

THE INSPECTION PANEL

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Alf Morten Jerve
Chairperson

IPN REQUEST RQ 13/02

January 30, 2013

NOTICE OF REGISTRATION

Request for Inspection

KENYA: Natural Resource Management Project (P095050)

Receipt of Request

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 Requesters

The Request was sent by individuals from Sengwer communities who “*live and represent others who live*” in the following four areas of the Cherangani Hills in the western highlands of Kenya, namely the Kapolet Forest (in Trans-Nzoia District), Talau and Kaipos (in West Pokot District), and Empoput Forest (in Marakwet District). The Requesters have asked for confidentiality (“*We do not authorize you to disclose our identities. Please, keep our identities and contacts confidential.*”). They refer to the communities as “*Sengwer ethnic minority hunter-gatherer Indigenous Peoples*”.

The Project

The NRMP is a Specific Investment Loan (SIL) approved by the Board on March 27, 2007. At the time of the receipt of the Request, the Project was 62.59% disbursed.

The Project Appraisal Document (PAD) states that the Project's development objective is 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."* The PAD adds that *"community participation and benefit sharing combines numerous inter-linked themes, including: enabling equitable and fair partnerships and equitable sharing of costs and benefits among various stakeholders, ensuring that all forest communities, and communities adjacent to forest areas are properly involved in decision-making and implementation activities, and protecting indigenous and customary access and use of forest resources."*

On June 10, 2011, the Project was restructured and the development objective was defined as to *"improve the management of water and forest resources in selected districts."* The areas where the Requesters indicate that they live fall within the districts defined as comprising the areas of intervention.¹

Of relevance to the issues raised in the Request (see below), the Project Paper at restructuring states that the Project will focus on updating the safeguards instruments and improving their implementation to respond to the needs of Indigenous Peoples in the project areas. It states that the Indigenous Peoples Policy was triggered *"due to the presence of Ogiek and Sengwer IP [Indigenous Peoples] communities in the Mt. Elgon and the Cherangany Hills, respectively."* The Paper states that *"an expressed concern of communities around the forests relates to land use and access issues"*. It adds that the Project will support preparation of Indigenous Peoples Plans (IPPs) for communities in project areas focusing on livelihoods and community driven development-type activities.

The Project Paper 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)."*² It mentions that VMGPs for the Ogiek and Sengwer communities will be developed and are expected to be completed during implementation of the restructured project, including free, prior and informed consultations. The Project Paper also mentions that the work currently underway with regard to community based forest management and conservation, as well as access to forest areas and natural resources, will benefit from the activities focused on addressing the governance principles of the REDD+ process.

¹ According to the Project Paper, 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.

² 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.'"*

NRMP is environmentally categorized as “B” and the following safeguard policies are triggered: Environmental Assessment (OP/BP 4.01), Natural Habitats (OP/BP 4.04), Forests (OP/BP 4.36), Indigenous Peoples (OP/BP 4.10), Involuntary Resettlement (OP/BP 4.12), Cultural Property (OPN 11.03 changed to Physical Cultural Resources (OP/BP 4.11)), and Projects on International Waterways (OP/BP 7.50).

Concerns Raised in the Request

The Request raises many concerns including some relating to human rights violations committed against Sengwer communities. Some of these acts seem to have taken place prior to the Project and other acts were committed at different times since the approval of the Project. The Requesters also raise the following concerns and list recommended actions to address their concerns.

Identification as Indigenous Peoples, consultations, and benefit-sharing. The Requesters claim that their rights were violated because they are not being recognized as Indigenous Peoples, but as a Vulnerable and Marginalized Group. They argue that this decision was taken without carrying out free prior and informed consultations with them. They state that they were told that the Indigenous Peoples Planning Framework (IPPF), prepared with support from the Project, was just a mere Memorandum of Understanding with the Bank. They add that when the leaders and elders of their communities pushed for the implementation of the letter and spirit of the IPPF for the Project they were told that they should be grateful to have the Project in Cherangani Hills because “*it was not supposed to be carried out in Cherangany Hills*” and that the Project was there by default. In substance, it seems that the Requesters do not feel that they are: in an equitable and fair partnership; sharing the benefits of the Project; and being properly involved in decision-making processes and implementation activities.

