

International Bank for Reconstruction and Development  
International Development Association

**PROGRESS REPORT  
TO THE BOARD OF EXECUTIVE DIRECTORS  
ON THE IMPLEMENTATION OF MANAGEMENT'S ACTION PLAN  
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT ON THE**

**KENYA  
NATURAL RESOURCE MANAGEMENT PROJECT  
(IDA Credit No. 42770-KE)**

September 17, 2015

## Abbreviation and Acronyms

ESF	Environmental and Social Framework
FCPF	Forest Carbon Partnership Facility
FY	Fiscal Year
GoK	Government of Kenya
Ha	Hectare
IFPO	Indigenous Forest Peoples' Organization
IP	Indigenous People
IPN	Inspection Panel
IPPF	Indigenous People Planning Framework
KEFRI	Kenya Forest Research Institute
KFS	Kenya Forest Service
NGO	Nongovernmental Organization
NRM	Natural Resource Management
OP	Operational Policy
PDO	Project Development Objective
REDD+	Reducing Emissions from Deforestation and Forest Degradation
WB	World Bank



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## **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 (NRMP), financed by IDA credit 42770-KE. The Request for Inspection was submitted by individuals from Sengwer communities who live, and represent other members who live, in four areas of the Cherangany Hills in the western highlands of Kenya, namely the Kapolet Forest (in Trans-Nzoia County), Talau and Kaipos (in West Pokot County), and Embobut Forest (in Marakwet County) (hereafter referred to as the “Requesters”).
2. The Executive Directors and the President of IDA were notified by the Panel of receipt of the Request. Management responded to the claims in the Request on March 15, 2013. In its [Eligibility Report](#) to the Board, the Panel found the Request eligible, and recommended that the Executive Directors authorize an investigation. The investigation was authorized by the Executive Directors on June 7, 2013.
3. On June 28, 2013 the Panel received a second Request submitted by four representatives of the Cherangany Indigenous Peoples Community on behalf of people living in the Cherangany Hills. The Board approved the Panel’s proposal to process the second Request jointly with the first one and, if deemed eligible, to address the claims presented in this additional Request in the context of the already approved investigation. The Requesters claimed that they had been forcibly evicted from their lands within the forests as a result of the Project, and that there had been a lack of recognition and protection of their customary rights during Project implementation.
4. On May 22, 2014, the Panel issued its [Investigation Report](#) outlining its findings. The Panel determined that no evictions were supported by the NRMP, but more attention should have been given from the outset to identify risks for affected people and adequately mitigate such risks as required by Bank policies on Environmental Assessment, Project Appraisal, Indigenous Peoples, and Involuntary Resettlement. The Panel also found an inadequate institutional analysis of the implementing agency, the Kenya Forest Service (KFS). The Panel found that Management responded repeatedly when issues did arise, succeeded in securing a moratorium on evictions and firmly brought to the attention of the Government of Kenya (GoK) instances of non-compliance with social safeguard obligations during Project implementation.
5. On July 7, 2014, Management submitted its [Response](#) to the Inspection Panel’s Investigation Report for consideration by the Executive Directors. The Investigation Report (INSP/R2014-0001) and the Management Report and Recommendation (IDA/R2014-0259) were discussed by the Board on September 30, 2014. The Board approved the proposed Management Action Plan (hereafter referred to as the Action Plan), as summarized below, and Management was requested to report back on its implementation within 6 to 12 months’ time. This report is intended to provide a summary of the progress on the implementation of the Action Plan.

## **Project Summary**

6. An IDA credit (US\$68.5 million equivalent) for the Kenya NRM Project was approved by the Board of Executive Directors in March 2007. The Project’s development objective was to improve the management of water and forest resources in selected districts (now counties). The Project included four components: Water Resource Management and Irrigation (US\$44.5 million), Management of Forest Resources (US\$22.4 million), Livelihood Investments in the Upper Tana Catchment (US\$6.2 million), and Management and M&E (US\$4.9 million). In June 2011, the Board approved Management’s proposal to restructure the Project. The restructuring revised and simplified the Project Development Objectives

(PDO), reallocated 21 percent of Project funds and formalized the inclusion of the Cherangany Hills into the Project area. The Project closed on June 30, 2013.

7. From the date of Board approval, the Project was operating in a very challenging environment, given the long history of tension on land and resource rights, a situation that was exacerbated by the ethnic unrest that followed the 2007 elections. Nevertheless, by the time the Project closed in 2013, the NRMP had delivered good results with over 145,000 rural people benefitting from irrigation works or through community-driven micro-projects; and 320,000 hectares of forest area brought under approved forest management plans (which exceeded the Project's development objectives). The achievements also included the establishment of 172 community-user groups with 50.5 percent women beneficiaries; and 713 livelihood based micro-projects supported. Other Project results included 7,124 ha of new area brought under forest cover, and 9,500 ha of land brought under irrigation in Project intervention areas.

