

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

THE INSPECTION PANEL

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Eimi Watanabe
Chairperson

IPN REQUEST RQ 13/02

August 1, 2013

**MEMORANDUM TO THE EXECUTIVE DIRECTORS AND ALTERNATES
OF THE INTERNATIONAL DEVELOPMENT ASSOCIATION**

**Request for Inspection
KENYA: Natural Resource Management Project (P095050)**

**Notice of Receipt of a Second Request Concerning the Project and Recommendation
to Process the Request in Connection with the Ongoing Investigation**

1. On June 28, 2013, the Panel received a second Request for Inspection concerning the Kenya: Natural Resource Management Project (NRMP). The Request was submitted by four representatives of the Cherangany Indigenous Peoples Community on behalf of people living in the area known as Cherangany Hills.
2. The first Request regarding the NRMP was submitted on January 14, 2013 by individuals from Sengwer communities living in the Cherangany Hills. The first Requesters asked the Panel to keep their identities confidential. The Panel registered the first Request on January 30, 2013. On March 15, Management submitted its Response and on May 29, 2013 the Panel issued its Report and Recommendation in which it recommended that the Board of Executive Directors authorize the Panel to carry out an investigation of the matters included in the Request. The Board approved the Panel's recommendation on June 7, 2013. The Panel is currently in the early stage of its investigation.
3. The second Request states that the Cherangany Indigenous Peoples Community has suffered harm as a result of World Bank failures or omissions in the NRMP. The Requesters claim that they suffered "*Community Identity Crisis*" as a result of the "*non recognition of the Cherangany Indigenous Peoples Community by the Kenya Forestry Service (KFS) and the World Bank who have not yet determined the real indigenous peoples.*" They add that there are distortions in Project documents, such as the Indigenous Peoples Planning Framework (IPPF) and the Social Assessment (SA), as to who are "*the rightful owners of the Cherangany Hills Territory*". As a result, they claim that they suffer a sense of loss of identity, territory, social and cultural status. According to the Requesters, the Project did not recognize the Cherangany Indigenous Peoples Community as indigenous peoples affected by

the Project, while Sengwer people were included. This, they state, has created “*unfair competition and conflicts which might lead to internal friction and tribal war from prospecting tribes*”.

4. Furthermore, the second Request raises claims similar to the ones in the first Request – i.e. the harmful change of terminology from “*indigenous peoples*” to “*vulnerable and marginalized groups*”, evictions of peoples from the forest without free, prior informed consultations, and lack of disclosure of key project documents.
5. They state that they have brought their concerns to the World Bank but have been sidelined; that “*there was a predetermined intention to sideline and totally misinform*” of the rights of Cherangany Indigenous Peoples.
6. They request the Panel to carry out an investigation of these matters.
7. After careful review of the second Request the Panel has concluded that, at the time the second Request was submitted, it met the basic requirements for registration and that for reasons of economy and efficiency, the second Request should be processed jointly with the first Request and within the context of the investigation already approved by the Board. Hence, the Panel will not issue a Notice of Registration and ask for a separate Management Response, but will provide copies of the second Request to Management and ask for any comments or information that the Panel should consider in relation to the new Request.
8. Subject to the Board’s approval, the Inspection Panel would proceed as follows:
 - a) verify the technical eligibility of the Requesters and the Request during the investigation visit to be conducted in the context of the investigation already approved by the Board;
 - b) if technical eligibility is confirmed, address the claims presented in this additional Request in the context of the Investigation Report to be submitted to the Board as a result of the investigation already approved by the Board;
 - c) advise the new Requesters accordingly and share this Notice with them (the Notice and the Request will be posted on the Panel’s website) .
9. The Panel has consulted with Management on the above.



ANNEX I

Second Request for Inspection

Dated Friday, 28th June, 2013.