Land rights, weak resettlement planning and inadequate compensation. The Requesters ask for the recognition, respect and protection of “*the rights of Sengwer forest indigenous peoples to live within their ancestral homes in Kapoet and Empoput Forests.*” They describe events affecting their rights over time, including forceful evictions, arrests, and other harms in the years 2004 and 2007 through 2011. The Requesters further claim that there are plans to resettle the Sengwer families living in Empoput Forest “*without carrying out effective and efficient free prior and informed consultations*”. They state that there were plans to purchase land in Kipkapus and Rongai, and that at some point community members were asked to look for land as individuals. They state that the resettlement plans go against the Bank Policy on Involuntary Resettlement. They also claim that Sengwer families were not compensated for assets lost in Empoput Forest since the IPPF for the Project was adopted in 2007. They also ask for compensation for the abuses to which some community members were subjected.

Failures in supervision. The Requesters state that they feel that the Bank failed to carry out its supervisory role. They state that instead, the Bank “*protected their client even when there were clear facts and indications that the rights of the Sengwer indigenous peoples were being violated*”.

Violation of national laws and international commitments. The Requesters claim that earlier national commitments (such as, according to them, the decision in 1997 to settle members of Sengwer communities in Kapolet forest and a 2004 Court decision in their favor) were not respected. They claim that the rights of indigenous peoples as stipulated in the UN Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169, African Charter on Human and Peoples Rights, World Bank's OP 4.10 on Indigenous Peoples are not respected. They also claim that the IPPF and the Social Assessment Report for NRMP are also not being respected.

Registration of the Request

The Panel notes that it verified, at the time the Request was submitted, that the Request met the basic requirements for registration. The Panel also met with the World Bank Management to be briefed on the background of the Project and Management's efforts to resolve concerns raised by Project stakeholders.

The Panel confirms that the Request was submitted by at least two people, in relation to a project supported by the World Bank. The Bank's financing for the project has not yet reached 95% disbursement. The Requesters assert that they are affected by activities supported by the Bank, and the Request raises issues of harm which may plausibly result from Bank supported activities and from alleged actions or omissions of the Bank. The Request is not related to procurement issues, and it deals with a subject matter on which the Panel has not made a previous recommendation.

Furthermore, the Requesters state that they have complained in writing to Bank staff on several occasions. They further state that they have had meetings with relevant Bank staff, and that they were not satisfied with the explanations received. Some of the correspondence with the Bank is attached to the Request.

As provided in paragraph 17 of the IDA Resolution that established the Panel, the Chairperson of the Panel "*shall inform the Executive Directors and the President of the Bank promptly upon receiving a request for inspection*". With this notice, I am notifying you that I have, on January 30, 2013 which is also the date of this notice, registered this Request in the Inspection Panel Register. The Panel's registration is an administrative step and it implies no judgment whatsoever concerning the merits of a Request for Inspection.

As provided in paragraph 18 of the IDA Resolution, and paragraphs 2 and 8 of the "*Conclusions of the Board's Second Review of the Inspection Panel*" (the "1999 Clarification"), Bank Management must provide the Panel, by March 1, 2013, a Response to the issues raised in the Request for Inspection. The subject matter that Management must deal with in the response to the Request is set out in paragraphs 3 and 4 of the 1999 Clarification.

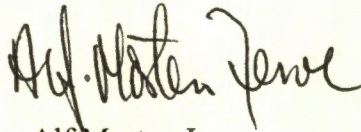
After receiving the Management response, the Panel will, as outlined in the 1999 Clarification and as provided by paragraph 19 of the Resolution, "*determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and*

shall make a recommendation to the Executive Directors as to whether the matter should be investigated."

The Panel will notify the Requesters that all communications in connection with the Request will be sent directly to them.

The Request has been assigned IPN Request Number RQ 13/02.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alf Morten Jerve', written in a cursive style.

Alf Morten Jerve
Chairperson

Mr. Jim Yong Kim, President
International Development Association

The Executive Directors and Alternates
International Development Association