and protect the customary rights and access to natural resources of the Sengwer people. The team heard from the Requesters and other community members that when they first learned of the NRM Project and the IPPF, they had great hope that the Project will help them in finding a resolution to this fundamental issue of land in the forest areas in which the NRM was set to begin its work.
75. Subsequently, according to the Requesters, the Project started going wrong, and did not adhere either to the IPPF or the safeguard policies which give them protection. In this context, the Requesters claim that it was improper under Bank policy to decide not to implement fully the IPPF when the Project was restructured. They believe that this has weakened their rights, and contend that this was done without prior consultation with the affected people, and without their broad community support, as required by OP 4.10 on Indigenous Peoples.
76. Management in its Response explains that, with the restructuring, Project outcomes were adjusted and that this included “*an acknowledgement that resolving the more comprehensive resolution of land issues was beyond the remit and time-horizon of the project and would need to be addressed as part of a the broader dialogue*”.<sup>41</sup> Furthermore, Management states that consultations in preparation of VMGPs in 2010 “*included explicit discussion and explanation of the fact that the Project would not be able to support the measures mentioned in the IPPF concerning the resolution of land rights*”.<sup>42</sup>
77. The Restructuring Paper mentions that “[w]hile the project will make targeted contributions to these issues through the preparation of relevant safeguards instruments, a more comprehensive resolution of land issues will need to be addressed as part of the overall GoK - Bank dialogue. However, the restructuring will support the GoK through the testing of tools and instruments which would help to strengthen its capacity towards

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<sup>41</sup> Management Response, ¶ 15.

<sup>42</sup> Management Response, ¶ 32.

*developing country systems to deal with these issues in the future*".<sup>43</sup> In addition, it is stated that the Project prepared a "Process Framework" to "*determine an approach for management of sustainable forest uses by VMGs in and around the Cherangany Hills and Mt. Elgon areas*".

78. **Panel's review.** The Panel notes that the issue of indigenous peoples' customary rights is a subject of Bank policy under OP 4.10. Paragraph 21 spells out requirements pertaining to situations such as protection of gazetted forest areas:

*"In many countries, the lands set aside as legally designated parks and protected areas may overlap with lands and territories that Indigenous Peoples traditionally owned, or customarily used or occupied. The Bank recognizes the significance of these rights of ownership, occupation, or usage, as well as the need for long-term sustainable management of critical ecosystems. Therefore, involuntary restrictions on Indigenous Peoples' access to legally designated parks and protected areas, in particular access to their sacred sites, should be avoided. In exceptional circumstances, where it is not feasible to avoid restricting access, the borrower prepares, with the free, prior, and informed consultation of the affected Indigenous Peoples' communities, a process framework in accordance with the provisions of OP 4.12. The process framework provides guidelines for preparation, during project implementation, of an individual parks and protected areas' management plan, and ensures that the Indigenous Peoples participate in the design, implementation, monitoring, and evaluation of the management plan, and share equitably in the benefits of the park's and protected areas. The management plan should give priority to collaborative arrangements that enable the Indigenous, as the custodians of the resources, to continue to use them in an ecologically sustainable manner."*

79. Accordingly, KFS developed a Process Framework for NRMP in Mount Elgon and Cherangany Hills in July 2011, further updated in February 2013. The objective of the Framework was to establish the process for the participation of Projected Affected Peoples in planning project components, determination of measures to achieve objectives, implementation and monitoring. The Framework also aimed to establish a grievance redress mechanism.

80. The Panel met with community members currently living in the Empoput forest. During the discussions, the people informed the Panel of their reluctance to leave the forest glades, as they consider the forest as their homes, where they were born, as had their forefathers; they depend on the forest for honey, medicinal herbs, firewood, as well as for ritual purposes; the forest is where the spirits of their ancestors reside. They also informed the Panel team that if they are resettled in smaller groups in other areas surrounded by the dominant groups, they fear that they will not be able to maintain their identity as Sengwer people. The community members informed the Panel that their first wish is to remain where they are, but with security over land tenure. Some also stated that if they had to be resettled, their preference is to remain together as a community and be settled in an area adjacent to the forest. Some community members informed the Panel

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<sup>43</sup> Project Paper, p. 4.

that they have not been consulted about co-management of the forest, but if KFS comes to discuss it with them, they can help with the preservation of the forest provided land is set aside where they can settle permanently.

81. Furthermore, the Requesters explained to the Panel team that the designation as Indigenous Peoples is important to them, as they wanted to be distinguished from other vulnerable and marginalized groups, some of whom may be more dominant groups living adjacent to them and may be claiming land in their territory. The Requesters feel that other communities should not benefit in the same way from the livelihood components, which, in their view, were designed for them. The Requesters claimed that a number of non-Sengwer were beneficiaries under the VMGP.<sup>44</sup> Further, according to the Requesters, being Indigenous Peoples in the Cherangany Hills means that this is their only home, whereas other, vulnerable and marginal peoples have homes elsewhere in Kenya. To them, the designation as Vulnerable and Marginalized Group critically severs their claim to their home territory and makes them indistinguishable from other groups.
82. The Requesters concerns about customary rights of indigenous peoples affected by the NRMP and the approach taken by the Project raise two issues of potential serious non-compliance with Bank policy, namely with respect to whether the Project has adequately taken into account such rights, and the adequacy of consultation.
83. **Consideration of customary rights.** The Panel fully appreciates the sensitivity of what constitutes Indigenous Peoples in Kenya. The Panel has also taken note of Management's statement that "*the use of the term "VMGP" does not in any way diminish the benefits and protections available under the policy to the people who meet the eligibility criteria accorded to IPs under OP 4.10*".<sup>45</sup> The Panel team was further informed that the term was arrived at after much discussion at the time of the adoption of the national Constitution, and that the term, Indigenous Peoples was difficult to explain in the national context, whereas people are comfortable with the term Vulnerable and Marginalized People.
84. During its meeting with Management, the Panel Team learnt that the country office has initiated a Country Social Analysis to interpret the interface between OP 4.10 and the Constitution with a view to providing guidance to Bank teams and GoK on the application of OP 4.10. While this is not a component of NRMP, the Panel takes positive note of Management's initiative in addressing this complex issue.
85. The Panel notes that Management was forthright in informing the Board in the Restructuring Paper of its view that, in retrospect, the Project could not find a comprehensive resolution to the land issues within the remit and time frame of NRMP. The Panel wishes to emphasize that it is not questioning the determination made at the time of restructuring that it would not be feasible to comprehensively resolve the longstanding claims to land of the Sengwer within the context of the Project.

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<sup>44</sup> During discussions in the country office, it was explained that this may be due to the significant numbers of inter-marriage that has occurred over the years between the Sengwers and surrounding dominant groups.

<sup>45</sup> Management Response, ¶ 36.

86. This notwithstanding, the Panel notes that it remains an important policy issue, for the Sengwer and the Bank, whether the Project has adequately paid attention to “*the customary rights of the Indigenous Peoples, both individual and collective, pertaining to lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihoods*”.<sup>46</sup> Whereas Bank policy recognizes that in some situations legal recognition of customary rights (e.g. through titling of land) may not be an available option under domestic law, it is expected that an assessment of customary rights would inform any alternative approach to addressing impacts on people who legitimately can claim such rights, for example in the context of the Vulnerable and Marginalized Groups Plans.<sup>47</sup>
87. The Panel notes that the Vulnerable and Marginalized Groups Plan (VMGP) for Marakwet (dated August 2011), covering the area where Sengwer communities still live in the forest, reports several concerns with respect to the issue of customary rights, raised during consultations. The Plan is presented as an approach to “*livelihoods enhancement support*” with the stated objective “*to mitigate any adverse effects that the implementation of the project may have on these VMGs. For example, access restriction to, and utilization of forest resources may adversely affect forest related livelihoods and income generating activities of the forest dependent VMGs and should therefore be mitigated.*”<sup>48</sup> The Panel notes the Requesters concern that the VMGP does not adequately address such impacts.
88. At the same time, the Panel team heard positive comments and appreciation regarding the benefits of the livelihood program implemented under the VMGP. This appreciation was to such an extent that these community members requested the Panel team to convey to Management and KFS that the Project should be extended beyond its closure date, and that identified beneficiaries should not be penalized because of the closure date for procurement delays that have occurred at the Project level.
89. **Consultation.** The Requesters and other community members cite several phases of the Project where, in their view, consultation has been inadequate. During the meetings with community members, the Panel team enquired about their experience with consultation. While some recalled being consulted during what appears to be the Social Assessment process, others stated that they have never been consulted. “They just come to burn our houses”.
90. The Management Response refers to various instances of consultation with the communities during the process of Social Assessment as well as during the preparation of the Process Framework and the Vulnerable and Marginalized Groups Plans. These are elaborated in detail in Annex 5 of the MR. In addition, Management also organized a

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<sup>46</sup> OP 4.10, Indigenous People, ¶ 16(a).

<sup>47</sup> ‘Customary rights’ to lands and resources are defined in Bank policy as “patterns of long-standing community land and resource usage in accordance with Indigenous Peoples’ customary laws, values, customs, and traditions, including seasonal or cyclical use, rather than formal legal title to land and resources issued by the State”.

<sup>48</sup> Final Report of the Marakwet VMGP. August 2011, p. 1.

Regional Consultation Workshop with broad participation that led to the formulation of a collective action plan.

91. Management Response also refers to the difficulty in consultation process due to the stated *“lack of clarity as to the nature of community representation, and uncertainty as to how communities as a whole view the status of a number of NGO leaders who claim to speak on their behalf”*. Management adds that *“[o]n numerous occasions, Project implementation was delayed as the Project team attempted to sort out the real will of the communities, by reviewing and assessing the comments of a diverse group of self-appointed community leaders holding inconsistent or contradictory positions”*.<sup>49</sup>
92. The Panel notes that OP 4.10 sets a high standard for consultation, requiring a process of free, prior and informed consultation with the affected Indigenous Peoples’ communities at each stage of the project (particularly at Project preparation) to fully identify their views and ascertain whether there is broad community support for the Project. It also appreciates Management’s comments on lack of clarity with regard to community representation, and the challenging nature of how to carry out effective and appropriate consultations in the present situation.
93. During its eligibility visit, the Requesters informed the Panel that there was no consultation during the restructuring process, which changed activities as well as the nomenclature. In addition, the Panel team made an effort to hear the views not only of the Requesters but also of the various individual community members who had gathered to meet them in both Kapolet and Empoput. The Panel has heard different and conflicting views on how such consultations should be conducted, and with whom, in light of the nature of representation within the affected communities. The Panel’s field visit also indicated that important questions remain as to whether Management has complied with the requirements of OP 4.10 to ensure that there is “broad community support” for the approach taken to avoid or mitigate adverse impacts on Sengwer communities with customary rights to land and resources inside the project area.
94. In light of the above, the Panel considers that the Requesters raise an important issue of whether the safeguards protection envisaged in Bank policy for indigenous people was adequately ensured, and in particular with respect to consideration of customary rights and the consultations on this issue. This remains an important issue also in a situation where resettlement of Sengwer communities from gazetted forest land is being considered.

## **G. Recommendation**

95. The Requesters and the Request meet the technical eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.
96. The Panel appreciates Management’s forthright approach taken during the restructuring process in recognizing the limitations of the Project in dealing with the comprehensive

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<sup>49</sup> Management Response, p. 10

resolution to land and legacy issues, as well as their intention of continuing their engagement on these issues through policy dialogue and through support to the Inter-ministerial task force. The Panel has noted positively that Management is also addressing the challenging issue of the interface between OP 4.10 and the Constitution through a Country Social Analysis. The Panel has also noted Management's responsiveness when reports of forced evictions and harassment began to emerge.

97. Nonetheless, the Panel notes that there are conflicting assertions and differing views on issues of harm and compliance with policies and procedures raised in the Request for Inspection, as evidenced by the various statements made in the Request, in the Management Response, and in the Panel's meetings with affected people and with Bank staff. These relate to whether the Project took adequate account of the safeguards protection envisaged in Bank policy for indigenous people, and in particular with respect to consideration of customary rights and the associated processes of consultation. The Panel also considers that there are plausible linkages between activities under the Project and the concerns of the people relating to eviction and resettlement, which raise serious issues as to whether Bank safeguard policies have been met, and whether any such non-compliance may have resulted in material adverse effects for the affected people and communities.
98. In order to ascertain compliance or lack thereof with Bank policies and procedures in the design, implementation, and restructuring of the Project, the Panel must conduct an appropriate review of all relevant facts and applicable policies and procedures. This can be done only in the course of an investigation.
99. In light of the observations noted above, the Panel recommends that an investigation be carried out on the issues raised by the Request that relate to allegations of harm and related non-compliance with World Bank operational policies and procedures under the Project with respect to a) the application of policies in relation to evictions and issues of resettlement of affected Sengwer people, and b) the consideration of customary rights of the affected Sengwer people, including consultations on this issue. The Panel's investigation will also report on any steps and actions taken by Management during the course of the investigation to address the issues of compliance and the concerns raised by the Requesters.



# **ANNEX I**



**The Executive Secretary,  
The Inspection Panel,  
World Bank,  
1818 H Street, NW,  
Washington, DC 20433, USA**

1. We, [REDACTED] live and represent others who live in the area known as **Kapolet Forest (Trans Nzoia County), Talau and Kaipos (West Pokot County), Empoput Forest (Elgeiyo Marakwet County) in Cherangany Hills Project Operation area for Natural Resources Management Project (NRMP) a World Bank funded project.** Our addresses are attached.
2. We have suffered harm and we likely to suffer further harm as a result of the World Bank's failures or omissions in the **Natural Resources Management Project (NRMP)** located in West Pokot, Trans Nzoia and Elgeiyo Marakwet Counties in Cherangany Hills, Rift Valley Province in Kenya.
3. Harm Suffered:-

- a) **Burning of Houses and Destruction Property of Sengwer ethnic minority forest Indigenous Peoples in Empoput Forest** - In 2007, 2008, 2009, 2010 and 2011 – Kenya Forest Service guards with support of administration police carried out forceful evictions of Sengwer Indigenous Peoples in Empoput forest. Over 500 houses were burnt, Property destroyed (food grains, house utensils, beddings, school books, etc). Further, the inhuman forceful violations led to cases of school drop outs; psychological torture; violations of spiritual and cultural believes, norms, taboos and values.

Empoput Forest (in Marakwet East District, Elgeyo Marakwet County) is part of ancestral homes of Sengwer an ethnic minority hunter-gatherer Indigenous Peoples. Colonialist found their ancestors their and even gave them permits to live in the forests.

- b) **Arrests of 41 members of Sengwer Indigenous Peoples and 4 local community members in Kapolet forest in 2009** - They were taken to police cells in Kitale Police Station and later appeared before Kitale Law Court were they were charged with an offence of illegal cultivation of forests without permit. It is important to note that Kapolet Forest is one of Sengwer ancestral homes that Sengwer families have been living since time immemorial till when Kenya became British Colonial Protectorate in 1895.

At first the British government recognized Sengwer families living in this forest by creating an administrative unit called Kipsirat location and having the late Kipsangas Kapelio as the Chief. Later on through discriminatory forest preservation policies led to forceful eviction and displacement of Sengwer families from the forest and having the forest gazetted as government forest.

**In 1997 the retired President of Kenya directed the provincial administration to settle members of Sengwer community on Kapolet forest – there are minutes from Provincial Commissioner and District Commissioner that supports the same. The government divided the settlement into two phases i.e. Phase I and II. 489 families were settled in phase I and no legal documents have been issued to date to support their settlement. Demarcation and Settlement of phase II was stopped up to now.**

**Further, in 2004 some hundreds of Sengwer families moved to settle in Kapolet forest i.e. Phase II. 97 members of the community were arrested and charged at Kapenguria law courts with intentions to encroach government forest. The case was later ruled in favour of Sengwer indigenous community.**

**It is important to note that the ruling of the case involving arrested community members is still pending at Kitale Law Courts since 2009. The arrested members, their families and entire Sengwer indigenous peoples have had their fundamental freedoms, human and indigenous rights violated. They have been subjected to torture, poverty, oppression and segregation as peoples within their ancestral lands and while an Indigenous Peoples Planning Framework for Natural Resources Management Project is still in force.**

**The Sengwer Indigenous Peoples have used hundreds of thousands in Kenya shillings to pay for legal fees, transport, meals and costs.**

- c) Shooting of a woman in Kapolet forest – in 2009 when the forest guards entered Kapolet forest to arrest members of Sengwer families they used live bullets. During the shootings, Mrs. Beatrice Chepkorir a Sengwer indigenous woman was shot from the back and left for death until good Samaritans took her to Kitale District hospital where she was admitted and received treatment.**
- d) The use of Vulnerable and Marginalized Groups instead of Indigenous Peoples – The decision by Kenya Forest Services and Kenya Government to use Vulnerable and Marginalized Groups with reference to Indigenous Peoples without carrying out a free prior and informed consultations with indigenous peoples is a violation of the rights of indigenous peoples as stipulated in the United Declaration on the Rights of Indigenous Peoples, African Charter on Human and Peoples Rights, World Bank Operational Policy 4.10 on Indigenous Peoples, IPPF for Natural Resources Management Project, Social Assessment Report for Natural Resources Management Project.**

**It is false for Kenya Forst Service to claim that the Kenya Constitution refers to Indigenous Peoples as Vulnerable and Marginalized Groups. The Kenyan constitution has got no definition of vulnerable groups or vulnerable and marginalized groups.**

- e) Threats and Intimidation – In Kapolet Fotest when Sengwer families objected to planting of trees, the then district commissioner of Trans Nzoia threatened the**

**Sengwer families that you rely on an IPPF which is just a mere Memorandum of Understanding. The DC said all these before Mr. Muchemi from the World Bank Office - Nairobi.**

**Further, when Sengwer leaders and elders pushed effective and efficient implementation of the letter and spirit of IPPF for Natural Resources Management Project - The World Bank Team Leader - said that we should be grateful to have NRMP in Cherangany Hills, because it was not supposed to be carried out Cherangany Hills. He further, said that it is the consultant who was hired to prepare an IPPF who covered Cherangany Hills. He concluded by saying that the NRMP is therefore in Cherangany Hills by default.**

- f) Resettlement Plans - The Kenya government through Kenya Forest Service/Natural Resources Management Project and Ministry Special Programmes made plans to resettle Sengwer families living in Empoput Forest without carrying effective and efficient free prior and informed consultations. There were plans to purchase land in Kipkapus and Rongai. Also at one point the community members were asked to look for land as individuals. The resettlement plans go against World Bank Operational Policy 4.12 on involuntary resettlement.**

4. World Bank's Operational Policies that we believe have not been observed are:-

- a) Operational Policy 4.10 - Indigenous Peoples Policy
- b) Operational Policy 4.12 - Involuntary Resettlement

We have complained to World Bank staff on the following occasions **see attached letters** by writing letters, we have had meetings with NRMP WB Team Leader and Country Director. We have not be satisfied by explannations given by the KFS, Kenya Government and World Bank Country Office. Further, we feel that World Bank officers failed to carry out their supervisory role instead they protected their client even when there was clear facts and indications that the rights of Sengwer indigenous peoples were being violeted.

**We recommend that -**

- a) Kenya Government through the Ministry of Forestry and Wildlife; Ministry of Lands recognizes, respects and protects the rights of Sengwer forest indigenous peoples to live within their ancestral homes in Kapolet and Empoput Forests as part of the ecosystem while carrying out livelihood activities that promote sustainable conservation and protection of natural resources.**
- b) Kenya Government reviews all discriminatory policies, acts and laws that are against recognition and promotion of the rights of forest indigenous peoples to live harmoniously within their ancestral homes in the forest.**
- c) Kenya Government through the Ministry of Forestry and Wildlife (Kenya Forest Service/Natural Resources Management Project) compensates Sengwer Indigenous Peoples families whose houses and property were burnt in Empoput**

**Forest since the Indigenous Peoples Planning Framework for Natural Resources Management Project was adopted by Kenya Government and World Bank in 2007.**

- d) Kenya Government through the Ministry of Forestry and Wildlife (Kenya Forest Service/Natural Resources Management Project) compensates members of Sengwer Indigenous Peoples who were arrested in Kapolet Forest and the case is still pending at Kitale Law Courts**
- e) Kenya Government through the Ministry of Forestry and Wildlife (Kenya Forest Service/Natural Resources Management Project) compensates the Sengwer woman who was shot by a forest guard in Kapolet forest in 2009.**
- f) Kenya Government recognizes and promotes the use of Indigenous Peoples as it did while preparing Indigenous Peoples Planning Framework and Social Assessment Report for Natural Resources Management Project and with respected to international human rights instruments e.g. United Nations Declaration on the Rights of Indigenous Peoples, African Charter on Human and Peoples Rights and ILO Convention No. 169.**
- g) Kenya Government transfers with immediate effect the current Zonal Manager for Trans Nzoia County Mr. Wahome for he has been the main person who directed the arrests of members of Sengwer community and shooting of a woman in Kapolet forest in 2009.**
- h) World Bank suspends any funding towards REDD + untill the said violations, injustices, concerns and fears are addressed**

We request the Inspection Panel recommend to the World Bank's Executive Directors that an investigation of these matters be carried out.

Signatures:

[Redacted signature block containing three sets of blacked-out text]

Keep our names and contacts as confidential

[REDACTED]

Date: 13.1.2013

Contact address, telephone number, fax number and email address:

[REDACTED]

**We do not** authorize you to disclose our identities. Please, keep our identities and contacts confidential.





# **ANNEX II**



**MANAGEMENT RESPONSE TO  
REQUEST FOR INSPECTION PANEL REVIEW OF THE  
KENYA: NATURAL RESOURCE MANAGEMENT PROJECT (P095050)**

Management has reviewed the Request for Inspection of the Kenya: Natural Resource Management Project (P095050), received by the Inspection Panel on January 14, 2013 and registered on January 30, 2013 (RQ13/02). Management has prepared the following response.