To Executive Secretary
The Inspection Panel
1818 H Street, NW,
Washington DC 20433, USA

1. We Barnabas Ngesemwo, Amos Ronoh Chesuswa, Joseph K Kiptum, William Kipkwen, Benson Kenyatta Krop and Barnabas Kibet live and represent others who live in the area known as Cherangany Hills which is the Natural Resources Management Project (NRMP) area Financed by the World Bank. Our addresses are attached.

2. We have suffered and likely to suffer harm as a result of the World Bank's Failures or Omissions in the Natural Resources Management Project (NRMP) located in the Cherangany Hills, in Kenya.

3. The damages and harm we have suffered and still suffering from are:

(i) We have suffered Community Identity Crisis: The non recognition of the Cherangany Indigenous Peoples Community by the Kenya Forest Service (KFS) and the World bank who have not yet determined the real indigenous peoples. The reports continue distortions on the rightful owners of the Cherangany Hills Territory, example, the description given on the Community on the ground despite interaction with them at various forums and written communications.

(ii) We suffered harm on Community Territorial identity through the World Bank funded Write-ups and Documentations in the following Documents:

- (a) The Indigenous Peoples Planning Framework (IPPF);
- (b) The Social Assessment (SA) Report.
- (c) Water Supply and Sanitation Improvement Project (WASSIP) etc.;

Which reports are the sources of the dilemma and falsehoods now leading to the current extinguishing of the Cherangany Indigenous Peoples fundamental and inherent Human Rights which have been Violated by the World Bank financed Project.

(iii) We now suffer a sense of loss of identity, territory, Social and Cultural Status, and general disillusionment and fatigue of the now dejected and apathy filled Cherangany Indigenous Peoples Community of Cherangany Hills which the government of Kenya and the World Bank have not recognized, which is a deliberate attempt and Omission and an infringement of the inherent human Rights of these IP Community.

(iv) The chasing of the Cherangany Indigenous Peoples Community participants at a KFS/World Bank Consultant's mobilization site at Kabolet which is also a Cherangany IP's Territory on 19th April, 2010 by claiming she wanted Sengwer only which heightened the division of the Community even further and was the worst Social Assessment Consultancy Service funded by the World bank, which together with the IPPF's distortions have brought about continued information blackout on the real territorial owners i.e the Cherangany Indigenous Peoples Community which will suffer markedly in the absence of factual verification and reporting. This problem is now being disseminated by both Kenya government and the World Banks' documents and publishing in the World Wide Web Sites hence harming and damaging our existence as a people.

(v) Misinforming the World by both Kenya government and the World Bank officers that Cherangany is only hills and not a people, which is wrong and most disenfranchising and has now also brought about unfair competition and conflicts which might lead to internal friction and tribal war from prospecting tribes, as people now scramble to exploit resources in total disregard of whose territory it is

or whose it belongs, which have come about as a result of the World Banks' financing.

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(vi) We have suffered because there was no disclosures of the KFS/World Bank Documents ranging from IPPF, Social Assessment (S.A) Report etc. for correction and ownership but when queries were being raised during some unspecified meetings, on questioning the veracity of the documents, the KFS officers, the Consultant, and the Bank Officials became alarmists and inciters lying and maintaining a mind set in the process as happened at Sibanga Maili -Nane (kipkiso) while trying to correct the name issue in one such forums.

(vii) The initial itinerary prepared by KFS/Consultant was most weird and seems pre- conceived to initiate blame and sidelining of the Cherangany IP Community, this was a tactically instigated plan by KFS Consultant to create the illusion and the basis for disregarding or tarnishing the Indigenous Peoples Organizations (IPOs).

(viii) The change of terminology from Indigenous Peoples to Vulnerable and Marginalized Groups is a lie by government officers who say that the name Indigenous Peoples is not in the Constitution of Kenya yet that name is in the Constitution. Some of the government's Officers have come to realize this too late while KFS and World Bank are still stuck in it.