### **Implementation of the Management Action Plan**

8. In response to the issues raised in the Panel Report, Management proposed an Action Plan which was consulted upon with the Requesters from both Requests through: (i) a video conference on June 11, 2014, attended by staff in the Nairobi and Washington offices; and (ii) a meeting with the Bank-team in Nairobi on June 30, 2014. Management identified and proposed actions best suited to address the Panel's findings considering that the NRMP had closed in June 2013, Government efforts to review and address related land issues were underway and further Bank engagement in Kenya's forest sector warranted an in-depth review of the issues that affected the NRMP. The country team also remained engaged in the dialogue with the GoK about the broader issues of tenure and access to forests, and provided advice to the GoK. In light of this, Management committed to undertake the following actions:

**A. Hold a Colloquium to Promote Dialogue and Cooperation on Land and Legacy Issues among Forest Stakeholders.** The Action Plan proposed the Colloquium to include members of the affected communities (possibly including the anonymous Requesters); Government agencies such as the KFS and the National Land Commission; nongovernmental organizations (NGOs); the World Bank and other Development Partners active in the forest sector. Also, the Colloquium was to build on the series of workshops and dialogues already held on land and legacy issues. Furthermore, the Colloquium would also allow the Cherangany-Sengwer stakeholders, including the Requesters, to articulate their proposals for working with the GoK in identifying a path forward to resolve the legacy land issues that affect the Cherangany-Sengwer community; and to continue to discuss the need for implementing participatory models of forest management among Cherangany-Sengwer in line with the Forest Act (i.e., the participatory forest management approach piloted by the Ogiek indigenous community in Mt. Elgon, which is another NRMP intervention area). As such, the Colloquium was to have discrete sessions on key topics including:

- Global best practices in (i) Developing process frameworks for customary rights, (ii) Resettlement, (iii) Indigenous Peoples Plans (i.e., Vulnerable and Marginalized Group Plans in NRMP);
- Global best practices in applying participatory forest management;
- Global best practices in community driven development; and
- Global best practices on mechanisms for resolving land and legacy issues.

**B. Provide Technical Assistance on Social Safeguards in Kenya to Indigenous Communities and the GoK.** This work had been initiated based on the fact that land and legacy issues are present throughout the Bank-financed portfolio in Kenya. So far three national workshops open to all

indigenous groups, including the Cherangany-Sengwer, who participated, were held to explain in detail how Bank social safeguards policies are applied in Bank-financed operations. Management has explored ways to expand this activity to include Government agencies.

## **Progress Report on the Action Plan**

### *Colloquium*

9. **The preparation of the Colloquium was a highly inclusive process** and the Bank team actively engaged with key stakeholders. An extensive set of consultations were organized with forest-dependent indigenous communities, Government institutions at national and county levels, Development Partners, academia and research, civil society, and the private sector. These consultations allowed the Bank team to collect inputs and comprehensive feedback to develop and focus the Colloquium's objectives, agenda and list of participants.

10. **A National Forum for Forest Dependent Communities preceded the Colloquium.** On January 18-21, 2015, the Kenyan Ministry of Water, Environment and Natural Resources (now Ministry of Environment and Natural Resources), in collaboration with the World Bank, organized a National Forum for Forest Dependent Communities in Nakuru. This event was attended by over 200 people, with the overwhelmingly majority coming from indigenous forest communities all over the country and including the Cherangany-Sengwer and Ogiek people from the Cherangany Hill areas. The Forum helped to build trust between the GoK and the indigenous forest dependent communities, and also established a collaborative platform between the communities and the GoK to continue the dialogue. At this Forum the indigenous forest communities groups prepared individual memoranda of issues and actions which they presented to the GoK for action.

11. **The Colloquium on Deepening Dialogue with Stakeholders in the Forest Sector was held in Eldoret on March 3-6, 2015 with more than 300 participants attending the event.** The event was hosted by the Ministry of Environment, Water and Natural Resources and the World Bank, with participation from the communities; Government representatives at the County and National levels; Independent National Commissions such as the National Land Commission, the Commission of Revenue Allocation, and the Cohesion and Integration Commission; private sector; Development Partners; international and Kenyan CSOs/NGOs; research institutes; international experts and media. The Colloquium included more than 170 community members representing the Cherangany-Sengwer (from Elgeyo Marakwet, West Pokot, and Trans Nzoia), Ogiek, Yaaku, Ilchamus, Samburu, Maasai (Narok), Aweer, Kaya (Mtswakara, Malakote, Sanye, Rabai), and Endorois. On the day preceding the Colloquium, March 3, 2015, a closed meeting of forest-dependent communities was held, which allowed communities to select their representatives and speakers, and to refine and agree on concrete positions including the memoranda from the January National Forum to be presented to the GoK.

12. **Discussions during the Colloquium were honest and constructive.** The event was opened by the Cabinet Secretary for Environment, Water and Natural Resources, who underlined the government's commitment to balance the conservation of forest resources and the rights of all citizens, including forest-dependent communities. The Kenya Country Director, who was also present during the first day session, emphasized, among others, the importance of trust and dialogue among stakeholders.