March 15, 2013



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### Map

Map 1. IBRD No. 39822 – Kenya Natural Resource Management Project

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## ABBREVIATIONS AND ACRONYMS

BP	Bank Procedures
CDD	Community Driven Development
CHEMUDEP	Cherangany Multipurpose Development Programme
DC	District Commissioner
FCPF	Forest Carbon Partnership Facility
FFM	Fact-finding Mission
GoK	Government of Kenya
GRM	Project-Level Grievance Redress Mechanism
IA	Implementing Agency
IDP	Internally Displaced Persons
IMTF	Inter-Ministerial Task Force
IP	Indigenous Peoples
IPO	Indigenous Peoples Organization
IPP	Indigenous Peoples Plan
IPPF	Indigenous Peoples Planning Framework
KFS	Kenya Forest Service
KWS	Kenya Wildlife Service
MoFW	Ministry of Forestry and Wildlife
MP	Member of Parliament
MSSP	Ministry of State for Special Programs
NGO	Nongovernmental Organization
NIB	National Irrigation Board
NRM	Natural Resource Management
NRMP	Natural Resource Management Project
OP	Operational Policy
PAD	Project Appraisal Document
PAP	Project Affected Person
PDO	Project Development Objective
PF	Process Framework
PS	Permanent Secretary
RAP	Resettlement Action Plan
REDD	Reducing Emissions from Deforestation and Forest Degradation
RPF	Resettlement Policy Framework
SA	Social Assessment
SIDP	Sengwer Indigenous Development Project
UN	United Nations
VMG	Vulnerable and Marginalized Groups
VMGCC	Vulnerable and Marginalized Groups Coordinating Committee
VMGP	Vulnerable and Marginalized Groups Plans
WaSSIP	Water Sector Sanitation Improvement Project
WRMA	Water Resources Management Authority

**Currency Unit**  
**(Exchange Rate as of March 15, 2013)**  
**1 US\$ = KSh 85**  
**1 KSh = 0.01 US\$**





## EXECUTIVE SUMMARY

### The Project

i. The Natural Resource Management Project (NRMP) was prepared to assist the Government of Kenya (GoK) to better manage water resources and forests, through strengthening of the information base, enhancing the legal and regulatory framework, financing investments in capital works, and, most importantly, engaging communities as partners in co-management of water and forest resources. In doing so, two critical watersheds of the Tana and the Nzoia Rivers were selected, with investments planned in the upper catchment of the Tana River and two watersheds of the Nzoia River catchment, the Kakamega Forest and Mt. Elgon.

ii. The NRMP was approved by the Bank's Board of Executive Directors in March 2007 and became effective on December 10, 2007, due to delays in the elaboration of subsidiary credit agreements between the Ministry of Finance (MoF) and the Implementing Agencies (IAs). Once it became effective, it was almost immediately affected by the turmoil that followed the disputed December 27, 2007 general election, which caused implementation delays until April 2008. The Project is currently under implementation and will be closing on June 30, 2013.

iii. **Project Objectives.** The original Project Development Objectives (PDO) were "to enhance the Recipient's institutional capacity to manage water and forest resources, reduce the incidence and severity of water shocks, such as drought, floods and water shortage in river catchments and improve the livelihoods of communities in the co-management of water and forest resources." Through the 2011 restructuring the PDO was changed to "to improve the management of water and forest resources in selected districts."

iv. **Project Components.** The NRMP has four components: (i) Water Resource Management and Irrigation (US\$38.1m); (ii) Management of Forest Resources (US\$21.1m); (iii) Livelihood Investments in the Upper Tana Catchment (US\$4.5m); and (iv) Management and Monitoring and Evaluation (US\$4.8m). The first two components support the legal and institutional reforms in the water and forest sectors, including support to enabling community participation and benefit sharing in Project forest areas. The third component focuses specifically on assistance to Upper Tana Catchment communities participating in the management of water and forest resources. The activities under Component 2 are the subject of this Request for Inspection.

v. **Project Restructuring.** The Project was restructured in 2011 to introduce changes in Component 2, where three enhancements to the existing activities were proposed: (i) to assist the Government in implementing a livelihood and rural development program, focusing on Indigenous Peoples (IPs) and other forest communities; (ii) technical assistance, as originally planned under the Project for formulation of a strategy to improve forest management, to cover integration of guidelines for vulnerable and marginalized communities; and (iii) to strengthen community forest associations and other local groups. In this context, together with the other components dealing with water resources management and irrigation, the restructured Project improved the overall impact on the country's participatory approach to sustainable development and poverty reduction programs. The restructuring also sought to address unrealistic aspirations in Project documents concerning the resolution of long-standing land issues, as will be described in more detail below.

## ***The Request***

vi. The Request for Inspection was submitted by individuals from Sengwer communities in the Cherangany Hills in the western highlands of Kenya (hereafter referred to as the “Requesters”). The Requesters have asked for confidentiality.

vii. The Request raises a broad array of concerns regarding indigenous groups’ land rights and tenure, including historical, unresolved land issues. Specifically the Request refers to a number of incidents between 2007 and 2011, which the Request claims involved evictions of community members from forest areas, alleged arrests of community members by the authorities, and alleged wounding of a community member by the authorities. The Request asserts that the Government should compensate them for these incidents. The Request also raises broader issues related to resettlement of forest communities, including allegations that the Government is currently planning to undertake resettlement without complying with safeguard requirements. The Request further puts forth a number of demands that are addressed to the GoK, and asserts that various incidents and actions of the GoK are not in compliance with the Indigenous Peoples’ Planning Framework (IPPF) prepared for the Project, and that the Bank’s supervision was insufficient. Finally, the Requesters contend that the use by the GoK of the term “vulnerable and marginalized groups” in the context of the Project instead of the term “Indigenous Peoples” was improper and was adopted without their consent.

## ***Management Response***

viii. Management notes that the Project environment of the NRMP has been challenging from the outset, and is characterized by tension over historic land issues, longstanding grievances of indigenous communities, and unresolved conflicts between those communities and the Kenya Forest Service (KFS). There have been additional challenges to the implementation of the Project, such as the widespread ethnic violence that took place in Kenya following the elections in 2007, including a significant influx into forest areas of people displaced by that violence and the security related mobility restrictions for Bank staff until mid-2008. As noted above, Management considers that the original project design was overly ambitious in several respects, including aspirations in safeguard instruments concerning the resolution of long-standing land and forest conflicts that were not realistic given the scope and time-frame of the project. This has contributed to occasional difficulties in maintaining a clear distinction between project activities and activities outside the project, and has at times blurred the line defining the appropriate boundaries of project safeguard obligations. Management has erred on the side of caution, reacting promptly to complaints as they have come to its attention, and strongly advising Government to implement solutions consistent with project safeguard frameworks.

ix. ***A number of the complaints raised in the Request are aimed towards the GoK and pertain to issues that go beyond the Project, such as historic land issues and longstanding grievances of indigenous communities.*** This includes two alleged eviction incidents (in 2007 and 2008) that occurred before the Project was operational. At the same time, Management recognizes, as explained in the Restructuring Paper, that the original Project documentation, most notably the IPPF, may have raised unrealistic expectations about the Project’s mandate and capacity to address such longstanding and systemic issues. In Management’s view these expectations may have contributed to the Request for Inspection.

x. ***Management has viewed with concern the reports of evictions, arrests and (in one case) an alleged shooting and wounding of a community member that have been brought to its attention during Project implementation. It has responded actively and constructively to those reports. Management notes that any harm that may have stemmed from these incidents was not caused by the Project, nor has the Project supported actions that led to these events.*** Nevertheless, Management acted swiftly when it became aware of the cited incidents, carrying out field verifications, notifying the Government of its obligations under Project safeguard instruments, and working with both the Government and affected parties to prevent recurrences, including securing a fresh commitment from the GoK to refrain from further evictions that are not consistent with those obligations.

xi. ***Management has used both the Project as well as its broader dialogue with the Government to help address allegations of harm and to facilitate better communication and collaboration between the GoK and participating communities.*** This approach has helped to resolve some grievances and prevent others, although Management is cognizant of the fact that not all issues have yet been resolved. In this connection, Management notes that while the Requesters assert that the GoK has failed to compensate people harmed as a result of these incidents, Management to date is not aware of persons having identified themselves through the Project or to the Bank to request compensation for their individual losses. With respect to reports of arrests and of the alleged shooting and wounding, Management understands that matters concerning several of the incidents are pending in Kenyan courts, and considers that the judicial process is the appropriate forum for resolution of these matters.

xii. ***Management emphasizes that no resettlement has been planned or financed under the NRMP in Cherangany Hills or in any other forested area in the Project area.*** Because no resettlement has been undertaken during implementation of NRMP, the Project did not support the preparation of resettlement plans under the forest component (as the Requesters erroneously assert). In raising concerns about anticipated resettlement in the Project areas, Management believes the Requesters may be referring to recently announced plans of the Ministry of State for Special Programs (MSSP, under the Office of the President) to carry out resettlement in the Cherangany Hills. This resettlement is planned for Internally Displaced Persons (IDPs), which includes post-election violence victims, the land slide victims from the 1960s, and forest evictees (including Embobut residents in seven glades). This initiative is independent of the NRMP.

xiii. ***Management understands that the Sengwer people in the glades in Embobut have, for many years, repeatedly requested that the GoK organize resettlement and have stated that this is their most immediate priority.*** Under NRMP, preparation of various safeguard instruments, as well as many field missions, has affirmed the very difficult circumstances that the Sengwer forest dwellers in Embobut have been facing from the distant past to the present, and their desire for an appropriate and consensual resettlement solution. With respect to the MSSP-proposed resettlement initiative, the Bank has ascertained through discussions held during February 2013 in the field that Sengwer community members currently residing inside the Embobut Forest: (i) are aware of and strongly support this initiative; and (ii) understand that it is independent of the NRMP. Management has advised the GoK that any such resettlement should be conducted in a manner that is consistent with due process and international best practice, as reflected in the safeguard instruments adopted under NRMP.

xiv. ***The Request further complains that the Bank introduced into Project documents the term “Vulnerable and Marginalized Groups” instead of “Indigenous Peoples.”*** Management would like to clarify that this change was made at the request of the GoK, in order to be consistent with terminology used in the new Kenyan constitution, and that it does not in any way diminish the benefits and protections available under the policy to the people who meet the eligibility criteria accorded to Indigenous Peoples under OP 4.10.

xv. ***The Project also encountered challenges related to a lack of clarity as to standing within communities of various individuals and groups who purported to speak on their behalf.*** While two leading, yet competing, Sengwer Indigenous Peoples Organizations (IPOs) in Cherangany Hills were identified at the outset of the Project, subsequent Project consultations have suggested that neither of them was well known among the communities nor did the communities consider them as their representatives even though the IPOs on numerous occasions had written letters, allegedly on the communities’ behalf. Some communities (e.g., in Embobut) affirmed that they did not have any social or cultural organizations that spoke on their behalf. On numerous occasions, Project implementation was delayed as the Project team attempted to sort out the real will of the communities, by reviewing and assessing the comments of a diverse group of self-appointed community leaders holding inconsistent or contradictory positions.

xvi. ***In Management’s view Project supervision has been strong and entailed prompt and appropriate responses to the incidents of which it became aware.*** Due to the complexity of the Project and the context within which it has been implemented, supervision has been exceptionally intensive, with frequent missions and field visits (every 10 weeks), as well as regular outreach to communities.

## **Conclusion**

xvii. ***Overall Management believes that despite the difficult circumstances facing Project implementation, the Project has provided many benefits to the communities, including popular livelihood enhancements selected by the communities themselves.*** Communities noted several benefits from the NRMP including capacity building of local community organizations in governance and group dynamics, leadership, management, technical skills and livelihood assets such as cattle and poultry raising and coffee and fruit growing. Through these activities and other processes, the NRMP has strengthened the collective voice of communities and allowed them to be proactively involved in Project implementation.

xviii. ***Management has carefully reviewed the issues raised by the Requesters and does not agree with the allegations that non-compliance with Bank policy has caused the harm alleged in the Request.*** The extremely difficult sector context presents many operational challenges to all concerned. In spite of this difficult operating environment, which includes complex and sensitive legacy issues, Management believes that the Bank has complied with the policies and procedures applicable to the matters raised in the Request. Management concludes that the Requesters’ rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures. On the contrary, it is Management’s view that the Bank was able to help address the issues in question and work with stakeholders, including the GoK, to support a solution to such issues.

xix. *While the Project has not caused, contributed to or aggravated the harm alleged in the Request, the NRMP and the Bank have assumed an important but more limited engagement to help resolve these issues.* Some concrete achievements include:

- *Securing a Government moratorium on evictions in the Embobut Forest, which has allowed the Sengwer to reside in the glades in the Embobut Forest, and enabled them to benefit from the livelihood enhancement activities of NRMP while awaiting Government resettlement.*
- *Supporting the implementation of livelihood sub-projects (Vulnerable and Marginalized Group Plans – VMGPs) through an informed and consultative process, which have enabled over 2,901 Indigenous People to access alternative incomes and direct livelihoods benefits from the NRMP.*
- *Supporting the Government Inter-ministerial Task Force on Land and Legacy Issues, composed of indigenous groups and government agencies. At its first meeting in November 2012, the Task Force agreed on a draft work plan that will be validated among a final, larger group, including many Government agencies and Indigenous Peoples community representatives. Vulnerable and Marginalized Group Coordinating Committees (VMGCCs) participating in NRMP were asked by the KFS in 2012, and again in 2013, to nominate representatives to the Task Force; the Sengwer Committee nominated one community member in February 2013.*
- *Supporting the preparation of a Process Framework (PF) that aims to help communities around the forests address issues related to land use and access.*
- *Deploying a Management-initiated dispute resolution approach and a Project-level grievance redress mechanism.*

xx. In March 2012 Management initiated an innovative dispute resolution approach to support resolution of community concerns relating to the NRMP. This was an early example of utilizing the new grievance redress capacity that the Board had approved for Management to develop in response to the 2010 IEG safeguards evaluation. An independent regional mediator was engaged to support KFS and community groups through a collaborative problem solving process. The intention was to build sustained capacity for the local Project-level grievance mechanism (GRM) and also facilitate dispute resolution on specific, potentially broader issues important to the indigenous communities participating in the Project. The action plans and agreements identified through this process were affirmed through participatory community meetings. These action plans have been accepted by KFS and are being implemented. The specific actions include delivery of Project benefits, co-management opportunities, initiatives to address land issues, and a commitment by both KFS and communities to strengthen existing local grievance redress procedures. Management believes that continued support for fair and effective grievance redress for communities on the ground is essential to sustain the important development benefits that have begun to emerge from Project activities.



## I. INTRODUCTION

1. On January 30, 2013, the Inspection Panel registered a Request for Inspection, IPN Request RQ 13/02 (hereafter referred to as “the Request”), concerning the Kenya: Natural Resource Management Project (P095050) financed by the International Development Association (the Bank).
2. ***Structure of the Text.*** The document contains the following sections: following this introduction, section II provides background information on the project, section III discusses special issues, section IV describes the Request, and section V presents Management’s response. Annex 1 presents the Requesters’ claims, together with Management’s detailed responses, in table format. Six other annexes provide additional background information.

## II. PROJECT BACKGROUND

### The Project Context

3. ***Kenya’s endowment of water, forests, and minerals serves as the foundation for much of the country’s economic activity, but is vulnerable to shocks such as floods and drought, mismanagement, and depletion.*** Kenya is one of the most degraded countries in the region, with only 12 percent of its total land area classified as having medium to high potential for agriculture and livestock production. The growing population and the resulting increase in demand for land, energy and water is putting tremendous pressure on the natural resource base. In 2002, the Government promulgated a Water Act (No. 8 of 2002) that provides for establishment of a new institutional framework for the management and development of water resources, chiefly through the national Water Resources Management Authority (WRMA). Recognition of acute problems in forestry also led the Government to prepare a Forest Policy and a Forest Act, which received parliamentary approval in 2005.
4. ***Water Resources Management.*** Kenya has a limited endowment of just 650 m<sup>3</sup> per capita per year of freshwater, which puts it in the “water-scarce” category. Annual rainfall is highly variable. The major rivers originate from five specific mountainous areas, and the management of these few “water towers” has consequences throughout the country. Over half of Kenya’s water resources are shared with its neighbors and need to be managed cooperatively. Key watershed management issues include: (i) watershed degradation as a result of deforestation and poor land use practices; (ii) lack of storage capacity; and (iii) poor management frameworks, although recent policy reforms have begun to address this. The Water Act of 2002 provided a basis for implementing water sector reforms. The WRMA was designated as the key institution to address: (i) institutional coordination, (ii) decentralization and local accountability, and (iii) the sustainable financing of WRM.
5. With only 90,000 hectares (ha) benefiting from irrigation (or about 1.2 percent of total cropped land), and close to 26 million ha depending on highly unpredictable rainfall, climate variability has a significant impact on the vulnerability of both smallholder farmers and the national economy. The National Irrigation Board (NIB) is a semi-autonomous body responsible for man-

aging national irrigation schemes. Conflicts between farmers and NIB over irrigation schemes in the last two decades led to a lack of infrastructure maintenance and unplanned development, including illegal water abstraction. Institutional reform targeting the irrigation sector has since improved management and accountability.

6. ***Forest Resource Management.*** Depletion and unsustainable use has reduced Kenya's forests from about 10 percent of its land area at independence in 1963 to an estimated 1.7 percent (or 1.24 million ha) today. Forest ecosystems are reservoirs of biological diversity, comprising four categories, including state indigenous forests, state plantation forests, farm forests, and forest and woodlands on local authority land, including dryland forests. Forests provide a wide range of economic, environmental and social goods and services such as raw materials for the wood-based industries, employment, soil stabilization, carbon sinks and water catchments that protect the rate of flow and quality of water discharged by the rivers draining these catchments. The indigenous forests have endemic and threatened species. Dryland forests and farm trees provide important livelihood strategies for many of Kenya's poor people including wood fuel, charcoal burning for income and use of wood products for building. It is estimated that in Kenya, forests provide wood and wood products to over 80 percent of all households.

7. Plantation forests were established to help create a viable, dynamic and diversified forest industry with attendant impacts on income and employment, while at the same time reducing dependence on indigenous forests for raw material supplies. Recognizing that indigenous forests play a critical role in Kenya's society and culture, they were managed to conserve water supplies, to reduce soil erosion and (to a lesser extent) to produce timber raw material. However, weak capacity in forest institutions combined with political interference, inadequate business environment, tight budgetary allocations and corrupt practices have resulted in poor plantation management, abuse in the disposal of forest land and produce as well as preferential licensing, which contributed to decline in supply of timber and other products. In addition, the steady growth of Kenya's rural population continues to place ever greater strains on forest land, which is often considered the only remaining "land reserve" in the country.

8. The main goals for the reform of the forest sector undertaken in the mid-2000s were to raise efficiency, ensure protection and sustainable forest use, and promote poverty reduction. Strengthening forest governance is critical for the success of these efforts. The 2005 Forest Act embraced participatory forest management, whereby community forest associations (CFAs) would be recognized as partners in management. It promoted private sector participation to enhance the competitiveness of the sector.

## **The Project**

9. It was in this context that the Natural Resource Management Project (NRMP) was prepared, to assist the Government of Kenya (GoK) to better manage water resources and forests, through strengthening of the information base, enhancing the legal and regulatory framework, financing investments in capital works, and, most importantly, engaging communities as partners in co-management of water and forest resources. In doing so, two critical watersheds of the Tana and the Nzoia Rivers were selected, with investments planned in the upper catchment of the Tana River and two watersheds of the Nzoia River catchment, the Kakamega Forest and Mt. Elgon.



10. The NRMP, a Specific Investment Loan, was approved by the Board of Directors in March 2007 and became effective on December 10, 2007, due to delays in the elaboration of subsidiary credit agreements between the Ministry of Finance (MoF) and the Implementation Agencies (IAs). Once it became effective, it was almost immediately affected by the turmoil that followed the disputed December 27, 2007 general election, which caused implementation delays until April 2008.

11. **Project Objectives.** The original Project Development Objectives (PDO) were “to enhance the Recipient’s institutional capacity to manage water and forest resources, reduce the incidence and severity of water shocks, such as drought, floods and water shortage in river catchments and improve the livelihoods of communities in the co-management of water and forest resources.”

12. **Project Components.** The Project comprised four components:

- *Component 1 – Water Resources Management and Irrigation (US\$38.1 million).* This Component: (i) strengthened the capacity of the WRMA, with direct investments in the Upper Tana Catchment; and (ii) contributed sustainable irrigation development through the consolidation of reforms of the NIB (National Irrigation Board) and development of irrigation in the downstream part of the Nzoia river basin.
- *Component 2 – Management of Forest Resources (US\$21.1 million).* With the passage of the Forest Act, Kenya sought to move from exclusive government conservation and management of forest resources to joint management by local communities and the private sector, in order to improve forest governance and participation and investment by stakeholders. To operationalize the Act, the Ministry of Forestry and Wildlife (MoFW) and the Kenya Forest Service (KFS) foresaw a Forest Management Component that would provide assistance in creating a transparent and accountable regulatory and institutional framework, and targeted support to implement the Act. Sub-components focused on (i) the operationalization of institutional reforms, including activities enabling institutional arrangements to enhance forest governance and improve revenue capture, improving the information base for improved development and management of forest plantations and better protection and management of indigenous forests. Investments would be made in training and sensitization, equipment and other infrastructure at different levels with emphasis on the district level to facilitate technical and cultural change required for an effective and accountable KFS; (ii) enabling community participation and benefit sharing, identifying and prioritizing an array of partnership models to implement the legislative framework and improve benefit sharing; and (iii) strengthening of institutional support services for the creation of an enabling environment for community and private sector involvement in development and management of production forests.