(ix) Our IP Community has been evicted from forests without FPIC (Free, Prior and Informed Consultations) on resettlement and our people are now living on small patches of forest glades as squatters.

(x) The government having failed to involve our IP Community in participating in Policies and Legislation that will impact on them negatively especially the Forests Act now still ongoing, yet the IPs are not represented.

4. The World Bank's operational policies we believe have not been observed are:

- (i)The OP 4.10 - On Indigenous Peoples and;
- (ii)The OP 4.12 - On resettlement.

We have complained to World Bank on various occasions and dates complaining about some issues among which was the name issue as prominent, and which is most controversial; but the Bank has virtually failed us in this; hence putting the entire Cherangany Indigenous Peoples Community into a very awkward and dangerous position on their fate for the present and future generations of this Cherangany IP Community. All these facts are available for verification and we would want to meet the Inspection Panel to inform them of the facts while providing evidence of what they may be asked for. The responses and explanations from Bank Officials have always not been satisfactory or completely misinform or distort facts exposing our IP Community to so many risks and suffering.

This is because though the Cherangany Indigenous Peoples Community Leaders and Organization (CHEMUDEP) had written complain letters on behalf of the Cherangany IP Community to the government Agency i.e (KFS) and the World Bank severally, the responses from both have been utterly mischievous and doctored, which means there was a predetermined intention to sideline and totally misinform the World of the Cherangany IPs fundamental Rights and Freedoms; hence, existence. Please see the attached Cherangany Council of Elders complain letter of 09th April, 2011, and that of the Cherangany Multipurpose Development Programme (CHEMUDEP) IPO (Indigenous Peoples Organization) which Organization has been sited in your World Bank reports and documents as a Sengwer IPO which is false; yet the name attests to itself indicating that it is a Cherangany Indigenous Peoples Organization which was acting on its behalf; why the distortion? For these and other evidences on Historical background, we reserve for your field fact finding inspection mission.

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

Please find our Contacts and signatures below.

Contact Address:

Barnabas Ngesemwo

P.O Box 280

Kitale.

Tel no. Mobile: 0722217482

Keiyo/Marakwet County.

William Kipkwen

P.O Box 98

Kapsara.

Tel no. Mobile: 0712507042

Trans Nzoia County.

Benson Kenyatta Krop,

P.O.Box 174

Kapenguria

Tel no.Mobile: 0722704262

West Pokot County

Joseph K Kiptum

P.O. Box 280

Kitale.

Tel no. Mobile: 0712568429

Keiyo/Maraket County

Amos R Chesuswa

P.O Box 152

Kapenguria

Tel no Mobile: 0712498952

West Pokot County

Barnabas Kibet

P.O Box

Kapcherop

Keiyo/Marakwet County

We attach our Signatures here aside as a scanned hand written copy, today Friday, June 28, 2013.

1. Attached also is the Cherangany Council of Elders Complain Letter of 09th April, 2011.
2. Other Complain letters have not been attached but have been reserved for your field visiting day.

To Country Director
World Bank
NAIROBI KENYA

To Christian Peter
Sr. Natural Resources Mgmt. Specialist
Sustainable Development (SD)
East Africa

09/4/2011

Dear Sir,

**RE: OBSERVATION BY CHERANGANY COUNCIL OF ELDERS ON NRM PLAN AND
IMPLEMENTATION PROCESS APPROACH IN CHERANGANY HILLS**

The Cherangany Council of Elders met on 6th April 2011 at its Headquarters in Kapcherop and deliberated on several issues. One of its agenda items was progress report on NRM issues in Cherangany Hills area which is represented by the following elected Locational Chairmen and Myoot Council Members.

1. Cherangany Council of Elders Trustee – Col (Rtd) Joel Tirmet 0722 791 910
2. Benson K. Krop – Myoot Board member – 0722 704 262
3. Barnabas Ngesemwo – Myoot Council of Elders – 0722 217 482
4. Vincent Ruto Maiyo – Myoot Council of Elders – 0722 922 582
5. Jeratel Arap Borusei – Myoot Council of Elders member.

CHERANGANY BOARD

NO	LOCATION	NAME	MOBILE	POSITION
1	Kaibos	Barnaba Mungo	0710 728 552	Chairman- Cherangany CE/CB
2	Makutano(Kabolet)	William Kipkwen	0712 507 042	V. chairman CE/CB
3	Kaisingor	John Kiplagat	0721 887 349	Chairman- Locational
4	Embubut	Gabriel Kibor	0733 156 258	V. secretary CE/CB
5	Chebororwo	Cyrus Kigen	0722 682 114	Treasurer CE/CB
6	Sengwer	Jackson Chesum	0714 145 190	Chairman - Locational
7	Talau	Emmanuel Ngeiywa	0725 349 629	Chairman –Loc.
8	Kapterit	John Kipsagas	0728 568 619	Chairman –"
9	Kamoi	Lazarus Rotich	0725 214 405	Chairman – "
10	Lelan	Luka Cheronu	-	Chairman – "

11	Kaisagat	Thomas Saisi	0728 133 142	Chairman – "
12	Kapkochur	Gabriel Chelimo	0727 561 843	Chairman - "
13	Cherangany	Julius Bartilol	0729 785 510	Chairman – "
14	Kapyogen	Julius Cherutich	0726 022 707	Chairman – "
15	Embobut	Benjamin S Nyebet	0722 364 425	Secretary CE/CB
16	Kapcherop	Kipkemoi Chebii	0724 697 094	Member – "

The Council of Elders appreciates that the World Bank through KFS is targeting livelihood improvement and Environmental projects in Cherangany Hills which aims to go a long way to improve the indigenous people's livelihoods.

Cherangany Hills is inhabited primarily by the Cherangany indigenous Peoples community. It is their historical territory that covers parts of Trans Nzoia, West Pokot and the Marakwet Districts. However, there is a group of the Community who want to usurp the Community name to Sengwer which has long been our cultural name. This has brought conflict which remains unsolved to date.

As a result it may appear as if two communities are living in two separate localities or both have territorial ownership of Cherangany hills which actually is not the case.

The Cherangany council of Elders / Myoot Council is bringing out these issues for your information because:

1. It seems NRM is continuously targeting a specific group i.e Sengwer in Cherangany Hills. If this is so then the areas of operation should be specified and leave out the areas of the Cherangany indigenous peoples community- The Cherangany hills.
2. Late 2010 Kenya Forest Service (KFS) carried out sensitization workshops in all the above Districts on Forest Act 2005 with emphasis that CFAs are the legal interface between indigenous peoples (IPs) Communities and the Government. The IP Community went ahead and registered CFAs in the entire Cherangany hills ecosystem in readiness for the NRM projects; so far the following CFAs have been registered with the Registrar of Societies :
 - i) Cherangany & Kapkanyar CFA
 - ii) Cherangany Kipteber CFA
 - iii) Kabolet CFA
 - iv) Cherangany Koisungur CFA
 - v) KAMKA CFA
 - vi) Sengwer Cherangany Hills CFA
 - vii) Chelifo- Waca CFA

And others still in formative stages.

On top of these the IP community has also registered several user groups and has set up a structure with an umbrella body called Cherangany Hills Forest Biodiversity and Water

Resources Conservation Association (CHEHIFO-WACA CFA) to take care of the entire ecosystem whose details are available for scrutiny.

3. The Cherangany Council of Elders is surprised that KFS has launched a Management Plan at Kapcherop covering a few forest blocks and purporting it to be for the entire Cherangany Hills. We object to this selective approach to issues affecting our IP community, and in fact the Cherangany IP community was not involved during inception.