As originally designed, financing was to be provided under this component to formulate and implement a coherent and transparent framework to mitigate current and future conflicts over land, customary rights and rights of Indigenous Peoples (IPs), consistent with existing Kenyan laws and the Land Policy that was then under consultation. The Project would also provide financial resources for compensation

and/or resettlement, conflict mitigation approaches and assisting such households with alternative livelihoods.<sup>1</sup> As it was subsequently determined that these planned activities were overly ambitious, given the deeply entrenched nature of the underlying issues and the limited mandate of the Project's implementing agency, these aspects of Component 2 were significantly scaled back in the 2011 restructuring described below.

- *Component 3 – Livelihood Investments in the Upper Tana Catchment (US\$4.5 million).* Financing was provided for Livelihood-based Multisectoral Management Investments in the Upper Tana Catchment in Central Kenya, using a Community Driven Development (CDD) approach, where proposals were sought from communities to fund livelihood enhancing microprojects which support the natural resource base. Management was decentralized, with a Secretariat based in the WRMA offices in Embu, and a steering committee of key ministry and civil society organizations involved in natural resources management (NRM) to vet the proposed projects. Implementation of microprojects would be carried out using district-based delivery mechanisms. Technical assistance was provided through WRMA, NIB and KFS staff on the ground to ensure a coordinated approach as well as sustainability of the microprojects.
- *Component 4 – Management and Monitoring and Evaluation (US\$ 4.3 million).* The Project was managed through two line ministries, Water and Irrigation, and Forestry and Wildlife, and the respective implementation agencies (WRMA, NIB, KFS), supported by a coordination office (staffed with a project assistant, procurement, financial management and monitoring and evaluation expertise, hosted within the Ministry of Water and Irrigation).

13. ***Project Restructuring.*** The Project was restructured in 2011 to introduce changes in Component 2. This was done to address unrealistic aspirations in Project documents as will be described later in more detail. It also introduced three enhancements to the existing activities as set out below:

- *First*, to assist the Government in implementing a livelihood and rural development program, focusing on IPs and other forest communities through the community led development of Project financed Vulnerable and Marginalized Group Plans (VMGPs).
- *Second*, technical assistance, as originally planned under the Project for formulation of a strategy to improve forest management, to cover integration of guidelines for vulnerable and marginalized communities.

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<sup>1</sup> The component also included a review of all relevant land related policies and laws to identify areas in need of harmonization with respect to resettlement as part of the development of a National Resettlement Policy. However, given that the GoK developed *Draft Evictions and Resettlement Guidelines* in 2009 and has been reviewing all laws and legislation to ensure consistency with the 2010 Constitution, this activity was dropped upon GoK request as part of the 2011 restructuring of the Project.

- *Third*, to strengthen the decentralized structure of community forest associations and other local groups. In this context, together with the other components dealing with water resources management and irrigation, the restructured Project improved the overall impact on the country's participatory approach to sustainable development and poverty reduction programs.

14. In June 2011 the restructured Project was approved by the Bank's Board of Executive Directors to introduce the following changes: (i) a revision and simplification of the PDO ("to improve the management of water and forest resources in selected districts");<sup>2</sup> (ii) a revision of the results framework, including changes to outcome indicators; (iii) a reallocation of about 21 percent of credit proceeds; (iv) an increase in the disbursement percentages by category, in line with the new Bank rules that allow up to 100 percent Bank financing for Project activities; and (v) the elimination of two outdated covenants. The reallocation of Project funds among existing categories was necessary to cover cost overruns on some components, in particular, in Component 2 (Management of Forest Resources), where implementation progress was affected as further detailed below.

15. The restructuring aimed to adjust Project outcomes so that they were: (i) within the control of and could be delivered by the implementing agency; and (ii) could be achieved during the life of the Project. This included: (i) an acknowledgment that resolving the more comprehensive resolution of land issues was beyond the remit and time-horizon of the Project and would need to be addressed as part of the broader dialogue; (ii) an understanding that the Project did not propose to address all vulnerability issues associated with IPs' land and forest resource access issues; and (iii) advancing the Indigenous Peoples Planning Framework (IPPF) into concrete Indigenous Peoples Plans (IPPs) for communities in Project areas, focusing on livelihoods and CDD-type activities so that communities could receive tangible benefits. The Project restructuring adjusted expected outcomes to take better into account the shifts in the Government's forest policies, including: (i) recalibration from a focus solely on forest protection to more joint forest and community management initiatives, as part of Government decentralization programs; and (ii) twinning forest control measures with rural development schemes, including support to community-driven livelihoods and social services in adjacent communities, while allowing sustainable access to forest resources. The community driven livelihood activities include cattle and poultry raising and coffee and fruit growing.

16. The restructuring also placed particular focus on updating the safeguard instruments and improving their implementation to respond to the needs of IPs in Project areas. An expressed concern of communities around the forests relates to land use and access issues. The Project has therefore provided targeted contributions to these issues through the preparation of an updated Process Framework (PF) and its implementation under the World Bank's Operational Policy (OP) 4.12 (Involuntary Resettlement), as well as the preparation of VMGPs, which is the Government-preferred nomenclature for the IPPs that are required under OP 4.10 (Indigenous Peo-

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<sup>2</sup> The Project intervention areas include the following districts: Kiambu, Thika, Murang'a, Nyeri, Kirinyaga, Laikipia, Nyandarua, Mbeere, Machakos, Mt. Elgon, West Pokot, Kakamega, Vihiga, Butere Mumias, Lugari, Bungoma, Busia, Uasin Gishu, Trans Nzoia, Keiyo, Nandi North, Nandi South, Marakwet, Ugunja, Siaya, Bunyala, Kirinyaga East, Mwea East and Mwea West.

ples). Investments to provide livelihood benefits to currently marginalized and vulnerable communities have been under implementation since mid-2012. The restructured Project also supported capacity-building for KFS to better address conflicts over access to forest resources through participatory approaches.

17. ***Project Status.*** Due to initial delays in procurement and financial management, and overall slow implementation progress, the Project was rated Moderately Unsatisfactory (MU) for the first few years of implementation. While Project performance gradually improved following the March 2010 MTR, in particular under the technical components, given the issues related to the implementation of the safeguard instruments, overall Project implementation progress has been rated Moderately Satisfactory (MS) since May 2011 and was again rated MS in the latest ISR, dated November 2012.

### III. SPECIAL ISSUES

#### Land Issues in Kenya

18. ***The Project was designed and has been implemented against the backdrop of a long history of conflict and confusion over land and access rights in Kenya's forests.*** In the case of the Cherangany Hills, the Social Assessment prepared for the NRMP indicates that forest areas have for many generations been inhabited by various Sengwer communities. The Sengwer, who traditionally have relied on hunting and gathering in the forest for their livelihoods, have long asserted an ancestral right to live in and use the forest without restrictions. Successive governments – both colonial and independent – by contrast, have prioritized the protection of forests through gazetting and state control, an approach which has consequently conflicted with the Sengwer's lifestyle and assertion of rights.

19. ***The result of these conflicting claims to the forest has been a complex history of tension and lack of trust between government forest institutions (now the KFS) and Sengwer living in or near the forests, which has heightened in recent decades as pressures on Kenya's forests and water resources have intensified.*** According to the Social Assessment (SA), there have been repeated evictions since the 1980s – of different scales and involving various segments of the Sengwer community, with the pace of evictions accelerating since 2000. The Embobut Task Force Report, for example, confirms that there have been a total of 21 eviction incidents in the Embobut forests over the last three decades. Some of the more recent eviction incidents are alluded to in the Request and are discussed in some detail below.

20. ***There has also been during this period an emerging recognition by both Government and the Sengwer that a permanent solution to this problem will require the resettlement of forest-dwelling Sengwer to suitable land outside the gazetted forest.*** In the absence of alternative land, the recurring pattern of evictions followed by re-entry in the forest is likely to continue. It is recognized that such resettlement needs to be accompanied by the provision of clearly demarcated and secure legal rights to land, and agreement on rules concerning access to the forest that balance the needs of conservation and traditional livelihoods. The SA documents several efforts by the Government to identify and provide alternative land over the last decade. In some cases this has led to actual relocation of some households to the identified locations, and some of these

households have received title to land. For the most part, however, attempts to find solutions through resettlement have not gotten off the ground or have stalled during implementation. The situation has been further complicated by the influx of an increasing number of non-indigenous groups, including Internally Displaced Persons (IDPs) after the 2007 elections, which has added a frequently tense inter-community dynamic to an already complex land and forest situation.

21. ***In recent years, Kenya's policy and legal framework has become more conducive to the possibility of working out a solution to problems such as those involving the Sengwer of the Cherangany Hills.*** As described above, a new Forest Act was adopted in 2005, which while not conferring land rights on forest-dwelling groups like the Sengwer, does provide an important legal foundation for a co-management approach to forest management involving local communities. In parallel there has been significant progress in improving the legal and policy framework for land relations more generally, through the adoption of the National Land Policy and the Land Act. A number of Task Forces have also been appointed by the Government to address specific issues related to displacement and resettlement.

22. ***In light of this improving policy environment, the Project as originally designed aspired to support the resolution of land issues in several ways, as described in the IPPF and the Project Appraisal Document (PAD).*** This included support to participatory boundary demarcation, clarification of land claims, support for resettlement and provision of compensation, and assistance in developing a National Resettlement Policy. As described below, it has been evident as Project implementation got underway that some of these aspirations – particularly those related to resolving land rights claims and implementing a comprehensive resettlement solution – were far too ambitious for NRMP, given the scope and time frame of the Project, and the limited mandate of the Project's implementing agency, KFS. While a comprehensive solution to land issues in the Project area remains a high priority of both the GoK and groups within the Project area, Management recognized during restructuring that there was a need to more narrowly define what contributions the Project itself could realistically make to this larger agenda. These more targeted contributions have included the development of VMGPs, capacity building and sensitization within KFS to improve forest governance methods, and the establishment of grievance redress and dispute resolution mechanisms in which, among other issues, tensions around land and forest access can be addressed.

### **Post-election Turmoil 2007/08 and its Impact on the Project**

23. ***The turmoil that followed the 2007 election had a major impact on the start of Project activities on the ground, particularly in Western Kenya and Rift Valley provinces.*** Some areas remained "off-limits" for both Bank and IA staff until about June 2008, and inter-ethnic conflicts also led to large numbers of displaced persons seeking refuge in gazetted forest areas, including the Cherangany Hills, adding to already strained inter-community relationships about land tenure and access.

24. ***This situation was further aggravated by a prolonged drought and the general recognition that ecosystem degradation and encroachment in the five remaining montane forest areas***

(“water towers”<sup>3</sup>) was a leading cause of reduced water flows into critical water bodies. In response, the GoK decided to address this situation and initiated a campaign to “reclaim” areas that had been encroached upon and cleared of forest cover, starting with the Mau Forest Complex (not within the Project area). These efforts led to the eviction of persons who were unable to claim land tenure and access rights.

25. *These events were closely followed in the Cherangany Hills, where downstream communities began to demand that the GoK evict communities living inside gazetted forest areas of Embobut.* The demand was accompanied by a threat to unilaterally evict upstream communities if the GoK did not take action. Considering the effects of the post-election violence in the area, the GoK felt obliged to act swiftly, and sought to avoid an escalation of the matter by organizing community meetings with elders and convincing the majority of settlers to leave the encroached area voluntarily by providing the prospect of a settlement scheme. Once the encroachers had left the area, Administrative Police, supported by guards from KFS and the Kenya Wildlife Service (KWS), burned existing structures to dissuade people from returning. However, as in the Mau Forest Complex, no alternative land was provided for resettlement at the time, other than allowing those persons moving out of Embobut to settle along the main road in the area. Eventually and as a result of the 2009 Embobut Forest Task Force recommendations, the majority of those communities identified as eligible for settlement were allowed to return to stay in the seven glades within Embobut Forest, until a lasting resettlement solution was found.

26. *This relocation exercise was widely reported and was the starting point for a continuous engagement of the NRMP with Sengwer community members.* It highlighted the need for KFS (and other GoK agencies) to change the approach to addressing issues of encroachment, and to recognize the benefits of employing more participatory and community-led approaches based on consultation and dialogue as a means to redress and mitigate conflict. In response to this, the NRMP provided funding to establish a community-led livelihood development program, focusing on indigenous and other forest communities, using a community driven development methodology and including a project-level Grievance Redress Mechanism (GRM). The latter has been shown to be robust and was able to resolve a dispute in 2011 (see below).

### **The Project and OP 4.10**

27. The Bank’s OP 4.10 on Indigenous Peoples was triggered with regard to Component 2 (Management of Forest Resources) of the Project, due to the presence of Ogiek and Sengwer IP communities in Mt. Elgon and the Cherangany Hills, respectively. Since actual sub-project sites had not been identified at the time of Project preparation, an IPPF was developed and disclosed in 2006 to ensure that: (i) communities in the areas selected would not be adversely affected; and (ii) measures would be developed and implemented to mitigate potential negative impacts.<sup>4</sup>

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<sup>3</sup> Aberdare Range, Cherangany Hills, Mau Forest Complex, Mt. Elgon, Mt. Kenya.

<sup>4</sup> Given the recognition of capacity constraints within KFS, there was heightened awareness on the part of the Bank to mainstream the recommendations of the IPPF and RPF into NRMP implementation by early 2009. Nevertheless, since few activities had been implemented until the official launch workshop of the Project took place in March 2009, there were no known compliance issues with either OP 4.10 or OP 4.12. A letter was sent to the Bank office in Washington in April 2009 which complained about (rumored) plans for the declaration of part of the Cherangany

28. In retrospect, the IPPF posed several implementation challenges. It included a number of undertakings that would require significant policy interventions and multi-agency actions regarding ancestral and land rights, that were beyond the remit of the Project to implement and that could not realistically be completed within the time horizon of the Project. Specifically, the IPPF included three commitments which the Project was not designed to implement: (i) a commitment to hasten the provision of titles for land presently occupied and used by these communities in the Project areas, including support for necessary steps (such as land survey and demarcation, registration, and documentation) to ultimately provide IPs in the Project area with letters of allotment, group ranch titles, etc.; (ii) a commitment to establish a comprehensive strategy to rehabilitate the livelihoods of evicted IPs, to the level of December 30, 2002; and (iii) a commitment for the Project to offer specific assistance within the land restitution process to IPs to claim all lands over which IPs have lost control between 1895 and December 30, 2002. These measures, while desirable on their own account, were not related to the mitigation of anticipated Project impacts.

29. In the 2011 Restructuring, Management clarified that the Project would not be able to implement these three land-related commitments set forth in the IPPF and also that the Project remained committed to the development of VMGPs – based on free, prior and informed consultation and broad community support – that reflect community choices, address livelihood needs and can be realistically accomplished within the Project framework. Subsequent consultations with the Sengwer communities on the PF and developing the VMGPs made clear: (i) that the plans and related PF would not address land and resettlement issues; (ii) the PF would specifically deal with matters of restriction of access to forests and use of forest products and resources, under NRMP Component 2; and (iii) which activities would be eligible under the livelihoods sub-projects (e.g., livestock breeding, bee keeping, cottage industry, conservation and reforestation activities, eco-tourism, water bottling, poultry keeping, horticulture, small-scale irrigation, fish farming etc.).

30. Management acknowledges that the IPPF lacked clarity and triggered unrealistic expectations. Despite efforts to eliminate the confusion about the role and function of the IPPF, some individuals and groups in the communities continue to maintain the view that the IPPF, in particular those provisions aimed at clarifying and securing the legal status of IPs occupying forest land, needs to be implemented as a prerequisite of any NRMP implementation.

31. It should be clarified that neither the PAD nor the Financing Agreement references the Cherangany Hills as a Project intervention area. However, given that the area had been included in the IPPF, which forms an integrated element of Project documentation, in its discussions with the GoK, the Bank took the position that it was part of the Project intervention area. This was

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Hills ecosystem as a Game Reserve, which would (if declared) curtail access to the gazetted area. Although the Bank team was not able to determine whether this gazettelement was in fact planned, general discussions with KWS, which is not part of the NRMP, confirmed the recognition that the declaration of new protected areas would be difficult, given the pressure on land. KWS's strategy is currently more focused on co-management outside protected areas. Nevertheless, as this issue continued to be brought up during consultations with Sengwer community members as well in an additional letter in July 2009 (to the Director KWS) connecting the assumed plan for declaration to the IPPF, the Bank sent a letter in August 2009 to the responsible Minister of Forestry and Wildlife requesting compliance with "mutually agreed upon safeguard instruments" and requesting the GoK to engage in a dialogue with the Sengwer and other hunter and gatherer communities.

formalized in the 2011 Restructuring, in order to enable a reallocation of credit funds towards the implementation of the VMGPs under the Project, and to allow KFS to use credit funds in the area.

32. As referred to in the restructuring, the Project has supported the preparation and implementation of the communities' own VMGPs as a way to advance the IPPF in accordance with OP 4.10. These VMGPs include livelihood and CDD types of activities, building upon a SA that was completed in June 2010.<sup>5</sup> Preparation of the VMGPs was based on the principle of free, prior and informed consultation resulting in broad community support as a pre-requisite for Bank financing. These consultations included explicit discussion and explanation of the fact that the Project would not be able to support the measures mentioned in the IPPF concerning the resolution of land rights and hence such activities would not be included in the VMGPs, which would supersede the IPPF with respect to the geographic areas they cover. The VMGP consultations ensured that the omissions could be considered by communities in determining their support for Project activities.

### Issues of Community Representation

33. *The Project has encountered additional difficulties because of a lack of clarity as to the nature of community representation, and uncertainty as to how communities as a whole view the status of a number of NGO leaders who claim to speak on their behalf.* These leaders, together with other professionals from the IP communities – both Ogiek and Sengwer – have formed an “Elite and Professional Group” of IPs (as they refer to themselves). Members of this group have sent numerous letters to the Bank, asserting that the letters have been sent on behalf of the communities. On several occasions, when the Bank team sought to validate the complaints communicated in these letters with the communities in the field, they learned that the communities were largely unaware of such letters. Indeed, on several occasions, the Bank has noted a marked disconnect between the aspirations of communities expressed in open consultations and the approach adopted by those purporting to write letters on the communities' behalf.

34. The bulk of the complaints presented in discussions between the Elite and Professional Group and a Bank team in 2011 was directed at the Kenyan Government, the constitutional process and a number of historic injustices that those present declared they had suffered.

35. Members of this group indicated that they felt excluded by KFS. Several of these individuals have in fact been elected onto Project coordination committees, but they have nonetheless expressed the view that these committees are less legitimate in terms of community representation than are the NGOs these individuals lead. They also claim that most community members are not competent to understand the issues at stake and hence need guidance from their elites. They expressed their discontent with the fact that the Project had not implemented the IPPF which they see as a precondition for Project implementation.

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<sup>5</sup> To date there are four VMGPs which were finalized by the communities and approved for financing by KFS. The VMGPs provide tangible livelihood benefits to the communities, such as cattle breeding and dairy, tea and coffee growing, etc.



36. A specific concern of the “Elite Group” has been the change in nomenclature from “Indigenous Peoples” to “Vulnerable and Marginalized Groups,” which the Bank introduced into Project documents at the request of the GoK, to be consistent with the terminology of the 2010 Constitution of Kenya.<sup>6</sup> Management has explained repeatedly that the use of the term “VMGP” does not in any way diminish the benefits and protections available under the policy to the people who meet the eligibility criteria accorded to IPs under OP 4.10. Paragraph 3 of OP 4.10 acknowledges that there is no universally accepted definition of the term “Indigenous Peoples.” The policy therefore contemplates the possibility of using alternative terminology taking into account the varied and changing contexts in which IPs live.

### **Overall Approach to Grievance Redress**

37. As described above, the Project’s forest component is being implemented in a complex environment characterized by long-standing tension between IPs and the GoK, in particular KFS, as well as frictions within and between different local stakeholder groups. In light of these dynamics, the GoK’s Project team, IPOs, and Bank Management have recognized the importance of building robust mechanisms for ensuring constructive communication, and diffusing and resolving grievances where possible. Two approaches for grievance redress have been put in place.

38. First, the Project-level GRM established and managed by KFS addresses implementation issues under the direct remit of NRMP and KFS. This Project-level GRM is described in the PF that was developed with and approved by the affected communities, including the Sengwer, after extensive consultations in local language. The GRM is now being mainstreamed into KFS’ activities nationwide, in recognition of the value of the approach.

39. Second, Management initiated an additional, broader dispute resolution approach – in parallel to NRMP and managed by the Bank – to support local parties to better resolve any community concerns whether or not the concerns fall under the remit of NRMP or are part of the broader legacy issues facing the IPs and KFS. This effort is an early example of utilizing the innovative new grievance redress capacity that the Board had approved for Management to develop in response to the 2010 IEG safeguards evaluation. This additional dispute resolution capacity provides a trust-building platform for communities and the GoK to explore opportunities to resolve disputes in a way that is mutually satisfactory.

40. **Project-level GRM.** The Project’s GRM has been active since May 2011. It is defined in the PF (pages 25-28) and in the VMGPs. The GRM aims to enable Project beneficiaries and KFS to:

- Address complaints quickly and systematically;

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<sup>6</sup> Although the term “Vulnerable and Marginalized Groups” is not used verbatim in the Constitution; the terms “vulnerable groups” and “marginalised groups” are used separately in various sections of the Constitution to include indigenous communities. In addition, Article 260 of the Constitution interprets “marginalised community” to mean and include an “indigenous community.” Finally, Article 21 (3) of the Constitution which makes reference to “vulnerable groups” includes “marginalized communities.” The use of the term “VMGP” does not represent any change in the application of OP 4.10 in Kenya and captures the spirit of the Constitution.

- Prevent minor issues from becoming major ones;
- Resolve problems at the lowest possible level;
- Build trust and confidence between the affected peoples and KFS staff;
- Help the different actors to identify underlying causes of conflicts and explore multiple options for unanimous agreement.

41. The NRMP GRM is based upon the ideas and opinions of Vulnerable and Marginalized Groups (VMGs) and other potentially affected people. It was developed closely and publicly with VMGs in local languages, through a series of consultations that involved 1,500 Sengwer and Ogiek individuals, and approved by the VMGs in May 2011. Importantly, the GRM complements the Government's other existing grievance redress mechanisms such as its Tribunal under the 2005 Forest Act, and beyond that, Kenya's High Court.

42. The Project-level GRM explicitly is not designed to address issues beyond the remit of NRMP implementation such as land and resettlement issues, inter-ethnic strife, criminal activity, or government policy.

43. One of the basic principles of the Project-level GRM is that it is based on good faith, respect, and resolution at the lowest level possible. Another principle is that it has both proactive and reactive elements for resolution of complaints that might arise from Project implementation. The 4-step GRM is designed with the objective of solving disputes as early as possible. See Annex 7 for a diagram on how the GRM works.

44. This resolution process was successfully followed for a grievance in Kaptirpai/Embobut as noted in paras. 73-76.

45. ***Management-initiated Dispute Resolution Approach.*** To help convene additional trust among NRMP stakeholders and add value to the Project-level GRM, Management initiated a second dispute resolution approach that goes beyond the remit of NRMP.

46. In early 2012 Management took the view that the evolving context and legacy of miscommunication, conflict and representation had the potential to prevent the Project from meeting its objectives. It therefore initiated a Management-sponsored dispute resolution approach as an innovative step to bring in a trusted external mediator to support Project stakeholders in resolving disputes. This approach was designed and is carried out in an open and participatory way: it creates an avenue for any grievance from Project beneficiaries or locally affected communities to be considered through a good-faith dialogue process. The mediator who anchors the approach is a globally recognized conflict resolution professional with wide experience in the region, including as a Mediation Expert in the panel led by Kofi Annan that successfully resolved Kenya's electoral crisis in 2008.

47. The Management-initiated dispute resolution process supported the Regional Consultation workshop held at Nakuru in March 2012, which took place at the request of IP groups, and was convened by the Bank with broad GoK participation. The objectives of the regional workshop were to: (i) enhance understanding of key concerns of indigenous communities among gov-

ernment agencies, and how they could be addressed; (ii) present the objectives and constraints of the NRMP; and (iii) discuss existing opportunities to address longstanding and emerging issues.

48. A collective action plan was agreed at the Nakuru Regional Consultation workshop and is being implemented by all stakeholder groups. The workshop was followed by a series of meetings in community locations to share the agreements, obtain feedback and enhance the VMGPs through broad participation. This process was followed up by further communications and community meetings involving the mediator and local parties between April and December 2012, as well as additional meetings in 2013. Key outcomes that this dispute resolution approach contributed to include:

- A commitment by KFS to strengthen its own Project-level GRM, and a corresponding commitment by community members to use the GRM to address their concerns;
- Progress implementing the VMGPs (field missions have also confirmed community satisfaction most recently as of February 2013);
- Improved understanding of policy and Project commitments as well as their implementation and limits; and
- Further momentum to the establishment of an Inter-ministerial Task Force on Land and Legacy Related Issues that includes significant VMG representation (VMG elections pending as of February 2013).

49. As usual in a project of this type, some complaints have arisen during recent implementation, for example relating to delays in procurement and the varying quality of agricultural inputs – but the earlier concerns relating to enforcement issues (as raised in the Request) were not raised again. In each of these cases, it has been possible for communities, complainants and KFS to address the issues through the Vulnerable and Marginalized Group Coordinating Committees (VMGCC) at the community level to the reasonable satisfaction of the parties concerned and to agree on constructive action steps. For example, in December 2012, community meetings were convened by the regional mediator with participation of over 100 community members. At these consultations, the community together with KFS was able to discuss a letter of complaint written by a single member of the Sengwer community from West Pokot. The complainant purported to represent the broader community in expressing wide-ranging concerns that the community had been marginalized by the project, and restating many issues of historical grievance that predate the NRMP. Community members discussed the issue together with the author of the letter. They clarified that they: (i) had not given their consent for the individual to write on their behalf; (ii) refuted the complaints in the letter and affirmed that the letter did not represent their collective issues; and (iii) reaffirmed their support to the NRMP and their commitment to addressing issues through the existing Project-level GRM process.

50. Management believes that continued support for the existing Management-initiated approach for dispute resolution and the mainstreamed Project-level GRM are both essential to sustain the important development benefits that have begun to emerge from Project activities. The Management-led dispute resolution approach is supported by local people, and has invested in building capacity for community consensus-building and accountable representation. Given the

inter-ethnic post-election violence in Kenya in 2008, and the legacy issues involving land access and use, there is a legacy of low trust among community members as well as between the community, local government administrations and KFS.

51. Restoring trust is essential to the process of community development, yet it inevitably takes time and effort from communities and agencies, as well as expertise from conflict resolution professionals. The Bank's role has been to help restore trust using a variety of approaches, and to help mainstream a grievance redress mechanism that is developed and owned by the KFS and indigenous communities. This community-based process that has demonstrated that it holds real long-term promise. Management believes that continued support for fair and effective grievance redress for communities on the ground is essential to sustain the important development benefits that have begun to emerge from Project activities.

#### IV. THE REQUEST

52. The Request for Inspection was submitted by individuals from Sengwer communities who say they represent other members of this community from the following four areas of the Cherangany Hills in the western highlands of Kenya, namely the Kapolet Forest (in Trans-Nzoia District), Talau and Kaipos (in West Pokot District), and Embobut Forest (in Marakwet District) (hereafter referred to as the "Requesters"). The Requesters have asked for confidentiality.

53. The Request raises a broad array of concerns regarding indigenous groups' land rights and tenure, including historical, unresolved land issues. Specifically the Request refers to a number of incidents between 2007 and 2011, which include evictions of communities from forest areas, alleged arrests of community members by the authorities, alleged wounding of a community member by the authorities, and related questions of compensation. The Request also raises the broader issue of resettlement of forest communities. It disputes the use of the term "vulnerable and marginalized groups" by the GoK and puts forth a number of demands that are addressed to the GoK. It asserts that various incidents and actions of GoK are not in compliance with the IPPF prepared for the Project, and that the Bank's supervision was insufficient.

#### V. MANAGEMENT'S RESPONSE

54. The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1. Management responds to several of the issues in more detail below.

55. ***Management believes that, despite the difficult circumstances facing Project implementation, the Project has provided many benefits to the participating communities.*** In addition the Project has helped to put in place important tools, such as the VMGPs, the PF and the approaches to grievance redress, to help enable the communities to better participate in the Government's forest management activities, which will continue beyond the closure of the Project.

56. ***Management notes that a number of the complaints raised in the Request are aimed towards the GoK and pertain to issues that go beyond the Project, such as historic land issues and longstanding grievances of indigenous communities.*** At the same time, Management recognizes, as explained in the Restructuring Paper, that original Project documentation, most nota-

bly the IPPF, may have raised unrealistic expectations about the Project's mandate and capacity to address such longstanding and systemic issues, including those that are raised in this Request.

57. ***Management notes that the overall Project environment of the NRMP has been challenging from the outset, and is characterized by tension over historic land issues, longstanding grievances of indigenous communities, and unresolved conflicts between those communities and the KFS.*** There have been additional challenges to the implementation of the Project, such as the widespread ethnic violence that took place in Kenya following the elections in 2007, including a significant influx into forest areas of people displaced by that violence and the security related mobility restrictions for Bank staff until mid-2008. As explained in detail further below, the Bank underestimated the complexity of the context in Project design and the associated safeguard instruments (such as the IPPF) promised more than the Project itself could realistically address.

58. ***As noted above, Management considers that the original project design was overly ambitious in several respects, including aspirations in safeguard instruments concerning the resolution of long-standing land and forest conflicts that were not realistic given the scope and time-frame of the project.*** This has contributed to occasional difficulties in maintaining a clear distinction between project activities and activities outside the project, and has at times blurred the line defining the appropriate boundaries of project safeguard obligations. Management has erred on the side of caution, reacting promptly to complaints as they have come to its attention, and strongly advising Government to implement solutions consistent with project safeguard frameworks.

59. ***Management has viewed with concern reports of evictions and recently proposed resettlement that have been brought to its attention during Project implementation, and has responded diligently to those reports. Management notes that any harm that may have stemmed from these evictions was not caused by the Project, nor has the Project supported such evictions.*** Nevertheless, Management acted swiftly when it became aware of these incidents, carrying out field verifications, notifying Government of its obligations under Project safeguard instruments, and working with both Government and affected parties to prevent recurrences, including securing a fresh commitment from the GoK to refrain from further evictions that are not consistent with those obligations. Management has used both the Project as well as its broader dialogue with the GoK to help address allegations of harm and to facilitate better communication and collaboration between the GoK and participating communities. This approach has helped to resolve some grievances and prevent others, although Management is cognizant of the fact that not all issues have yet been resolved. While the Request raises issues related to compensation, Management to date is not aware of specific, individual claims for compensation.

The prompt and appropriate responses to the incidents of which Management became aware illustrate the strong efforts invested in supervision of the NRMP, which included frequent missions and field visits (approximately every 10 weeks), as well as regular outreach to communities, and responding to requests for meetings.

## **Bank Response to Evictions and Related Incidents**

60. *The Bank has reacted promptly to reports of evictions and sought corrective action from Government.* Management is aware of three specific incidents concerning eviction and the destruction of property, which were brought to its attention after the Project became effective in 2009. Management's understanding of these incidents, its discussions with affected people and its efforts to seek corrective action by Government are summarized below.

### ***2009 Eviction of Sengwer Community Members in Embobut***

61. Through a May 3, 2009 article in the Daily Nation, reporting the "eviction" of 450 families, the Bank learned of ongoing activities targeting encroachment into parts of the Embobut Forest. In an effort to better understand the situation on the ground, the Bank on May 8, 2009 wrote to KFS to request more information and to clarify the extent of KFS's engagement in the mentioned evictions as well as whether NRMP financing had been used to cover the operational cost (which was not the case) in case KFS forest guards had been involved.

62. On the same date, the Bank received a letter from a community member reporting on the impact of the April/May 2009 eviction on the Sengwer community and requesting the Bank to intervene, based on the assumption that the evictions took place as part of the implementation of Bank-financed projects. In its response on May 18, 2009, the Bank reiterated its commitment to ensure compliance with the IPPF recommendations and proposed a meeting between Bank and Sengwer community members to start engaging in a direct dialogue on the issues at stake. Management points out that the NRMP was not the only project addressed by the Sengwer representative; the Water and Sanitation Services Improvement Project (WaSSIP) and the Education Sector Support Project were noted as well, given that they shared a similar IPPF.

63. Taking advantage of a regular supervision mission carried out in the last week of May 2009, the Bank team obtained more detailed information on the April/May 2009 evictions from Embobut Forest, and met with Sengwer community members in Nairobi on May 29, 2009. In the meeting community members informed the Bank about their longstanding grievances as well as their willingness to be resettled, if "equivalent or better land" were made available by the GoK.

64. Discussions with senior management of the MoFW and KFS revealed that the April/May 2009 evictions were a result of Government action in response to an ongoing historical dispute over water between communities living downstream from Embobut Forest and those living within the forest. Given the prominence these evictions had in the media, political leaders (led by the Member of Parliament of Marakwet East) started using their influence to support the development of a strategy to solve the situation. Public pressure was applied to the MoFW, culminating in the Minister establishing a multi-stakeholder Embobut Forest Task Force in June 2009, to help the local GoK agencies to find a lasting solution for the evictees.

65. A main output of the Task Force was a September 2009 report on the assessment of affected persons, identifying three categories of people living in Embobut Forest: (i) Sengwer/Kimalas/Ndorobos; (ii) landslide victims from the 1960s; and (iii) permit holders/associates. Based on the report, those persons identified as eligible for resettlement were allowed to return to the forest until a final settlement was to be decided, but had to adhere to a

number of restrictions (including regarding agricultural activities) inside the forest. Management notes that the activities of the Task Force have not been financed under the NRMP.

***July/August 2010 Burning of 8 Dwellings in Embobut Forest***

66. On September 29, 2010, Sengwer representatives informed the Bank of an alleged burning of houses and destruction of property belonging to Sengwer IPs in Embobut Forest. The Bank responded to the letter within three days, requesting the complainants to provide more details regarding the allegation, while the Bank team at the same time requested KFS to provide an account of the events. The latter submitted its findings on October 12, 2010; the Sengwer report was received two days later.

67. Following the initial information on the Embobut incident, which confirmed that dwellings in Embobut Forest had indeed been burned, the Bank wrote on November 15, 2010 to the MoF: (i) stating its concern and requesting that the Government comply with the social safeguard documents and refrain from carrying out or planning any evictions without following due process; and (ii) warning that non-compliance could result in remedial action by the Bank. In addition, given the discrepancies in the reports, the Bank decided to dispatch its own Fact-finding Mission (FFM) to get an independent third party account of the situation on the ground (carried out during November 23 to 30, 2010). On November 23, 2010 the MoF instructed the line ministries responsible for implementing the NRMP to comply with the requirements set forth in the Bank's letter.

68. The FFM found a very unclear situation on the ground which did not corroborate either report. It identified a total of 8 dwellings with household property, 5 stores, and 3 maize plots which were burnt and slashed down. It also confirmed that those properties were inside the glade areas, and not encroaching into the forest. Community members indicated that the circumstances that led to the destruction of their property were unclear and associated with victimization and corruption, such as extortion of protection money by the individuals carrying out the evictions. The FFM noted that while some dwellings and maize fields were destroyed, adjacent ones had been spared, which suggests the arbitrary targeting of individuals. According to community members' reports, KFS forest guards, jointly with members of the communities (that is members of the glade committees) engaged in the evictions. Upon inquiry by the Bank, KFS expressed that this action was not a planned or sanctioned eviction, but rather an unauthorized infringement by individual KFS staff members.

69. A Bank supervision mission in December 2010, reiterating the Bank's concern regarding evictions, proposed the restructuring of the Project, to include actions to better address the implementation of social safeguard instruments. A technical mission to agree on the restructuring was carried out in mid-January 2011; it also stressed the urgent need to instigate a "moratorium" on evictions. In addition, the Government and Bank agreed on: (i) the development of a PF; and (ii) developing Indigenous Peoples Plans from the IPPF.

70. The Bank communicated the findings of the FFM on March 18, 2011 to the MoF, emphasizing the need for the GoK to: (i) adhere to the obligations set forth in the social safeguard instruments developed under the Project; (ii) support the development of a PF; and (iii) refrain

from carrying out any further evictions of people from their current designated areas (glades) until the PF was in place.

71. In response to the findings of the Bank's FFM, the MoF confirmed on April 27, 2011 its agreement that: (i) that there would be no evictions until alternative settlement was found; and (ii) authorized persons would have access to the forest, including Sengwer community members.

72. The Bank team has followed up on several occasions with the community (including during the PF Consultations in Embobut in April 2011) to better understand whether community members affected by the incident are claiming compensation, given that no such claims had been received by KFS. In their response affected community members expressed no interest in seeking compensation, but rather a desire to participate in the CDD-type livelihood activities under the VMGPs prepared with support of the NRMP to receive the related benefits. Community members also expressed that their interest was to be voluntarily and permanently resettled by the Government, which was seen as an ultimate priority.

### ***November 2011 Burning of One or Two Dwellings in Kaptirpai/Embobut***

73. In a letter dated November 5, 2011 from the Cherangany Multipurpose Development Programme (CHEMUDEP), an IPO based in West Pokot District, to the KFS NRMP Coordinator, the Bank was informed that on October 26, 2011, two houses located in Embobut Forest had allegedly been destroyed by KFS rangers. Following up, the Bank held consultations with the KFS NRMP team, which confirmed the incident. Given that the GoK (in its letter dated April 27, 2011) provided assurances that no intentional evictions of persons were planned from forests in NRMP areas, the apparent conduct of the KFS rangers in destroying the homes was considered a deviation from this commitment. In a letter dated November 15, 2011 to KFS, the Bank requested to put in place a credible set of measures to ensure that such incidents do not occur in the future and proposed to carry out a full assessment of the situation on the ground by a joint Bank-Government team, as part of the NRMP Implementation Support mission.

74. KFS responded to the letter by the Bank on November 28, 2011 clarifying that the incident of the burning of a house in Kaptirpai Glade was neither intended nor sanctioned by KFS. A newly posted forest ranger unfamiliar with the area was responsible for this action and he had been warned on the matter. Using the established grievance mechanism under the project, KFS immediately explained to the VMGCC the circumstances that led to the incident and went on to discuss the issue to mutually reach an understanding. KFS reported that this dialogue with the community was well received, with both parties agreeing to continue the existing cordial relations and work together to maintain orderly access and use of forest resources.

75. A Bank team visited the site in Kaptirpai Glade, together with the KFS Zonal Forest Manager and forester in Marakwet, as well as VMGCC representatives on November 29, 2011. Through consultations with VMGCC representatives and community members as well as an interview with the affected person, the team verified the report by the KFS regarding the cause and results of the incident. Although the complaint letter by CHEMUDEP indicated the destruction of two houses, it was confirmed that one house was burnt down and some utensils were damaged at another neighboring house. The incident had been reported to the responsible KFS Zonal For-



est Manager on the same day by the VMGCC Chairman in line with the established grievance mechanism. The Zonal Forest Manager, accompanied by the KFS Inspector and VMGCC Vice Chairman, visited the site on the day following the incident to ascertain the facts. Subsequently, a community meeting was organized by KFS, at which the forest ranger officially apologized to the affected person and provided compensation of KES 4,000, the amount requested by the affected person. The affected person confirmed to the Bank team that the issue had been resolved. The community also indicated that the issue had been dealt with by KFS and VMGCC. The community added that CHEMUDEP did not represent the community and was not residing in Embobut.

76. The incident tested and confirmed the effectiveness of the grievance mechanism established under the Project to enable faster communication of issues and quick resolution of conflicts. On the other hand, it revealed weak communication between enforcement (to which rangers belong) and technical staff (to which Zonal Forest Managers and Project staff belong) within KFS. The Bank team recommended strengthening sensitization and training of forest rangers on ongoing developments under the Project in order to ensure compliance with Project-related commitments made by KFS. This was carried out in the months following the incident.

#### ***Action of KFS against Alleged Forest Encroachers in Kapolet in 2009***

77. The post-election violence in Kenya saw a near breakdown of law and order in the country. As a result, a number of ethnic communities tried to redress what they perceived as injustices against them by successive Kenyan governments since Independence. It is against this background that in 2008, the Sengwer community members entered parts of Kapolet forest to construct temporary houses and begin farming activities. The community felt that this part of the forest should have been sub-divided and given to them for settlement and for use without any restrictions.

78. Given that Kapolet forest is a gazetted forest according to KFS, the encroachment carried out by Sengwer and some Pokot community members was a breach of the Forest Act of 2005, which does not allow cultivation of crops without a specific permit. In an attempt to address the perceived breach of the Forest Act, KFS together with Administration Police carried out evictions from the forest to prevent further encroachment and destruction of the forest. This incident was brought to the attention of the Bank during the SA in 2010. The Bank team was informed that during this event, 41 Sengwer community members allegedly had been arrested and a Sengwer woman shot and injured.

79. In order to verify the facts, the Bank team requested documentary evidence (such as any written report/complaint by the Sengwer community to the police, Chief, District Commissioner or KFS; Police form P3 for reporting such incidents; or hospital/medical facility diagnosis, etc.) in 2010 and again during a supervision mission in 2013. However, no documentary evidence could be provided by the community. In addition, the Bank team was not able to meet the woman who had allegedly been injured, despite repeated attempts.

80. Management understands that the matter is currently in court, as the alleged victim is seeking compensation from KFS. The Bank considers the Kenyan judicial system the appropriate forum for deciding on matters pertaining to law enforcement under Kenyan law.

### **Clarification on the Project's Approach to Resettlement in the Cherangany Hills**

81. *Management would like to emphasize that no resettlement has been planned or financed under the NRMP in Cherangany Hills or in any other forested areas in the Project area.* As a consequence, NRMP has not supported the preparation of resettlement plans under the forest component, as erroneously asserted in the Request.

82. *In arguing that the Bank and NRMP bear responsibility for resettlement in the Project areas, Management believes the Requesters may be referring to recently announced plans of the Ministry of State for Special Programs (MSSP) to carry out resettlement in the Cherangany Hills.* Resettlement is planned for IDPs, which includes post-election violence victims, the land slide victims from the 1960s and forest evictees (including Embobut residents in seven glades). This initiative is wholly independent of NRMP and does not involve KFS.

83. *Management understands that the Sengwer people in the glades in Embobut have, for many years, repeatedly requested that the GoK organize resettlement and have stated that this is their most immediate priority.* Under NRMP, preparation of the SA, PF and VMGPs, as well as many field missions, have affirmed the very difficult circumstances that the Sengwer forest dwellers in Embobut have been facing from the distant past to the present, and their desire for an appropriate and consensual resettlement solution. With respect to the current MSSP-led initiative, the Bank has ascertained through discussions held during a February 2013 NRMP implementation support mission that Sengwer community members currently residing inside the Embobut Forest: (i) are aware and strongly supportive of this initiative; and (ii) understand that it is independent of the NRMP.