4. The structure that is now being formed through elections of representatives by KFS is not a long term solution to the IP community after expiry of the World Bank project period. The only long term way is the CFA approach that through policy change can be held in perpetuity by IPs communities which has been undertaken through other stakeholder fora.

The above nominations were not carried out fairly, for example in Marakwet District, one location in Embobut was represented by 10 people while Nine (9) locations in Kapcherop Division were represented by only 5 representatives; and this violates other peoples' rights to equal representation.

5. We now understand that there is a consultant due to visit Cherangany Hills to undertake harmonization of the Kenya Constitution, the forests Act 2005 and the Land Policy with respect to the Vulnerable and Marginalized Groups (VMGs).

The Cherangany Council of Elders has a lot of reservations towards this consultancy exercise, particularly its expected output.

The last time this consultancy firm carried out Social Assessment (SA) in this area generated a lot of conflicts although it was adopted pending further Addendum in the SA report which failed to be honored due to the same conflicts.

6. The Council of Elders has taken time to keep itself informed on issues touching on NRM projects in Cherangany Hills and was expecting a full Management Plan Development. We have learnt that KFS wants to undertake a pilot project plan and a process framework in some areas that will include governance issues.

The Council of Elders wants to state here that the IP community in Cherangany Hills has an operational umbrella body that is geared towards other funding programmes within the Cherangany Hills ecosystem for livelihood and environmental benefits in a rights based approach.

Formation of other umbrella bodies within the Cherangany Hills ecosystem can only run parallel with the existing one hence conflicts- and therefore KFS through Forest Zonal Managers should attempt to harmonize and avoid conflicts.

7. The new terminologies being introduced are not consistent with the IP community thinking, and the International Law although they are calling it the Kenyan Equivalent i.e (VMG) to replace the Indigenous Peoples definition in Kenya which we have not agreed with; since we have the UN Declaration on the rights of indigenous peoples passed by the UN General Assembly in July 2006 and now being operationalized by states; and Kenya should not

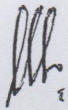
be an exception, whose constitution alludes to adopt international conventions but in effect the same Government negates this fundamental rights. If there were to be any changes in the UN Declaration then there must be a consultative forum with the IPs themselves.

Hoping that the elaborated contents and facts in this letter will be understood by all concerned.

In conclusion the Cherangany Council of Elders/Myoot Council of Elders strongly caution that as we go to NRM implementation, the Council advises KFS through its consultancy firms to avoid creating further conflicts which may lead to loss of confidence by majority of IPs in the entire process hence rendering it invaluable.

Dear Sir,

Signed By – Barnaba Mungo

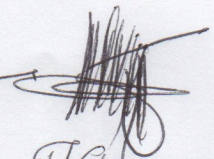


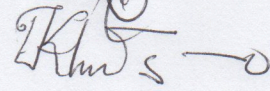
Chairman-Cherangany Council/Cherangany Board.

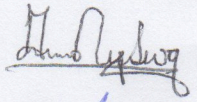
CC.


- Ingangi Yakhama- H/Q KFS NRMP Coordinator.
- Murila – Social Specialist KFS Nairobi.
- Tacitus Consultants.
- Forest Zonal Managers- Marakwet, West Pokot, and Trans Nzoia.
- File Cherangany Council of Elders.

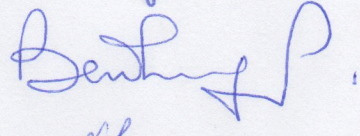
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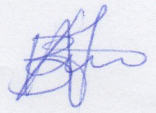
Barnabas Ngesenwo 

Joseph R. Kiplim 

Amos Rono Chesuwa 

William Kipkwen 


Benson Kenyatta Krop 

Barnabas Kibet-Kapareop 

OUR CONTACTS ARE AS TYPED ABOVE.

Friday 28/6/2013

P.O. Box 480 KAPENGURIA

Email:  cherangany indigenous peoples @ gmail . com .