84. *Management acknowledges that at the time of Project design, it was anticipated that NRMP would play a more direct role in the planning and implementation of resettlement of Project beneficiaries who resided in gazetted forests or had been subject to eviction.* Consistent with the Government's commitments in the IPPF, both the PAD and the original Resettlement Policy Framework (RPF) for NRMP indicate that the Project intended to support activities aimed at addressing rights to forest resources, conflict over land and resettlement. The PAD states that "the project will provide financial resources for compensation and/or resettlement" and will put in place frameworks for "assessing the rights of persons residing in gazetted forests, categorizing the forest encroachers, and selecting the appropriate approach for addressing the problem." The RPF, prior to its revision in 2011, stated that "sustainable natural resource and forest management is only possible if all stakeholders are taking part and this is not possible as long as they have no shelter, land or legal access to land and resources. To define how the livelihood can be rehabilitated best, the NRM project will commission for each of the evicted communities a Resettlement Action Plan in line with the OP 4.12."

85. As part of the RPF and to address the fact that NRMP supported activities could cause restrictions in access to natural resources in legally designated parks and protected areas, a PF was prepared to establish a process by which members of potentially affected communities would: (i) participate in the design of activities and determination of measures necessary to secure equitable resource access rights; (ii) participate in the implementation and monitoring of relevant Project activities, and (iii) participate in the formal four-step GRM for NRMP implementation issues. The PF was developed through a series of public consultations held in local languages with about 1,500 Indigenous People (Sengwer and Ogiek) from April to May 2011, following which it was endorsed in a public baraza<sup>7</sup> in June 2011. The Project level GRM under the PF was adopted immediately and this is the mechanism that communities have been referencing in resolving issues in their communities, through the VMGCCs. For example, in September the community used the Project level GRM to resolve complaints by a community member concerning procurement of cows and their distribution among members. The VMGCC, with the community, agreed to resolve the allocation matter through a lottery.

86. KFS, however, wished to proceed with caution and to take time to consider the implications of the PF in light of the recent experience with the IPPF, which had overly committed KFS to mandates beyond the remit of the Project or KFS. Specifically, KFS wished to have an instrument that: (i) would not be contentious, (ii) had broader application to groups not covered by OP 4.10 that are also present in the Project area (e.g., landslide victims and permit holders in Embobut forest); and (iii) could be mainstreamed into KFS beyond NRMP.

87. While the Project level GRM was being implemented at the community level to resolve day to day problems, the Government/KFS assessed how to absorb the principles of the PF to be able to mainstream it into KFS's operational procedures. In this regard, KFS held a workshop June 30-31, 2011 to review the document with its senior management and legal counsel and the Bank/KFS further hired a consultant in June 2012 to develop Draft Guidelines for Managing Livestock Grazing in West Pokot, which could be piloted with the PF. However, in light of the elections (scheduled at various times for August 2012, December 2012, and finally March 2013) and increasing tensions around land, KFS decided to postpone this.

88. Following discussions between the Government and the Bank, and multiple revisions to ensure the PF would be a workable tool for KFS, the PF was sent to the Bank in February 2013 for clearance to disclose. It consists of the principles for addressing restrictions of access to resources and livelihoods, as well as a summary of the consultations and subsequent action plans.

89. *As explained above, at the time of Project restructuring, Management frankly acknowledged to the Board that the approach set forth in the IPPF on resettlement and restoration of livelihoods was overly ambitious and not possible to implement given the scope of NRMP's forest component and the limited mandate of its implementing agency, KFS.* As a consequence, and consistent with the explanation given in the Restructuring Paper, it was subsequently decided that the Project would not be in a position to provide direct support for the resettlement of the Sengwer community members to a more permanent location. Instead, NRMP and the Bank have assumed an important but more limited engagement on these issues by:

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<sup>7</sup> Baraza is a formal community meeting.

- *Securing a Government moratorium on evictions in the Embobut Forest*, which has allowed the Sengwer to reside in the glades in the Embobut Forest, and enabled them to benefit from the livelihood enhancement activities of NRMP while awaiting Government resettlement.
- *Supporting the completion of VMGPs* through an informed and consultative process, so that livelihood benefits of Project-supported activities in forest areas could begin to be realized.
- *Supporting the GoK Inter-ministerial Task Force on Land and Legacy Issues*, composed of indigenous groups and government agencies.<sup>8</sup> At the first meeting of the Task Force in November 2012, a draft work plan was agreed that will be validated among a final, larger group including many GoK agencies and IP community representatives. VMGCCs participating in NRMP were asked by the KFS in 2012, and again in 2013, to nominate representatives to the Task Force; the Sengwer CC nominated one community member in February 2013.
- *Supporting the preparation of a PF* that aims to help communities around the forests address issues related to land use and access.
- *Deploying the Management-initiated dispute resolution approach* described above

90. ***Although the MSSP-led resettlement initiative is independent of the Project, Management recognizes that it is expected to involve and affect the livelihoods of a segment of NRMP beneficiaries.*** The Bank has therefore strongly advised the GoK that any such resettlement should be conducted in a manner that is consistent with due process and international best practice, as reflected for example in the safeguard instruments adopted for NRMP. In recent discussions with the MSSP, Management has recommended that the MSSP use the Bank's safeguard instruments, as this would help support a fair resettlement based on free, prior, and informed consultations with the communities. The Bank also advised the GoK to document or carry out further consultations with the Sengwer and other IPs given the decades-long persistent disputes over land use and access in the forest zone, and the resulting legacy of mistrust. As stated by the MSSP, the Inter-Ministerial Task Force on Internally Displaced Persons (IMTF on IDPs) and Forest Evictees is tasked with finding land, securing agreement of IDPs to resettle, and providing them with resettlement assistance as well as livelihoods restoration support.

91. Management also asked for more information on the resettlement, which has been a rapidly evolving and politically sensitive issue during the run-up to the March 2013 general elections. As of this writing, Management understands that:

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<sup>8</sup> It should be noted that the issues dealt with in the Inter-ministerial Task Force on Land and Legacy Issues go beyond the efforts now being addressed by the Inter-ministerial Task Force on IDPs (chaired by MSSP under the office of the President), which is focusing on the resettlement of IDPs, landslide victims and forest evictees prior to the election.

- (i) Land in Rongai and Kipkapus was offered to the IDPs and forest evictees but was rejected by them and the MSSP no longer considers this land an option – contrary to what the Request has indicated; and
- (ii) Instead, two pieces of land (totaling 1,400 acres) have been identified in Eldoret. Leaders of the IPs/forest evictees have formed executive committees and their leaders and Member of Parliament (MP) viewed the land and accepted it. This land is currently being surveyed.
- (iii) A new law entitled the “Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act,” which came into effect in February 2013, provides that: (i) arbitrary displacement is prohibited and an act punishable under the law; (ii) IDPs have the right to: (1) an adequate standard of living (including safe access to essential food and potable water); (2) basic shelter and housing; (3) essential medical services and sanitation; and (4) education; and (iii) Government shall put into place measures for assistance and protection of IDPs with particular regard to displaced communities with a special dependency on and attachment to their lands, among others.

92. Additional pertinent facts are provided in Annex 3.

### **NRMP and Reducing Emissions from Deforestation and Forest Degradation (REDD+)**

93. *Management notes that while the Request mentions REDD+, it does not appear to raise any specific issues of noncompliance and harm with regard to REDD+.* Rather the Request makes an unspecific recommendation that REDD+ should not be funded by the Bank before the issues identified by the Request (“...violations, injustices, concerns and fears...”) are addressed, without further specifying such concerns.

94. *Background.* The GoK has its own REDD+ program supported by various international partners including the UN and the Bank. Participation in REDD+ is voluntary and several countries including fourteen in Africa are engaging in the REDD+ process through the Bank’s Forest Carbon Partnership Facility (FCPF). At this stage Kenya does not receive any funding from the FCPF for its REDD+ readiness. This has slowed the pace of readiness work in the country, despite initiation of a good process that received positive feedback from the stakeholders.

95. The FCPF is a pilot facility for assisting countries to enhance their capacity for REDD+ readiness. Funding is made available to participating REDD+ countries for building robust and participatory forest monitoring systems, analysis of options for reducing deforestation and forest degradation taking into account social and environmental considerations, setting up management arrangements and building institutional capacity for REDD+ implementation.

96. Kenya is engaging in REDD+ readiness efforts through its participation in initiatives such as the UN-REDD+ Programme and its ongoing dialogue with the Bank on receiving support in the future from the FCPF. The need for an inclusive and participatory process that in-

volves relevant stakeholders at every stage of the decision making process underscores the various phases of the REDD+ readiness process.

97. As a first step towards readiness, Kenya has put in place a REDD+ Coordinator at the MoFW and prepared its roadmap for REDD+ readiness that outlines the activities as well as the process that the country will undertake during the REDD+ readiness phase. Multi-stakeholder engagement through regional workshops (including one for IPs), and representation of relevant stakeholders including IPs in the REDD+ Technical Working Group/equivalent bodies has been ensured during the preparation of the roadmap. This is well documented in Kenya's Readiness Preparation Proposal which was validated at the national level and is available on the FCPF website.

98. However, recognizing the need to mainstream REDD+ within the ongoing forestry sector activities, the next phase of the signing of the Readiness Preparation Grant has been delayed to ensure that government agencies working on NRMP and REDD+ understand IP concerns and work in a coordinated manner.

99. It is important to note that in December 2012, the Bank received a letter from Indigenous Peoples of Kenya requesting the Bank to expedite its support to the REDD+ Program. This was due to the success of the Bank's earlier support and the broad in-country stakeholder support for the program. A follow up grant is being considered by the Bank.

100. **NRMP and REDD+**. The NRMP is currently the only source of Bank financing that is providing support to the GoK's REDD+ Program, and it consists only of technical assistance for REDD+ readiness. In particular, NRMP is:

- Financing REDD+ readiness activities that provide a better understanding of the needs, perspectives, and priorities of the people residing in the forest, through, for example, a social and environmental assessment, consultations and development of benefits sharing options;<sup>9</sup> and
- Not financing any REDD+ activities that could threaten the livelihoods of indigenous forest-dependent peoples, such as through tree planting, carbon sequestration or civil works.

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<sup>9</sup> Activities currently started include: Strategic Environmental and Social Assessment facilitator and consultancies for implementation, Assessment of Benefit Sharing Options, Identification of Grazing Systems as a REDD+ Strategy Option, Development of a Methodology for Monitoring Community Engagement in Forest Management and REDD+.

## Conclusion

101. ***Management has carefully reviewed the issues raised by the Requesters and does not agree with the allegations that non-compliance with Bank policy has caused the harm alleged in the request. Specifically, Management notes that any harm that may have stemmed from the incidents cited in the Request was not caused or aggravated by the Project, nor has the Project supported these incidents.*** The extremely difficult sector context presents many operational challenges to all concerned. In spite of this difficult operating environment, which includes complex and sensitive legacy issues, Management believes that the Bank has complied with the policies and procedures applicable to the matters raised in the Request. Management concludes that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures. On the contrary, it is Management's view that the Bank was able to help address the issues in question and work with stakeholders, including the Government, to support a solution to such issues, while generating valuable lessons in sustainable and equitable forest management.

## Actions

102. ***Management is cognizant of the difficult issues surrounding the project and that the project was only in part able to address those. However, Management remains committed to continue supporting the initiatives and mechanisms that the NRMP has helped put in place, and which will help the communities to better participate in Government forest management activities going forward.*** In light of the fact that the project will close on June 30, 2013 Management intends to discuss with Government further supporting the work in the sector through technical assistance on lessons learned from the NRMP forest component. This technical assistance would focus on developing options for participatory co-management of forests, forest access, conflict resolution, and so on. The work would build on NRMP processes and KFS's ongoing effort to mainstream safeguards work developed under NRMP as operational tools for KFS's work nationwide.

103. Apart from that Management will continue to reach out to affected communities and encourage them to raise upcoming and pending issues through the Project level GRM and/or the management-initiated dispute resolution process.

## Annex 1 Claims and Responses

N o.	Claim/Issue	Response
1.	<p>Burning of Houses and Destruction Property of Sengwer ethnic minority forest Indigenous Peoples in Empoput Forest. In 2007, 2008, 2009, 2010 and 2011, Kenya Forest Service guards with support of administration police carried out forceful evictions of Sengwer Indigenous Peoples in Empoput forest. Over 500 houses were burnt, Property destroyed (food grains, house utensils, beddings, school books, etc). Further, the inhuman forceful violations led to cases of school drop outs; psychological torture; violations of spiritual and cultural believes, norms, taboos and values. Empoput Forest (in Marakwet East District, Elgeyo Marakwet County) is part of ancestral homes of Sengwer an ethnic minority hunter-gatherer Indigenous Peoples. Colonialists found their ancestors their and even gave them permits to live in the forests.</p> <p>We recommend that-</p> <p>a) Kenya Government through the Ministry of Forestry and Wildlife; Ministry of Lands recognizes, respects and protects the rights of Sengwer forest indigenous peoples to live within their ancestral homes in Kapolet and Empoput Forests as part of the ecosystem while carrying out livelihood activities that promote sustainable conservation and protection of natural resources.</p> <p>We recommend that-</p> <p>b) Kenya Government reviews all discriminatory policies, acts and laws that are against recognition and promotion of the rights of forest indigenous peoples to live harmoniously within their ancestral homes in the forest.</p> <p>We recommend that-</p> <p>c) Kenya Government through the Ministry of Forestry and Wildlife (Kenya Forest Service/Natural Resources Management Project) compensates Sengwer Indigenous Peoples families whose houses and property were burnt in Empoput Forest since the Indigenous Peoples Planning Framework for Natural Resources Management Project was adopted by Kenya Government and World Bank in 2007.</p>	<p><b>Management is aware of three specific incidents concerning eviction and the burning of property that were brought to its attention after the Project became effective in 2009. Management's understanding of these incidents, its discussions with affected people and its efforts to seek corrective action by Government are summarized below.</b> A more detailed account of events is attached in Annex 4. Management has no knowledge of the more widespread property damage or other abuses alleged by the Requesters.</p> <p>Management notes that any harm that may have stemmed from these incidents was not caused by the Project, nor has the Project supported actions that led to these events. Nevertheless, the Bank team responded actively and constructively when these reports were brought to its attention, carrying out field verifications, notifying Government of its obligations under Project safeguard instruments, and working with both Government and affected parties to prevent recurrences.</p> <p>The Bank team has worked where appropriate and possible to help mediate grievances – most recently by deploying an innovative dispute resolution approach. Nevertheless, as Management frankly acknowledged at the time of Project restructuring, it is beyond the remit, capacity and appropriate focus of a project of this type, to undertake to ensure resolution of such longstanding systemic problems.</p> <p>Management notes that the overall Project environment of the NRMP has been challenging from the outset, and is characterized by tension over historic land issues, longstanding grievances of indigenous communities, and unresolved conflicts between those communities and the KFS. A number of the complaints raised in the Request are aimed towards the GoK and pertain to issues that go beyond the Project, such as historic land issues and longstanding grievances of indigenous communities. At the same time, Management recognizes, as explained in the Restructuring Paper, that original Project documentation, most notably the Indigenous Peoples Planning Framework (IPPF), may have raised unrealistic expectations about the Project's mandate and capacity to address such longstanding and systemic issues.</p> <p>Management believes that, despite the difficult circumstances facing Project implementation, the Project has provided many benefits to the participating communities. In addition the Project has helped to put in place important tools, such as the VMGPs, the Process Framework (PF) and the approaches to grievance redress, to help enable the communities to better participate in the Government's forest management activities, which will continue beyond the closure of the Project.</p> <p><b>Spring 2009 Eviction of Sengwer Community Members in Embobut.</b> Through a May 3, 2009 article in the Daily Nation, reporting the "eviction" of 450 families, Management became aware of ongoing activities by the GoK targeting encroachment into parts of the Embobut Forest.</p> <p>Management on May 8, 2009 requested KFS to clarify the extent of KFS's engagement in the mentioned evictions as well as whether NRMP financing had been used to cover the operational cost (which was not the case) in case KFS forest guards had been involved.</p>



N o.	Claim/Issue	Response
		<p>Discussions with senior management of the MoFW and KFS revealed that the April/May 2009 evictions were a result of Government action in response to an ongoing historical dispute over water between communities living downstream from Embobut Forest and those living within the forest. Given the prolonged drought in early 2009, forest encroachment and degradation of the ecosystem and the reduced water flow reaching downstream communities, the latter (not involved in NRMP) were threatening to unilaterally evict upstream communities if the GoK did not take action. Keeping in mind the ethnic violence during the post-election crisis, the GoK tried to avoid an escalation of the matter by organizing community meetings with elders, convincing the majority of people to leave the encroached area voluntarily by providing the prospect of a settlement scheme. Once the alleged encroachers had left the area, Administrative Police, supported by guards from KFS and KWS, burned the structures to prevent people from returning. People were allowed to remain on land along the roadside until formal settlement was carried out. KFS confirmed that no NRMP funding had been utilized, most community members had left voluntarily and that only in 2 cases had persons refused to leave.</p> <p>Given the prominence these evictions had in the media, political leaders (led by the Member of Parliament of Marakwet East) started using their influence to support the development of a strategy to solve the situation. Public pressure was applied to the MoFW, culminating in the Minister establishing a multi-stakeholder Embobut Forest Task Force in June 2009, to help the local GoK agencies to find a lasting solution for the evictees. Eventually and as a result of the Task Force recommendations, the majority of those communities identified as eligible for settlement were allowed to return to stay in the seven glades within Embobut Forest, until a lasting resettlement solution was found, but had to adhere to a number of restrictions (including regarding agricultural activities) inside the forest.</p> <p><b>July/August 2010 burning of 8 dwellings in Embobut Forest.</b> On September 29, 2010 Sengwer representatives informed the Bank of an alleged burning of houses and destruction of property belonging to Sengwer IPs in Embobut Forest. Management requested both KFS and the complainants to provide more information on the events. KFS submitted its findings on October 12, 2010; the response from the complainants was received 2 days later.</p> <p>The initial findings of the Embobut incident confirmed that structures in Embobut Forest had indeed been burned. The Bank wrote on November 15, 2010 to the MoF: (i) stating its concern and requesting that the GoK comply with the social safeguard documents and refrain from carrying out or planning any eviction exercises without following due process; and (ii) warning that non-compliance could result in remedial action by the Bank. In addition, given the discrepancies in the reports, the Bank decided to dispatch its own Fact-finding Mission (FFM) to get an independent third party account of the situation on the ground (carried out November 23-30, 2010). On November 23, 2010 the MoF instructed the line ministries responsible for implementing the NRMP to comply with the requirements set forth in the Bank's letter.</p> <p>The FFM found a very unclear situation on the ground which did not corroborate either report. <b>It identified a total of 8 dwellings with household property, 5 stores and 3 maize plots, which were burnt and slashed down. It also confirmed that those properties were inside the glade areas and not encroaching into the forest.</b> The FFM noted that while some dwellings and maize fields were de-</p>

N o.	Claim/Issue	Response
		<p>stroyed, adjacent ones had been spared, which suggests the arbitrary targeting of individuals. Community members indicated that the circumstances that led to the destruction of their property were unclear and associated with victimization and corruption such as extortion of protection money by the individuals carrying out the evictions. According to community members' reports, KFS forest guards, jointly with members of the communities (that is members of the glade committees), engaged in the evictions. Upon inquiry by the Bank, KFS expressed that this action was not a planned or sanctioned eviction, but rather an unauthorized infringement by individual KFS staff members.</p> <p>The FFM collected evidence through: (i) testimonies from 20 individual community members and two focus groups, both including elders, women, children and youths; (ii) interviews with three local KFS/District staff; (iii) a GPS/aerial photography aided ground-truthing exercise within the 3 affected glades: Kesom, Koropkwen and Kaptirpai.</p> <p>The Bank communicated the findings of the FFM on March 18, 2011 to the MoF, emphasizing the need for the GoK to: (i) adhere to the obligations set forth in the social safeguard instruments developed under the Project; (ii) support the development of a PF; and (iii) refrain from carrying out any further evictions of people from their current designated areas (glades) until the PF was in place.</p> <p>In a letter from the MoF dated April 27, 2011 in response to the findings of the Bank's FFM, the GoK confirmed its agreement that: (i) there would be no evictions until alternative settlement was found; and (ii) authorized persons would have access to the forest, including Sengwer community members.</p> <p>The Bank team has followed up on several occasions with the community (including during the PF Consultations in Embobut in April 2011) to better understand whether community members affected by the incident are claiming compensation, given that no such claims had been received by KFS. In their response affected community members expressed no interest in seeking compensation, but rather a desire to participate in the CDD-type livelihood activities under the VMGPs prepared with support of the NRMP to receive the related benefits. Community members also expressed that their interest was to be voluntarily and permanently resettled by the Government, which was seen as an ultimate priority.</p> <p><b>November 2011 burning of one or two dwellings in Kaptirpai/Embobut.</b> In a letter dated November 5, 2011 from the Cherangany Multipurpose Development Programme (CHEMUDEP), an Indigenous Peoples Organization (IPO) based in West Pokot District, to the KFS NRMP Coordinator, the Bank was informed that on October 26, 2011, two houses located in Embobut Forest had allegedly been destroyed by KFS rangers. KFS confirmed the incident and explained that it was neither intended nor sanctioned by KFS, but carried out unauthorized by a newly posted forest ranger. In a letter dated November 15, 2011 Management requested KFS to put in place a credible set of measures to ensure that such incidents did not occur in the future and proposed to carry out a full assessment of the situation on the ground by a joint Bank-GoK team as part of the NRMP Implementation Support mission.</p> <p>A Bank-KFS team visited the site (located in the Kaptirpai Glade) together with Vulnerable and Marginalized Group Community Commit-</p>

N o.	Claim/Issue	Response
		<p>tee (VMGCC) representatives on November 29, 2011. Despite the fact that the complaint letter by CHEMUDEP indicated the destruction of two houses, it was confirmed that one house was burnt down and some utensils damaged at another neighboring house. Subsequently, a community meeting was organized by KFS, at which the forest ranger officially apologized to the affected person and provided compensation of KES4,000, the amount requested by the affected person. The affected person confirmed to the Bank team that the issue had been resolved. The community also indicated that the issue had been dealt with by KFS and added that CHEMUDEP did not represent the community and was not residing in the area.</p> <p>The incident tested and confirmed the effectiveness of the grievance mechanism established under the Project to enable faster communication of issues and quick resolution of conflicts. On the other hand, it revealed weak communication between enforcement (to which rangers belong) and technical staff (to which Zonal Forest Managers and Project staff belong) within KFS. The Bank team recommended strengthening sensitization and training of forest rangers on ongoing developments under the Project in order to ensure compliance with Project-related commitments made by KFS. This was carried out in the months following the incident.</p>
2.	<p>Arrests of 41 members of Sengwer Indigenous Peoples and 4 local community members in Kapolet forest in 2009. They were taken to police cells in Kitale Police Station and later appeared before Kitale Law Court where they were charged with an offence of illegal cultivation of forests without permit. It is important to note that Kapolet Forest is one of Sengwer ancestral homes that Sengwer families have been living since time immemorial till when Kenya became British Colonial Protectorate in 1895.</p> <p>It is important to note that the ruling of the case involving arrested community members is still pending at Kitale Law Courts since 2009. The arrested members, their families and entire Sengwer indigenous peoples have had their fundamental freedoms, human and indigenous rights violated. They have been subjected to torture, poverty, oppression and segregation as peoples within their ancestral lands and while an Indigenous Peoples Planning Framework for Natural Resources Management Project is still in force.</p> <p>The Sengwer Indigenous Peoples have used hundreds of thousands in Kenya shillings to pay for legal fees, transport, meals and costs.</p> <p>We recommend that-</p> <p>d) Kenya Government through the Ministry of Forestry and Wildlife (Kenya Forest Service/Natural Resources Management Project) compensates members of Sengwer Indigenous Peoples who were arrested in Kapolet Forest and the case is still pending at Kitale Law Courts</p>	<p><b>The cited arrest of community members by the Kenya Police is not related to the implementation of the NRMP.</b></p> <p>Management understands that the police arrested community members in a part of Kapolet Forest which is a gazetted forest reserve, and where cultivation of crops is not permitted without a specific permit.</p> <p>Management promptly followed up on the matter with KFS, and learned that it was not related to the NRMP. The incident is considered by KFS as an offence under the Forest Act, resulting in government action and eventually legal action against the alleged offenders.</p> <p>It is Management's understanding that the matter is pending in Kitale Court. The Bank considers the Kenyan judicial system the appropriate forum for deciding on matters pertaining to law enforcement under Kenyan law.</p>

N o.	Claim/Issue	Response
3.	<p>Shooting of a woman in Kapolet forest-in 2009 when the forest guards entered Kapolet forest to arrest members of Sengwer families they used live bullets. During the shootings, Mrs. Beatrice Chepkorir a Sengwer indigenous woman was shot from the back and left for death until good Samaritans took her to Kitale District hospital where she was admitted and received treatment.</p> <p>We recommend that-</p> <p>e) Kenya Government through the Ministry of Forestry and Wildlife (Kenya Forest Service/Natural Resources Management Project) compensates the Sengwer woman who was shot by a forest guard in Kapolet forest in 2009.</p>	<p><b>The cited incident is not related to the implementation of the NRMP. However, Management undertook several attempts to understand the facts surrounding the alleged incident.</b></p> <p>As set out in more detail below Management understands that the particular circumstances surrounding the alleged wounding of a woman in Kapolet forest by gunshot are still highly disputed and the case is allegedly being dealt with in court.</p> <p>During the Social Assessment (SA) in 2010, this matter was brought to the attention of the Bank. The consultants carrying out the SA were informed by the Kapolet Sengwer that a Sengwer woman was shot during the above-cited arrest of 41 Sengwer community members, and that the matter became a court case and was still pending in court at the time of the SA in 2010.</p> <p>In order to verify this claim with a view to reflecting the situation in the SA report, the consultants asked for any documentary evidence (such as any written report/complaint by the Sengwer community to the police, Chief District Commissioner (DC), or KFS; Police form P3 for reporting such incidents; or hospital/medical facility diagnosis, etc.) in 2010 and again during a supervision mission in 2013. No documentary evidence could be provided by the community. In addition, the consultants were not able to meet the woman, despite repeated attempts.</p> <p>Meanwhile, the KFS Zonal Manager for Trans Nzoia informed the SA consultants that, the woman was not shot but that she fell down and got hurt as she tried to run away from the people carrying out the evictions. However, he also had no documentary evidence of such an incident having been reported to his office or any other KFS office.</p> <p>In February 2013, during a field supervision mission by the Bank team the issue of the woman who was shot was again brought up. When the team asked for proof of the allegation, it was informed that because the matter was pending in court, no documents related to the incident could be provided.</p> <p>A clarification by a KFS Forest Ranger on 8th February 2013, indicated that while KFS had indeed arrested some Sengwer community members for encroaching on Kapolet forest, the woman who is alleged to have been shot was not among the people arrested. As such, according to KFS there is no case pending in court with regard to the alleged shooting incident.</p> <p>Management is not in a position to confirm or refute any of the accounts. However, Management understands from KFS that the alleged victim refused to allow an independent medical examination of the injury to help determine whether or not it was indeed a gunshot wound.</p> <p>Management further understands that the matter is currently in court as the alleged victim seeks compensation from KFS. Again, The Bank considers the Kenyan judicial system the appropriate forum for deciding is not in a position to comment on matters pertaining to law enforcement under Kenyan law..</p>
4.	<p>The use of Vulnerable and Marginalized Groups instead of Indigenous Peoples. The decision by Kenya Forest Services and Kenya Government to use Vulnerable and Marginalized Groups with</p>	<p><b>Management notes that the use of the term “VMGP” does not in any way diminish the benefits and protections available under the policy to the people who meet the eligibility criteria accorded to IPs under OP 4.10.</b> Paragraph 3 of OP 4.10 acknowledges that</p>

N o.	Claim/Issue	Response
	<p>reference to Indigenous Peoples without carrying out a free prior and informed consultations with indigenous peoples is a violation of the rights of indigenous peoples as stipulated in the United [Nations] Declaration on the Rights of Indigenous Peoples, African Charter on Human and Peoples Rights, World Bank Operational Policy 4.10 on Indigenous Peoples, IPPF for Natural Resources Management Project, Social Assessment Report for Natural Resources Management Project.</p> <p>It is false for Kenya Forest Service to claim that the Kenya Constitution refers to Indigenous Peoples as Vulnerable and Marginalized Groups. The Kenyan constitution has got no definition of vulnerable groups or vulnerable and marginalized groups.</p> <p>We recommend that:</p> <p>Kenya Government recognizes and promotes the use of Indigenous Peoples as it did while preparing Indigenous Peoples Planning Framework and Social Assessment Report for Natural Resources Management Project and with respect to international human rights instruments e.g. United Nations Declaration on the Rights of Indigenous Peoples, African Charter on Human and Peoples Rights and ILO Convention No. 169.</p>	<p>there is no universally accepted definition of the term “Indigenous Peoples.” The policy therefore contemplates the possibility of using alternative terminology taking into account the varied and changing contexts in which IPs live.</p> <p>In the course of supervising the NRMP, the Bank was requested by the GoK to use the term “Vulnerable and Marginalized Groups” to be consistent with the terminology of the 2010 Constitution of Kenya. Although the words “Vulnerable and Marginalized Groups” are not used verbatim in the Constitution; both terms “vulnerable groups” and “marginalised groups” are used separately in various sections of the Constitution to include indigenous communities. In addition, Article 260 of the Constitution interprets “marginalised community” to mean and include an “indigenous community.” Finally, Article 21 (3) of the Constitution which makes reference to “vulnerable groups” includes “marginalized communities.” The use of the term “VMGP” does not represent any change in the application of OP 4.10 in Kenya and captures the spirit of the Constitution.</p>
5.	<p>Threats and Intimidation - In Kapolet Forest when Sengwer families objected to planting of trees, the then district commissioner of Trans Nzoia threatened the Sengwer families that you rely on an IPPF which is just a mere Memorandum of Understanding. The DC said all these before Mr. Muchemi from the World Bank Office -Nairobi.</p> <p>Further, when Sengwer leaders and elders pushed effective and efficient implementation of the letter and spirit of IPPF for Natural Resources Management Project -The World Bank Team Leader -said that we should be grateful to have NRMP in Cherangany Hills, because it was not supposed to be carried out Cherangany Hills. He further said that it is the consultant who was hired to prepare an IPPF who covered Cherangany Hills. He concluded by saying that the NRMP is therefore in Cherangany Hills by default.</p> <p>We recommend that:</p> <p>Kenya Government transfers with immediate effect the current Zonal Manager for Trans Nzoia County Mr. Wahome for he has been the main person who directed the arrests of members of Sengwer community and shooting of a woman in Kapolet forest in 2009.</p>	<p>Since actual sub-project sites had not been identified at the time of Project preparation, an IPPF was developed and disclosed in 2006 to ensure that: (i) communities in the areas selected would not be adversely affected; and (ii) measures would be developed and implemented to mitigate potential negative impacts.</p> <p><b>However, in retrospect, the IPPF posed several implementation challenges. It included a number of undertakings that would require significant policy interventions and multi-agency actions regarding ancestral and land rights.</b> Specifically, the IPPF included commitments that the Project was not designed to implement: (i) a commitment to hasten the provision of titles for land presently occupied and used by these communities in the Project areas, including support for necessary steps (such as land survey and demarcation, registration, and documentation) to ultimately provide IPs in the Project area with letters of allotment, group ranch titles, etc.; (ii) a commitment to establish a comprehensive strategy to rehabilitate the livelihoods of evicted IPs, to the level of December 30, 2002; and (iii) a commitment for the Project to offer specific assistance within the land restitution process to IPs to claim all lands over which IPs have lost control between 1895 and December 30, 2002. These measures, while desirable on their own account, were not related to the mitigation of anticipated Project impacts.</p> <p>The Requesters’ reference to the inclusion of Cherangany Hills in the NRMP is related to the consultations with Sengwer community members regarding the rationale for restructuring the NRMP. The Bank team sought to clarify that the NRMP originally approved by the Bank Board in 2007 had been designed <b>without</b> any activities in the Cherangany Hills. Neither the PAD nor the Financing Agreement ref-</p>

N o.	Claim/Issue	Response
		<p>erences the Cherangany Hills as a Project intervention area. However, given that the area had been included in the IPPF, which forms an integrated element of Project documentation, in its discussions with the GoK, the Bank took the position that it was part of the Project intervention area. This was formalized in the 2011 restructuring, in order to enable a reallocation of credit funds towards the implementation of the Indigenous Peoples' Plans (called Vulnerable and Marginalized Groups Plans (VMGPs) under the Project in deference to the Government-preferred nomenclature) and to allow KFS to use credit funds in the area.</p> <p>With regard to the IPPF, the restructuring clarifies that:</p> <p><i>“[R]esolving more comprehensive resolution of land issues is beyond the remit and time-horizon of the project and will need to be addressed as part of the broader Government of Kenya (GoK)-World Bank (Bank) dialogue. In this context, the restructured project does not propose to address all vulnerability issues associated with IPs’ land and forest resource access issues. Instead, the restructuring will support preparation of IPPs for communities in project areas, focusing on livelihoods and community driven development (CDD)-type activities.”</i></p> <p>Management acknowledges that the IPPF lacked clarity and triggered unrealistic expectations. Despite efforts to eliminate the confusion about the role and function of the IPPF, some individuals and groups in the communities continue to maintain the view that the IPPF, in particular those provisions aimed at clarifying and securing the legal status of IPs occupying forest land, needs to be implemented as a prerequisite of any NRMP implementation.</p>
6.	<p>Resettlement Plans. The Kenya government through Kenya Forest Service/Natural Resources Management Project and Ministry Special Programmes made plans to resettle Sengwer families living in Empopot Forest without carrying effective and efficient free prior and informed consultations. There were plans to purchase land in Kipkapus and Rongai. Also at one point the community members were asked to look for land as individuals. The resettlement plans go against World Bank Operational Policy 4.12 on involuntary resettlement.</p>	<p><b><i>Management understands that Sengwer community members in the glades in Embobut have for many years repeatedly requested that the GoK organize resettlement and have stated that this is their most immediate priority.</i></b> Under NRMP, the SA, preparation of the PF, VMGPs, as well as many field missions, have affirmed the very difficult circumstances that the Sengwer forest dwellers in Embobut have been facing from the distant past to the present, and their desire for an appropriate and consensual resettlement solution.</p> <p><b><i>In arguing that the Bank and NRMP bear responsibility for resettlement in the Project areas, Management believes the Requesters may be referring to recently announced plans of the Ministry of State for Special Programs to carry out resettlement in the Cherangany Hills.</i></b> Resettlement is planned for Internally Displaced Persons (IDPs), which includes post-election violence victims, the land slide victims from the 1960s and forest evictees (including Embobut residents in seven glades). This initiative is wholly independent of NRMP and does not involve KFS. With respect to the current MSSP-led initiative, the Bank has ascertained through discussions held during February 2013 in the field that Sengwer community members currently residing inside the Embobut Forest: (i) are aware of and strongly support this initiative; and (ii) understand that it is independent of the NRMP.</p> <p><b><i>Management acknowledges that at the time of Project design, it was anticipated that NRMP would play a more direct role in the planning and implementation of resettlement of Project beneficiaries who resided in gazetted forests or had been subject to eviction.</i></b> Consistent with the GoK’s commitments in the IPPF, both</p>

N o.	Claim/Issue	Response
		<p>the PAD and the original Resettlement Policy Framework (RPF) for NRMP indicate that the Project intended to support activities aimed at addressing rights to forest resources, conflict over land and resettlement. The PAD states that “the project will provide financial resources for compensation and/or resettlement” and will put in place frameworks for “assessing the rights of persons residing in gazetted forests, categorizing the forest encroachers, and selecting the appropriate approach for addressing the problem.” The RPF, prior to its revision in 2011, stated that “sustainable natural resource and forest management is only possible if all stakeholders are taking part and this is not possible as long as they have no shelter, land or legal access to land and resources. To define how the livelihood can be rehabilitated best, the NRM project will commission for each of the evicted communities a Resettlement Action Plan in line with the OP 4.12.”</p> <p><b><i>As explained above, at the time of Project restructuring, Management frankly acknowledged to the Board that the approach set forth in the IPPF on resettlement and restoration of livelihoods was overly ambitious and not possible to implement given the scope of NRMP’s forest component and the limited mandate of its implementing agency, KFS.</i></b> As a consequence, and consistent with the explanation given in the Restructuring Paper, it was subsequently decided that the Project would not be in a position to provide direct support for the resettlement of the Sengwer community members to a more permanent location. Instead, NRMP and the Bank have assumed an important but more limited engagement on these issues by:</p> <ul style="list-style-type: none"> <li>• <b>Securing a Government moratorium on evictions in the Embobut Forest</b>, which has allowed the Sengwer to reside in the glades in the Embobut Forest, and enabled them to benefit from the livelihood enhancement activities of NRMP while awaiting Government resettlement.</li> <li>• <b>Supporting the completion of VMGPs</b> through an informed and consultative process, so that livelihood benefits of Project-supported activities in forest areas could begin to be realized.</li> <li>• <b>Supporting the GoK Inter-ministerial Task Force on Land and Legacy Issues</b>, composed of indigenous groups and government agencies.<sup>10</sup> At the first meeting of the Task Force in November 2012, a draft work plan was agreed that will be validated among a final, larger group including many GoK agencies and IP community representatives. VMGCCs participating in NRMP were asked by the KFS in 2012, and again in 2013, to nominate representatives to the Task Force; the Sengwer CC nominated one community member in February 2013.</li> <li>• <b>Supporting the preparation of a PF</b> that aims to help communities around the forests address issues related to land use and access.</li> <li>• <b>Deploying the Management-led dispute resolution approach.</b></li> </ul> <p><b><i>Although the MSSP-led resettlement initiative is independent of</i></b></p>

<sup>10</sup> It should be noted that the issues dealt with in the Inter-ministerial Task Force on Land and Legacy Issues go beyond the efforts now being addressed by the Inter-ministerial Task Force on IDPs (chaired by MSSP under the office of the President), which is focusing on the resettlement of IDPs, landslide victims and forest evictees prior to the election.

N o.	Claim/Issue	Response
		<p><b><i>the Project, Management recognizes that it is expected to involve and affect the livelihoods of a segment of NRMP beneficiaries.</i></b></p> <p>The Bank has therefore strongly advised the GoK that any such resettlement should be conducted in a manner that is consistent with due process and international best practice, as reflected in the safeguard instruments adopted for NRMP. In recent discussions with the MSSP, Management has recommended that the MSSP use the Bank's safeguard instruments, as this would help support a fair resettlement based on free, prior, and informed consultations with the communities. The Bank also advised the GoK to document or carry out further consultations with the Sengwer and other IPs given the decades-long persistent disputes over land use and access in the forest zone, and the resulting legacy of mistrust. As stated by the MSSP, the Inter-Ministerial Task Force on Internally Displaced Persons (IMTF on IDPs) and Forest Evictees is tasked with finding land, securing agreement of IDPs to resettle, and providing them with resettlement assistance as well as livelihoods restoration support.</p> <p>Management also asked for more information on the resettlement, which is a rapidly evolving and politically sensitive issue during the run-up to the elections on 4 March 2013. As of this writing, Management understands that:</p> <ul style="list-style-type: none"> <li>(a) Land in Rongai and Kipkopus was offered to the IDPs and forest evictees but was rejected by them and the MSSP no longer considers this land an option – contrary to what the Request has indicated; and</li> <li>(b) Instead, two pieces of land (totaling 1,400 acres) have been identified in Eldoret. Leaders of the IPs/forest evictees have formed executive committees and their leaders and Member of Parliament (MP) viewed the land and accepted it. This land is currently being surveyed.</li> <li>(c) A new law has been enacted, the "Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act," which came into effect February 2013 spelling out specific rights and responsibilities of IDPs and the Government, including that: (i) arbitrary displacement is prohibited and an act punishable under the law; (ii) IDPS have the right to: (1) an adequate standard of living (including safe access to essential food and potable water; (2) basic shelter and housing; (3) essential medical services and sanitation; and (4) education; and (iii) that Government shall put into place measures for assistance and protection of IDPs with particular regard to displaced communities with a special dependency on and attachment to their lands, among others.</li> </ul> <p>Additional pertinent facts are provided in Annex 3.</p>
7.	<p>We have complained to World Bank staff on the following occasions see attached letters by writing letters, we have had meetings with NRMP WB Team Leader and Country Director. We have not been satisfied by explanations given by the KFS, Kenya Government and World Bank Country Office. Further, we feel that World Bank officers failed to carry out their supervisory role instead they protected their client even when there was clear facts and indications that the rights of</p>	<p><b>The Project has been supervised adequately, meeting the requirements of OP 13.05, and takes a proactive approach in managing implementation risks.</b></p> <p>Despite the difficult circumstances surrounding the post-election period in Kenya, Management has made great efforts to supervise the Project since implementation began. A total of 18 supervision missions have taken place between November 2009 and February 2013 – averaging one mission nearly every 2 months as compared to the usual 6 months. Detail about supervision missions, field trips, work-</p>



N o.	Claim/Issue	Response
	<p>Sengwer indigenous peoples were being violated.</p>	<p>shops, etc. are included in Annex 4.</p> <p>Management has been very responsive to letters and communications it has received from communities and individuals. Annex 4 contains an overview of these communications. The Bank team has also been responsive to requests for meetings, both in the field and in Nairobi.</p> <p>The Bank team followed up on the cited incidents once it became aware of them and has taken up these matters with KFS and informed the communities as appropriate.</p> <p>The Bank generally followed a strategy of routing enquiries and complaints through the Project complaints handling mechanism led by KFS.</p> <p>In addition, multiple, well-attended consultations with the communities were held over the years, in which the communities themselves expressed very positive experiences with the Project. This is documented in consultation minutes verbatim and on video.</p> <p>In March 2012, Management initiated a comprehensive grievance redress mechanism (Management-led dispute resolution approach) as discussed above in Item 6:</p> <ul style="list-style-type: none"> <li>(i) The process has been functional for just under a year and is designed and supported by a regionally-based independent mediator, internationally regarded as a leading expert in the field of dispute resolution;</li> <li>(ii) Each project-affected community has developed its own joint action plan with KFS/GoK and monitors progress in an open, transparent manner; there have been multiple follow-up visits to communities on the ground to ensure effective implementation;</li> <li>(iii) Key issues relating to procurement and representation of local associations have been raised and resolved through the process;</li> <li>(iv) The GoK initiated the Inter-Ministerial Task-Force on Land and Legacy Issues as a result of this initiative;</li> <li>(v) Local communities have committed to addressing disputes and complaints locally and have asked their own community members to seek resolution through the existing leaders and recourse structures locally before exiting the agreed process. No one has reported that this local remedy is exhausted.</li> </ul>
8.	<p>We recommend that: World Bank suspends any funding towards REDD+ until the said violations, injustices, concerns and fears are addressed.</p>	<p>Management notes that the NRMP is currently the only source of Bank financing that is providing support to the GoK's REDD+ Program, and it consists only of technical assistance for REDD+ readiness. This assistance should not be suspended because:</p> <ul style="list-style-type: none"> <li>▪ It is financing REDD+ readiness activities which provide a better understanding of the needs, perspectives and priorities of the people residing in the forest, through, for example, a social and environmental assessment, consultations and development of benefits sharing options;</li> <li>▪ It is not financing any REDD+ activities that could threaten the livelihood of indigenous forest-dependent peoples, such as tree planting, carbon sequestration or civil works;</li> </ul> <p>It is important to note that in December 2012, the Bank received a letter from Indigenous Peoples of Kenya requesting the Bank to expedite its support to the REDD+ Program. This was due to the success</p>

*Kenya*

<b>N o.</b>	<b>Claim/Issue</b>	<b>Response</b>
		of the Bank's earlier support and the broad in-country stakeholder support for the program. A follow up grant is being considered by the Bank.

## **Annex 2. World Bank Actions in the NRMP Project Area in Response to Evictions in Embobut Forest**

1. It is important to note the complexities involved in the environment and context in which NRMP is being implemented. In particular, dealing with the issues touching on evictions from Embobut forest is challenging due to the fact that when eviction is undertaken, it is not directed towards any particular group – there are 3 groups of people who live in Embobut forest – and in the process, the Sengwer, Marakwet and other groups who live in the forest would normally be affected.
2. Also, it is important to note that in the process of implementing a complex project such as NRMP, Bank supported projects often experience cross-fire from: implementing agencies who tend to resist application of some of the safeguards; Project Affected Persons (PAPs) who wish to move ahead with implementation of beneficial livelihoods projects; and other PAPs who seek to hold the project back if some demands – including issues outside the scope of the project – are not met.

*The interventions by the Bank in 2010 secured a moratorium on evictions of the Sengwer IPs in Embobut Forest.*

### The Fact Finding Mission on Burning of Sengwer Houses in Embobut Forest

3. On Sept. 26, 2010, the Bank received a letter from Sengwer Representatives complaining about an alleged burning of houses and destruction of property belonging to Sengwer Indigenous Peoples in Embobut forest. In response the Bank hired a consultant on November 10, 2010, to undertake a Fact-finding Mission (FFM) to determine the facts surrounding the allegations. The FFM was motivated by humanitarian and poverty related concerns for the IPs on the ground and for purposes of good practice in addition to the safeguard policies of the WB. The FFM, which collected testimonies from 20 Sengwer community members and held two focus discussions with elders, women and youth, and children, found that:
  - There were 275 Sengwer Households and 1,978 household members residing in 3 glades in Embobut forest;
  - 8 out of 275 Sengwer owned houses had been burnt between July and August 2010.
4. The Sengwer in Embobut forest informed the FFM that, in their view, their current situation could be mitigated through:
  - Provision of basic human needs to sustain their livelihoods;
  - Consultation by KFS with glade communities when conducting its operation;
  - Permanent settlement.

5. Note there were different accounts from KFS, the Sengwer, and the Bank mission.

Government of Kenya (GoK)/Ministry of Forestry and Wildlife (MoFW) agrees to a Moratorium on Evictions

6. Based on the findings of the Bank's FFM and taking into consideration the findings of the Government led Embobut Forest Task Force, the Bank wrote to the MoF on November 15, 2010 asking the Government to comply with the Bank's safeguard policies, and to refrain from carrying out or planning any eviction exercises without following due process. In response, the MoF wrote to line Ministries (Water and Forestry) on November 23, 2010 to reiterate the Bank's request for compliance with social safeguard instruments. On the same date (November 23, 2010), the MoF wrote to the same ministries and their implementing agencies, requesting them to halt evictions and undertake consultations with Sengwer and Ogiek on actions that affect them.
7. On April 7, 2011, in response to the request by the Permanent Secretary (PS), MoF for restructuring of NRMP, the Bank Country Director requested:
  - Written confirmation "that there will be no further evictions of persons from the forests in the NRMP areas until appropriate safeguard instruments are in place" including development of Vulnerable and Marginalized Peoples Plans (VMGPs), a Process Framework (PF) and if required a Resettlement Action Plan (RAP);
  - Government response to the Bank FFM and proposed remedial actions;
  - Government response to allegations of restricting access to forests in NRMP area;
  - Government to prepare a PF for Grievance and Complaints handling.
8. In response to the Country Director's letter, a meeting was held on April 8, 2011 between the Bank and MoF (including the PS and Economic Secretary) on the need for a moratorium on evictions in NRMP forest areas and Project restructuring to include development of VMGPs, PF and setting up an Inter-ministerial Task Force to deal with land and resettlement related complaints in the Project area.
9. Finally, on April 13, 2011, the Bank received a copy of a letter from the PS, Ministry of Forestry and Wildlife, to the PS, MoF, confirming there would be no further evictions from Embobut and denying allegations of intimidation and extortion.

The QACU/LEGEN Mission in Response to Letters of Complaint from the Project Area

10. In response to several complaint letters from individuals from the IP communities in Cherangany Hills, a field visit was undertaken by a World Bank Team that included a Senior Counsel (LEGEN) and Senior Operations Officer (OPCQC) in addition to the TTL, the Senior Social Development Specialist and VMPP/PF Consultant. The Mission met the Sengwer community members (about 120 people) representing Cherangany Hills Sengwer from Trans Nzoia (which included Kapolet forest), West Pokot and Marakwet West and East.

11. Apart from 2 participants, all speakers expressed their great appreciation and support for the Project, and willingness to carry on with it. Other speakers stressed to the Mission members that the letters of complaint, which were the subject of the Mission, were never shared with, or written on behalf of the community or the VMG Coordinating Committee. Rather, these letters were the work of the “so called elite and professional group”.
12. On the other hand, members of the IPs’ “elite and professional group” who met with the mission in Nairobi expressed concern that the community members are “illiterate[s] who cannot understand the issues at stake.” They also expressed the fact that they were excluded from the consultations despite some of them having been in the forefront of leading the mobilization and consultation process during the SA.
13. The mission concluded that the IPs are happy with and supportive of the livelihoods enhancement projects proposed for support under NRMP and would like to move on with their implementation. The findings of the mission have been consistently affirmed by subsequent missions to NRMP areas in Cherangany Hills and the livelihoods projects in Cherangany Hills have undergone the first round of financing. They are currently in the second financing round.

### Annex 3

#### **Current Plans by the GoK through the Ministry of State for Special Programmes (MSSP, under the Office of the President) to Resettle IDPs and Forest Evictees (NRMP not involved)**

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##### Inter-ministerial Task Force on IDPs and Forest Evictees

1. The post-election violence (PEV) in Kenya resulted in a number of Internally Displaced Persons (IDPs), some of whom still live in camps. In addition, there are a number of forest evictees (from various gazetted forests such as Mau), some of whom live in camps while others such as the Embobut Sengwer continue to live in the glades in the forest (following the Bank's intervention).
2. Given the spirit and letter of the Constitution of Kenya 2010, which seeks to redress historical land injustices, and the commitment of the GoK to implement the Constitutional provisions on land and articles dealing with the Marginalized, Minority and Vulnerable Groups, including IPs in the NRMP area, and in recognition of and response to the struggles for land by various communities in Kenya, including the Embobut Sengwer, the Government mandated the Ministry of State for Special Programmes (MSSP) to fast track the resettlement of PEV IDPs, Forest Evictees and Embobut forest dwellers, who include the Sengwer. The President of the Republic of Kenya was reportedly keen to see this project completed as soon as possible.
3. In order to carry out this mandate, the MSSP has instituted an Inter-ministerial Task Force on IDP and Forest Evictees Resettlement. The core mandate of the Task Force is to identify and purchase land, and to settle the IDPs and forest evictees. According to a member of the Task Force (from Forestry and Wildlife), the Task Force can only purchase land when it is clear that it has no cumbrances and when it has been accepted by the IDPs or forest evictees/forest dwellers.
4. It is against the foregoing background that the Task Force on IDPs and Forest Evictees first identified land in Rongai in Nakuru County and Kapkapus in Elgeyo Marakwet County. These two pieces of land were deemed not to be acceptable to the Embobut forest evictees and the Sengwer who live in the glades, and the Task Force stopped their purchase. Instead, the Task Force has now identified other pieces of land in Eldoret which have been inspected by the leaders of Embobut forest dwellers' Executive Committee and their Member of Parliament (MP). These community leaders and their MP have accepted the land and the Task Force has accordingly initiated the purchase process.
5. The fact that the Task Force stopped the purchase of the Rongai and Kipkapus land in response to the beneficiaries' concerns shows that it is not only keen to consult the target beneficiaries but is also ready to take their views and concerns into account.
6. Even though this project is outside the NRMP scope, the Bank's Safeguard Specialists nevertheless met with officials of the Task Force and endeavored to ensure that the support that the Task Force proposes to offer to the target resettlement beneficiaries, among

whom are the Embobut Sengwer, is consistent with the Bank’s safeguard policy on resettlement, OP 4.12. For example, according to the terms of reference of the Task Force, the following benefits will be provided to the resettlement beneficiaries, including the Sengwer who are currently living in Embobut Forest:

- Transportation to the resettlement site,
- Temporary housing as construction of the more permanent housing units is completed,
- Social infrastructure including schools, health facilities, water, roads etc.,
- Food rations for six months,
- Support to parents to enroll their children in nearby schools while their own schools are being constructed, and
- Agricultural inputs for livelihoods enhancement projects.

The GoK has a number of legal instruments in place to guide the resettlement process that provides persons to be resettled some fundamental rights and entitlements

7. *The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act*, of 2012, was passed in January 2013 and published February 5, 2013. The Act makes “provision for the prevention, protection and provision of assistance to internally displaced persons and affected communities and gives effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, and the United Nations Guiding Principles on Internal Displacement and for connected purposes.” Key elements of the Act are summarized in the table below.

<i>Rights-based response to internal displacement</i>	Government and any other organization, body or individual shall prevent internal displacement in situations of armed conflict, generalized violence, human rights violations, natural or human-made disasters and development projects.
	GoK shall raise public awareness, undertake training and education on the causes and impact of internal displacement and means of prevention.
	IDPs have the right to (i) an adequate standard of living (including safe access to essential food and potable water; (ii) basic shelter and housing; (iii) essential medical services and sanitation; and (iv) education, among others.
<i>Prevention of Displacement</i>	GoK shall establish a prevention mechanism to monitor areas inhabited by persons at risk of displacement, to be able to take action to prevent internal displacement.
<i>Protection from Displacement</i>	Arbitrary displacement is prohibited and an act punishable under the law.
<i>Preparedness and Mitigation</i>	Government shall put into place measures and structures to prepare for emergency disaster and ensuing internal displacement and mitigate its consequences.
<i>Assistance and Protection</i>	The Government shall put into place measures for assistance and protection needs of IDPs with particular regard to displaced communities with a special dependency on and attachment to their lands and the protection needs of women, children, persons

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	with disabilities, and the elderly and other persons with special needs.
<i>Durable and Sustainable Solutions</i>	The Government shall create the conditions for and provide IDPs with a durable and sustainable solution, including the right of IDPs to make an informed and voluntary decision on whether to return, locally integrate or resettle elsewhere in the country.



### Annex 4 Timeline of Key Events Related to Safeguards in NRMP Component 2

Date	Event related to IPs issues	Bank Action
Dec. 22, 2006	Permanent Secretary of Water confirms in writing GoK's approval of the Safeguard Documents (ESMF, RPF and IPPF)	
Dec. 28, 2006		Final version of the IPPF cleared by ASPEN for disclosure
Mar. 27, 2007		WB Board approval of the Project
Dec. 10, 2007		Effectiveness
Dec. 28, 2007	Elections in Kenya	
Jan-Feb 2008	Post-election violence in Kenya	
Apr. 13-19, May 19-24, 2008	Mission to enable re-engagement with the Project after long start up delay and post-election violence in Kenya	SPN missions after Bank re-engagement to finalize work plan as well as procurement, FM and M&E issues of the Project, which were identified as areas of priority given the long implementation delays.
Aug. 25-30, 2008		During the SPN mission delays in operationalizing the social safeguard were identified, requiring strengthening social expertise for both the GoK and Bank teams
Dec. 15, 2008		Social development consultant identified to work on NRMP and WK CDD/FM Project and contract processed on December 15, 2008 to improve its supervision capacity in terms of social safeguards.
Mar. 12, 2009	Formal Launch of NRMP	Bank staff participate in launch workshop in Nyeri NRMP Project
Apr. 8, 2009	IP Representative writes to Bank in regard to the implementation of IPPF of three projects in Kenya (WK CDD/FP Project, NRMP and WaSSIP); requesting consultations with the Sengwer indicating plans of GoK to gazette parts of the Cherangany Hills – Kapolet, Kiptepperr and Kipkanyar - as a Wildlife/Game Reserve	
May 3, 2009	Daily Nation reports on <i>More families evicted from public forest</i> referring to Embobut Forest (part of the Cherangany Hills)	
May 6, 2009		Bank acknowledges receipt of the April 8, 2009 letter to the IP representative, informs about consultation and promises to get back to IPs
May 8, 2009		TTL writes to Director KFS to request more information and/or engagement of KFS in above mentioned evictions
May 8, 2009	IP Representatives writes to Bank reporting on the impact the recent eviction had on the Sengwer community and requests the Bank to intervene (based on the [wrong] information) that the evictions	

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Date	Event related to IPs issues	Bank Action
	were financed through Bank projects	
May 18, 2009		Bank invites Sengwer IP representatives for a meeting in Nairobi to discuss their concerns following numerous letters to the Bank
May 25-29, 2009		Bank Team, including the Social Safeguards Consultant, carried out an Implementation support mission to the Project area, affirming that required safeguards documents (ESMF, RPF, and IPPF) were in place at time of Project effectiveness (December 2007)
May 29, 2009		Meeting between Bank staff and Sengwer representatives takes place in Nairobi, chaired by the Country Director
June/July 2009	Minister of Forestry and Wildlife establishes the <i>Embobut Forest Task Force</i> to investigate, examine, identify genuine and qualified squatters in Embobut Forest and give recommendations to GoK on "...lasting solutions to restore, conserve and protect the forest..."	
Jul. 23, 2009	Representative of the Sengwer Indigenous Development Project (SIDP) writes to the Bank (i) informing that the Sengwer will not allow Kenya Wildlife Services (KWS) to gazette Kapolet, Kipteeperr, Kipkanyar and Embobut forests, as National Game Reserves; and (ii) requesting a workshop between the Sengwer and WKCDD/FM, NRMP, KAPAP and WaSSIP project staff.	
Aug. 13, 2009	Sengwer representative writes to Director KWS (copying the Bank) regarding the lack of consultation on a plan to gazette part of Kapolet, Kipteeperr and Kapkanyar and Embobut Indigenous Forests as National Game Reserve, indicating that such process would be in violation of the NRMP IPPF.	
Aug. 13, 2009		Bank writes to the Minister of Forestry and Wildlife, copying the Representative of the SIDP, stressing the need of following due process in implementing Bank social safeguard instruments as well as the fact that non-compliance would affect Bank engagement with GoK on the Project.
Aug. 14, 2009		Bank TTL reiterates to the IAs in writing the need to add social development expertise to the NRMP implementation team
Aug. 26, 2009	Safeguards mission to Embobut	Bank team (including a Social Development Specialist, CMU Sr. Country Officer and TTL) travels to Embobut Forest to attend Sengwer Community Meeting with the aim of ascertaining the level of consultations between IPs and NRMP.
Sep. 30, 2009		TTL meets with the then WB IP Advisor to strate-

Date	Event related to IPs issues	Bank Action
		gize and review the implementation arrangement and progress of the IPPF under the NRMP.
Oct. 30, 2009	Strengthening the Bank's safeguard supervision capacity.	Bank hires local safeguard consultant to support the Bank team in supervising the IPPF implementation.
Nov. 4, 2009		Bank hires international STC to develop a road map with respect to implementing the IPPF.
Nov. 26, 2009	Ogiek and Sengwer sensitization workshops in preparation of the Social Assessment (SA) to be carried out.	
Nov. 30 - Dec. 4, 2009		Bank carries out an implementation support mission that includes a Social Safeguards Consultant and the International STC. Mission recommends the rollout of Social Assessment and Capacity Building of IPs and that NRMP move beyond the IPPF and take a proactive approach to engage IPs in a participatory process so that they can receive Project benefits compatible with their cultures.
Jan. 6, 2010	<p><i>Embobut Forest Task Force</i> submits its final report to the Minister of Forestry and Wildlife recommending "...settling genuine people who have nowhere else to go temporarily in glades within the forest, awaiting GoK decision on their resettlement..."</p> <p>GoK uses it to identify options for resettlement of 3,211 families, including the ongoing Ministry of State for Special Programmes (MSSP) led resettlement of IDPs.</p>	
Feb. 11-12, 2010	SIDP complains to KFS in writing against the formation of Community Forest Associations in Kapolet Forest.	
Feb. 22, 2010		Bank TTL attends KFS/Sengwer IP community members meeting in Kitale on the issue. Following subsequent consultations with the Bank, KFS suspends the CFA formation process for the Kapolet Forest Area until further notice (to ensure that the exercise is done after effective capacity building of the IPs).
Mar. 21-30, 2010		Considering the delays in effectiveness and slow implementation, the GOK and Bank agree on an early MTR to: (i) critically assess reasons for implementation delays; (ii) identify existing areas where implementation can be accelerated; and (iii) restructure the Project in areas where opportunities exist to better align components to emerging priorities.
Mar. 22 and Apr. 6, 2010	Sengwer Community members write to the Bank complaining that preparations to plant trees in Kapolet forest would violate the NRMP IPPF.	Following discussions during the MTR between KFS and the Bank team, KFS engages with the affected communities and ultimately suspends the tree planting exercise in Kapolet Forest.
Apr./May 2010	SA field work carried out in Cherangany	

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Date	Event related to IPs issues	Bank Action
	and Mt. Elgon Forests areas using the free, prior and informed consultations process.	
Jun. 7, 2010	SA Report finalized and submitted by KFS.	
Aug. 2010	Dissemination of SA report findings and recommendations carried out (Mt. Elgon); Inter-community conflicts prevent a conclusive dissemination/validation for the Sengwer IP community in Cherangany Hills.	Bank team observes dissemination workshop organized by KFS hired consultants.
Sept. 26, 2010	Sengwer Representatives inform the Bank about alleged burning of houses and destruction of property belonging to Sengwer Indigenous Peoples in Embobut forest.	
Sept. 29, 2010		Bank writes to the Sengwer representative acknowledging receipt of the complaint and requesting further details.
Oct. 12, 2010	KFS submits its findings regarding the alleged burning of Sengwer property in Embobut.	
Oct. 6, 2012	Executive Director of CHEMUDEP writes a letter to the Bank stating that NRMP does not follow free, prior and informed consultations and about the use of the term VMG instead of IP.	
Oct. 14, 2010	Sengwer Economic, Social and Cultural Council (SESCCO) submits a report (and video) of its findings with respect to the alleged burning of Sengwer property in Embobut.	
Nov. 15, 2010		Considering the initial findings of the Embobut incident, the Bank writes to the MoF, stating its concern and requesting compliance with the social safeguard documents; GoK to refrain from carrying out or planning of any eviction exercises without following due process; and warning that non-compliance would result in withdrawal of Bank support. In addition, Bank informs about the plan to send a fact finding mission.
Nov. 2010		Given the discrepancies in the two reports, Bank hires STC to undertake Fact Finding Mission to determine allegations of destruction of property and houses in Embobut Forest. Mission finds that there were 275 Sengwer Households and 1,978 household members residing in 3 glades. 8 out of 275 Sengwer owned houses had been affected between July and August 2010. Evictions

Date	Event related to IPs issues	Bank Action
		were carried out by a team of Forest Guards and Glade Committees <sup>11</sup> and were perceived as part of a continuous process undertaken whenever a gazetted forest is encroached in violation of standing orders instituted by glade committee.
Nov. 23, 2010	MoF writes to line Ministries (Water and Forestry) to reiterate the Bank's request for compliance with social safeguard instruments.	
Nov. 25, 2010		To overcome the impasse in implementing the IPPF, Bank writes to GoK (MoF) to proposes a restructuring of the Project.
Dec. 01, 2010	MoFW acknowledges the Bank's concern regarding the implementation of social safeguard instruments, agrees to the FFM and reiterates its readiness to work with the Bank on improving Project implementation.	
Dec. 12, 2010		Implementation Support Mission reiterates the Bank's concern regarding evictions, agrees on restructuring of the Project.
Jan. 17, 2011		Joint GoK/Bank restructuring mission agrees on: (i) a "moratorium" on evictions; (ii) development of a Process Framework (PF); and (iii) advancing the IPPF into IPPs.
Feb. 7 – March 5, 2011	KFS Consultant team in the field to facilitate and support the establishment of IP Coordinating Committees for NRMP activities (a key recommendation of the SA). VMGCCs are established for all four zones and effectively become the link between the VMGs and NRMP.	
Mar. 4, 2011		Internal Bank meeting on safeguard issues in NRMP including Sector Director, Country Director, Sector Manager, TTL and Soc. Dev. Specialist discusses and agrees on road map for a Project restructuring prior to June 30, 2011.
Mar. 8, 2011	Sengwer Economic, Social and Cultural Program protests about the establishment of IP Committees in West Pokot, claiming that some committee members were not genuine Sengwer IPs. In addition , the letter requests clarification regarding the change in terminology from "Indigenous Peoples" to "Vulnerable and Marginalized Groups."	
Mar. 11, 2011		The Bank's Task Team meets with KFS and consultant team to better understand the process and rational for the March 8, 2011 letter.

<sup>11</sup> Residents of the Embobut forest glades, including Sengwer, have a Glade Committee which helps to ensure that there is no encroachment.

Date	Event related to IPs issues	Bank Action
		The meeting clarified that: (i) the process was bottom up and transparent; (ii) the selected members in the committees had been selected based on proposals made by the communities; (iii) some individuals who campaigned to become committee members were not elected. The latter individuals were the ones complaining about the process in an attempt to question the legitimacy of the establishment of the committees. The received letter seemed a deliberate attempt to unravel a process which had an outcome unfavorable for them.
Mar. 18, 2011		Bank meets with Permanent Secretary of MoF on Embobut FFM.
Mar. 29, 2011	MoF writes to the Bank requesting restructuring of the NRMP.	
Apr. 7, 2011		Bank responds to PS MoF and requests: (i) written confirmation “that there will be no further evictions of persons from the forests in the NRMP areas until appropriate safeguard instruments are in place” including development of VMGPs, Process Framework and if required a RAP. Costs to be borne from Project funds; and (ii) that GoK provides a response to the Bank FFM and proposes remedial actions.
Apr. 8, 2011		Meeting between WB and Min. of Finance (including PS and Economic Secretary) on NRMP, following up on the request for moratorium on evictions and restructuring to include development of VMGs, PF and setting up an Inter-ministerial Task Force on Land Tenure and Legacy Issues.
Apr./May 2011	KFS Consultant uses the free, prior and informed consultation process to prepare VMGPs and PF, with full participation of VMGCC officials, Provincial Administration (District Commissioners, District Officers and Chiefs) and line agency staff, KFS and VMGs in all four zones of Mt. Elgon (Ogiek) and Cherangany Hills (Sengwer). Draft PF discussed publicly with Sengwer VMGs on May 26, 2011.	
Apr. 10-13, 2011		Safeguards implementation support mission to Sengwer Project area of Marakwet, including Embobut, by Senior Social Development Specialist during the PF and VMGPs development.
Apr. 13, 2011	Letter from PS MoFW to PS MoF confirming no evictions from Embobut and rejecting allegations of intimidation and extortion. Letter also clarified that access was denied to forest to three persons who had no ID and refused to state reason for entry into forest.	
Apr. 13, 2011	Letter from ED CHEMUDEP claiming NRMP is isolating IPOs; not using free, prior and informed consultations; against	

Date	Event related to IPs issues	Bank Action
	the term VMGs; claims selection of VMGCCs not fair.	
Apr. 14, 2011		Letter from Bank to CHEMUDEP acknowledges receipt; notes issues and request they be raised directly with KFS. Explains rationale for free, prior and informed consultations and the use of VMG term. Proposes training for KFS staff and VMGCCs, and need to prepare a PF for dispute/conflict resolution.
May 2011		Second meeting between Bank staff and Sengwer representatives takes place in Nairobi, chaired by the Country Director.
Apr. 11-22, 2011	Training of VMGCCs with the objective of enabling effective participation in decision-making on all matters affecting them and their communities and to play an active role in the implementation of NRMP.	
Mar. 19-21, 2012	Regional workshop to discuss and advance understanding of key issues of concern to the Sengwer and Ogiek communities among government agencies with a view to finding a way forward. Participants included representatives of Sengwer (Cherangany) and Ogiek indigenous Peoples, different Ministries, NGOs, IPOs, KFS, and Bank.	
May 17, 2012	Letter from Coordinator of SIDP complains about “Un-procedural Communication and General concerns on NRMP.”	
May 20, 2012	Coordinator of SIDP writes to inform the Bank that KFS had positively responded to the concerns he raised in the letter of May 17, 2012.	TTL responds to Coordinator of SIDP and expresses his appreciation for the direct engagement between IPs and NRMP/SDO which seems to address issues of concern relatively quickly. This is an illustration that through constructive dialogue, issues can be resolved amicably, and without delay. He encouraged such engagement among stakeholders, going forward.
Jun. 11, 2012	Letter from Coordinator of SIDP to KFS asking for release of funds for hole digging to enable tea production in Trans Nzoia.	
Jun. 11, 2012	KFS responds to Coordinator of SIDP request informing that unskilled labor, including ‘hole digging’ is the responsibility of the beneficiaries. Coordinator of SIDP acknowledges receipt of response letter and agrees that unskilled labor should be the responsibility of the beneficiaries.	
Jun. 18, 2012	Letter “Violation of Human Rights on Embobut Forest IPs on Resettlement” from the Chair of the Marakwet VMGCC, complaining about the actions of the Dis-	

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Date	Event related to IPs issues	Bank Action
	District Commissioner registering permit holder families.	
Jul. 19, 2012		TTL writes to KFS on the complaints stating that while the complaint is not related to NRMP activities it would affect directly NRMP beneficiaries. He requests KFS to have an appropriate response and actions.
Jul. 20, 2012	KFS and the District Commissioner (DC) explain that the DC was validating the Embobut census of 2009 and that Resettlement was under the Ministry of Social Programs, not NRMP or KFS.	
Aug. 6, 2012	A community member from Marakwet sends a complaint letter to KFS about sub-standard cows supplied to his community.	
Aug. 9, 2012	KFS responds to Marakwet complainant confirming receipt of the complaint.	
Sep. 6, 2012		TTL writes to Complainant assuring him that a joint mission of the Bank and GoK will visit the Project area to learn more and that the Bank looks forward to further cooperation on implementation of the VMG Plans and a resolution on this particular procurement/quality issue, using the proper channels as nobody wishes to shortchange any community. TTL and Complainant follow up with a phone conversation in the subsequent days confirming this understanding and emphasizing use of the local Project grievance mechanism directly with KFS if such problems persist. A field mission in late September 2012 looks into this issue and confirms that, while the community is pleased with livelihoods inputs provided under their own VMG plan, there are some procurement/quality issues that need resolution.
Sep. 11, 2012	KFS respond to Marakwet complainant, requesting him to channel the complaint through the GRM.	
Sep. 11-12, 2012	Marakwet complainant expresses his dissatisfaction with the response, as his complaint involves the VMGCC.	



## Annex 5

### Free Prior and Informed Consultations Process for Social Assessment (SA), Process Framework (PF) and Vulnerable and Marginalized Groups Plans (VMGPs)

#### 1. The Social Assessment (SA) Process: Consultations with Sengwer and Ogiek IPOs and IPs

<i>Step 1: April 18, 2010: IPOs Participated in Planning for how to involve Sengwer and Ogiek IPs actively in the SA Process</i>			
<b>Output</b>	<b>IPOs Represented</b>		<b>IPO Leader</b>
IPOs sensitized on: <ul style="list-style-type: none"> <li>• <i>Free, prior and informed consultations</i> process required for the SA process</li> <li>• Need for <i>active participation</i> of Sengwer and Ogiek IPs in the SA</li> <li>• Need for active participation of IPO leaders in the SA process</li> <li>• Identified Sengwer and Ogiek villages in the Cherangany Hills and Mt Elgon in which to conduct SA</li> <li>• Agreed on IPOs' responsibilities for mobilizing Sengwer and Ogiek IPs to participate in SA</li> <li>• Kick started SA process with full participation and support of the Sengwer and Ogiek IPO leaders</li> </ul>	<ul style="list-style-type: none"> <li>• Sengwer Indigenous Development Project (SIDP)</li> </ul>		Chairman (also Chairman of the VMGP Coordinating Committee)
	<ul style="list-style-type: none"> <li>• Cherangany Multipurpose Development Programme (CHEMUDEP)</li> </ul>		Chairman
	<ul style="list-style-type: none"> <li>• Sengwer Kapolet Land Allocation Committee</li> </ul>		Chairman
	<ul style="list-style-type: none"> <li>• The Sengwer Spokesman</li> </ul>		Chairman
	<ul style="list-style-type: none"> <li>• Sengwer Cultural and Information Centre; Sengwer Cherangany Cultural Group; Cherangany Sengwer Consolidated Bonds (Endowment Bonds and Trust Bonds)</li> </ul>		Chairman
	<ul style="list-style-type: none"> <li>• Talau Location Sengwer Youth Representative</li> <li>• Sengwer Traditional Group</li> </ul>		Chairman
	<ul style="list-style-type: none"> <li>• Marakwet West District Chairman and Kapcherop Water Project</li> </ul>		Chairman
	<ul style="list-style-type: none"> <li>• Chepkitale Indigenous Development Programme (CIDP) and Chepkitale Trust Land</li> </ul>		Chairman
<i>Step 2: April 19 to May 6, 2010: Implementation of the SA in Cherangany Hills According to Plan Developed by IPO Leaders</i>			
<ul style="list-style-type: none"> <li>• A total of 1,045 Sengwer and Ogiek IPs consulted in 12 public forums covering a total of 57 Sengwer and Ogiek villages and two feedback, verification and validation [of initial findings] workshops. Breakdown is below.</li> </ul>			
<b>District</b>	<b>IPO Leader Responsible for Mobilization of IPs</b>	<b>Name of IPO</b>	<b>No of IPs Consulted</b>
Trans Nzoia District	Chairman	Sengwer Indigenous Development Project (SIDP)	75
West Pokot District	Chairman	Cherangany Multipurpose Development Programme (CHEMUDEP)	167
Marakwet	Chairman	Sengwer Indigenous Development Project (SIDP)	364
		Councilor and Marakwet West District Chairman	
Mt Elgon	Chairman	Chepkitale Indigenous People Development Programme (CIPDP)	316
<ul style="list-style-type: none"> <li>• Participation in the feedback, verification and validation workshop in Cherangany Hills</li> </ul>			64
<ul style="list-style-type: none"> <li>• Participation in the feedback, verification and validation workshop in Mt Elgon</li> </ul>			59

<b>Total No of Sengwer and Ogiek IPs Consulted during the SA process in Cherangany Hills and Mt Elgon</b>	<b>1,045</b>
<i>Outputs of the SA Process</i>	
<i>Three main outputs:</i>	
<ol style="list-style-type: none"> <li>1. IPs sensitized on the objectives of NRMP and the purpose of <i>free, prior and informed consultations</i>;</li> <li>2. IPs sensitized on the objectives of the SA, how its findings would help IPs and KFS, and the need for their full participation in the process;</li> <li>3. IP views, knowledge and perceptions collected on: <ul style="list-style-type: none"> <li>o Historical background of the Sengwer;</li> <li>o Current production systems of the Sengwer;</li> <li>o Sketch maps drawn by participants showing their historical and current areas;</li> <li>o Project stakeholders according to IPs participating in the SA consultative meeting;</li> <li>o Perception of participants on the possible positive and adverse effects of the Project;</li> <li>o Measures and strategies for avoiding, reducing, minimizing or compensating adverse impacts of the Project on IPs;</li> <li>o Level of support for the Project by IPs;</li> <li>o Level of knowledge by IPs of the IPOs that speak on their behalf, and their impact on IPs;</li> <li>o Level of knowledge and understanding of the IPPF by IPs;</li> <li>o Communication strategy that should be adopted by KFS for implementing the Project;</li> </ul> </li> <li>4. IPs produced sketch maps of their current and historical territories and livelihood production activities they are engaged in;</li> <li>5. Initial findings of the SA (on above) verified and validated by IPs through selected representatives from each consultation forum.</li> </ol>	

## 2. Consultation Process for the Development of Vulnerable and Marginalized Groups Plans (VMGPs) and Process Framework (PF) in Cherangany Hills and Mt Elgon: 7<sup>th</sup> April to 28<sup>th</sup> July 2011

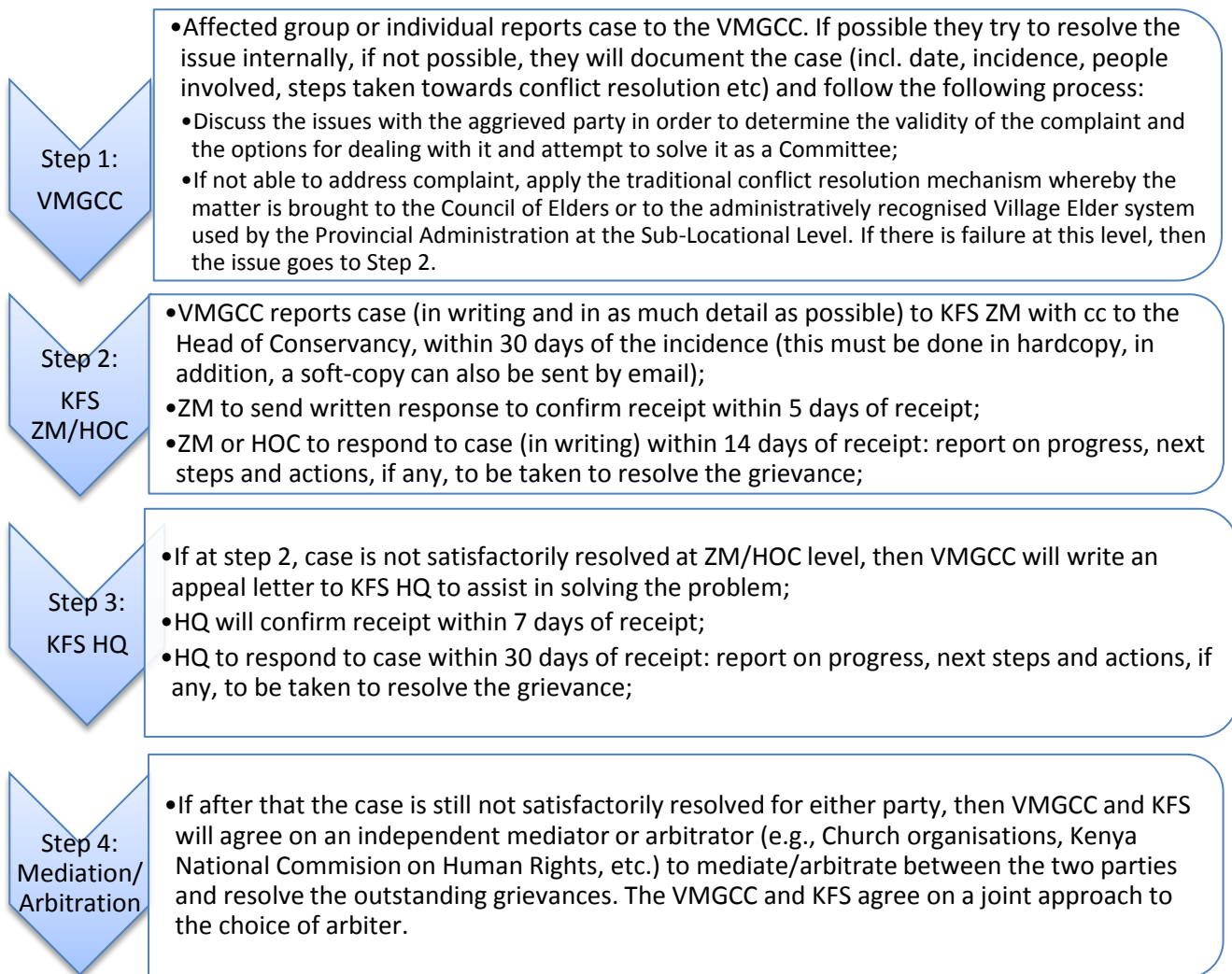
<i>Step 1: 28 Vulnerable and Marginalized Groups Coordinating Committee (VMGCC) Officials – 11 from Mt Elgon and 17 from Marakwet Participated in Planning for how to involve the Sengwer and Ogiek IPs in the VMGPs and PF Development Consultation Process</i>		
<b>Output</b>		
<ol style="list-style-type: none"> <li>1. VMGCC officials sensitized on: <ul style="list-style-type: none"> <li>• Purpose of the VMGPs and PF</li> <li>• <i>Free, prior and informed consultations</i> process necessary for the development of the VMGPs and PF</li> <li>• Need for <i>active participation</i> of Sengwer and Ogiek IPs in the VMGPs and PF development</li> <li>• Need for active participation of VMGCC leaders in the VMGPs and PF development process</li> <li>• Identified Sengwer and Ogiek villages in the Cherangany Hills and Mt Elgon respectively in which to carry out consultations for the VMGPs and PF development</li> <li>• Agreed it was the responsibility of the VMGCCs to mobilize Sengwer and Ogiek IPs to participate in the VMGPs and PF development process</li> <li>• Kick started the VMGPs and PF process with full participation and support of VMGCC leaders in each of the two areas (Mt Elgon and Marakwet in Cherangany Hills)</li> </ul> </li> </ol>		
<i>Step 2: Consultations Leading to the Development of PF and VMGPs in Mt Elgon and Cherangany Hills</i>		
<ul style="list-style-type: none"> <li>• A total of 1,543 Sengwer and Ogiek IPs participated in 17 Consultation forums (including 2 VMGP planning workshops covering 3 days each) in Cherangany Hills and Mt Elgon. In each Project zone, the process was spearheaded by the respective VMGCCs. Breakdown is below.</li> </ul>		
<b>District</b>	<b>No of IPs Consulted</b>	
Trans Nzoia District	71	Consultations were for development of PF only
West Pokot District	157	Consultations were for development of PF only
Marakwet	909	Consultations were for development of both PF and prototype VMGP
Mt Elgon	406	Consultations were for development of both PF and prototype VMGP
<b>Totals No of IPs consulted</b>	<b>1,543</b>	

<i>Step 3: Disclosure of the PF and VMGPs in Cherangany Hills and Mt Elgon</i>		
<ul style="list-style-type: none"> <li>A total of 425 IPs participated in public forums to disclose PFs and VMGPs in Cherangany Hills and Mt Elgon as shown below</li> </ul>		
<b>Date</b>	<b>Activity</b>	<b>No of IPs Participating</b>
May 26, 2011	Disclosure of PF	170 Sengwer from Marakwet, Trans Nzoia and West Pokot
July 28, 2011	Disclosure of VMGP	101 Sengwer from Marakwet
July 31, 2011	Efforts are made to publicly disclose the PF and VMGP in Mt Elgon but the disclosure did not happen as the CIPDP IPO leader, the VMGCC and IPs insisted that while they have no problems with the 2 documents which they participated in developing, they could not be disclosed until outstanding pre-Project issues of access and land are resolved. This was in spite of the VMGCC having given the date for this purpose.	154 Ogiek of Mt Elgon
<i>Outputs of the SA</i>		
<p><i>Three main outputs:</i></p> <ol style="list-style-type: none"> <li>1. PFs for Cherangany Hills and Mt Elgon</li> <li>2. Two prototype VMGs – one for Marakwet and the other for Mt Elgon</li> <li>3. Successful disclosure of PF and VMGP in Cherangany Hills</li> </ol>		

## Annex 6. Component Two – Disclosure of Safeguard Instruments for the NRMP

	Document name	Report prepared when?	Disclosed?	Comments
1	Indigenous Peoples Planning framework for the Western Kenya Community Driven Development and Flood Mitigation Project and the Natural Resource Management Report	July to December 2006	December 1, 2006 in Bank website	Report noted that both Ogiek and Sengwer participated actively in consultative meetings and consultations for the SA IPPF for NRM and Western Kenya IPPF went beyond features of an IPPF to almost represent IPP. Workshop on IPPF – Sengwer represented by the Chairman, Sengwer Cherangany Hills Forest Conservation. Sengwer Consultations also held with: the Chairman, Sengwer Indigenous Development Project; the Chairman, Sengwer Cherangany Cultural Group. Meetings held in Talua, Kamologon in Embobut Forest and in Kapolet Forest with the resp. of the Sengwer Land Allocation Committee, Sengwer Health Centre, Sengwer Youth Committee and Sengwer Water, Sanitation and Environment Committee). Nov. 2009 WB consultant makes recommendations to improve the implementation of OP 4.10.
2	Social Assessment for NRMP	April – May 2010	Public Forum June 2011	Prepared in a participatory manner. 5 IPOs and about 1,045 people involved in consultations.
	VMGP of Mt Elgon Region (Ogiek)  VMGP for Marakwet (Sengwer)	Completed July 2011.  Completed in August 2011	Public Forum/Community barazas, June 2011	Two Prototype VMGPs were developed. Mt. Elgon submitted its request for funding for VMGP livelihoods activities.  VMGPs developed in a highly participatory manner. Sengwer communities in West Pokot, Trans Nzoia and Marakwet are now receiving the second round of funding of livelihood activities.
3	Resettlement Policy Framework for Western Kenya CDD and NRMP	2006	July 20, 2006	A joint RPF was done for NRM and Western Kenya in 2006. Developed initially in January 2007.
4	Updated Resettlement Policy Framework for NRMP	May 2011	May 1, 2011	The 2007 RPF updated for the NRMP only.
5	Process Framework for NRMP in Mt. Elgon and Cherangany Hills	Dev. April-May 2011	Third Draft submitted to Bank October 2012. To be disclosed Feb 2013.	The restructured Project prepared a stand-alone Process Framework (PF) which was originally included in the 2007 RPF. Validation and public disclosure with communities held: Discussed and disclosed Marakwet, Trans Nzoia and West Pokot. May 26, 2011. KFS, however, had concerns with certain aspects of the documents and wanted a tool that (i) went beyond an IP focus and could be applicable to all PAPs beyond IPs and (ii) could be mainstreamed into KFS governance structures. A third draft was prepared and submitted to Bank October 2012. KFS wished to test and pilot the PF however, after internal discussions, KFS decides to defer testing the PF and draft grazing guidelines. After satisfying itself that document meets its concerns KFS submits document to PF in February 2013.

## Annex 7: Project-level GRM Process



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