13. **The four-day event covered a range of issues,** including participatory forest and natural resource management; benefit sharing; grievance and dispute handling mechanisms; mechanisms for resolving land issues affecting forest communities; process frameworks for customary rights; and resettlement planning. International and global experiences were presented by experts from China, Ghana, Tanzania and Mexico, which participants freely discussed. They greatly appreciated the World Bank's role in organizing the

Colloquium, which they referred to as historical. The spokesperson for the forest-dependent communities said: *“Colloquium was a historic event that had brought all the communities together with the government and other stakeholders to find solutions to internal conflicts that had persisted for many decades over conservation of forests and the livelihoods of the communities.”*

14. **The Colloquium took a forward-looking approach.** The Colloquium recognized the importance of defining a road map and concrete actions for implementation of the recommendations of the National Forum held in Nakuru in January 2015. A process for sustaining dialogue and for coordinating and monitoring implementation was recommended, including the creation of a cross-sectoral steering committee comprising Government and community representatives. Preparation of a detailed draft matrix of follow-up actions was initiated and finalized (see Annex 1). The Bank expressed its commitment to supporting the GoK in continuing the dialogue in collaboration with other Development Partners.

15. **The Colloquium created a new platform for collaboration and dialogue between the GoK and the Indigenous forest-dependent communities.** Following the Colloquium, an Indigenous Forest Peoples’ Organization (IFPO) was formed, and a draft constitution is awaiting registration at the Registrar-General’s Department. The Colloquium confirmed the GoK commitment to conservation of forest resources while ensuring the rights of indigenous forest-dependent communities to these resources. The Principal Secretary in the Ministry of Environment, Water and Natural Resources, said: *“We have engaged in frank and open discussion during these last three days and agreed to continue consultations on the complex issues of participatory management of the forest sector. The government has a responsibility and is committed to resolve the issues we have heard in this forum.”*

16. **Communities pledged readiness for the policy dialogue on sustainable community forest management and indigenous peoples’ issues.** The event increased awareness of international best practice in community forest management among all participants. The Chairman of the Indigenous Forest Peoples’ Representative Committee addressed the Colloquium participants at the end of the event, stating that *“the community is and will be ready to dialogue on the issues identified. Our shared vision is that of leading fulfilled lives, a stable economy and maintaining enriched culture. We shall contribute our rich knowledge towards restoring the lost glory of our forests.”*

### *Social Safeguards Support*

17. **On March 19-21, 2014, the Bank organized a dedicated training in Nakuru on social safeguard policies for vulnerable and marginalized group communities, with 30 community members attending.** The Bank’s social development team will continue to provide support to projects to ensure complete coverage of the Bank portfolio on social safeguards. Capacity building training sessions for clients and Bank staff have been conducted to ensure and promote compliance with the Bank policies.

18. **Kenya has been included in the series of consultations to prepare the new World Bank Environmental and Social Framework (ESF), including on specific issues under the ESF.** A dedicated workshop on Indigenous People issues was held on February 27, 2015 and was attended by 42 people, including representatives from the Sengwer community. Kenya will participate in the upcoming third round of consultations on the new ESF and every attempt will be made to ensure a broad-based participation by all key stakeholder groups.

19. **Other learning events have also been organized.** At the June 16-18, 2015 meeting in Nairobi of the Bank’s Africa Region External Communications department, the Kenya NRMP was presented as a case study in a discussion on Borrower and World Bank compliance mechanisms. The presentation covered the Kenya NRMP, its achievements, challenges with regard to safeguards due diligence, the ensuing Inspection Panel Investigation and Management decisions and Action Plan. Other topics included

the series of engagement activities between stakeholders, especially the January 2015 National Forum organized by the GoK for Indigenous Forest Communities and the March 2015 Colloquium as well as the planned post-Colloquium activities towards deepening the dialogue, in particular between the GoK and the IFPO.

20. **Other opportunities were sought to engage with vulnerable groups.** On August 19–21, 2015 the executive leadership of the IFPO was among several Indigenous Peoples and CSOs from about 15 African countries who participated at the World Bank organized workshop under the proposed Forest Carbon Partnership Facility (FCPF)-supported Capacity Building Project on REDD+ for Indigenous Peoples, Southern CSOs and Local Communities. The Project seeks to build the capacity of targeted forest-dependent peoples and civil society organizations in the Africa region by enhancing their knowledge and understanding of REDD+, thereby allowing them to increase their participation in the REDD+ processes at the national level.

#### *Structured learning event*

21. On September 3, 2015, the Bank team held a structured learning event to discuss: (i) lessons learned from the preparation and implementation of the Kenya NRM Project; (ii) the Inspection Panel case and the Bank’s follow up actions, and (iii) resources available to Bank staff for dealing with legacy issues, particularly land tenure issues. The event targeted NRM practitioners, social and environmental safeguards specialists and other staff working on projects with land tenure issues. The learning event was part of a series on Lessons Learned from Inspection Panel cases. The Kenya NRM Project case study will be included in the Bank’s regular training program for staff (see Annex 2).

#### *Conclusion*

22. With the successful implementation of the dedicated safeguards training and the Colloquium, the Action Plan in response to the Panel’s Investigation Report is completed and no further reporting is required. The training workshop on social safeguard policies for vulnerable and marginalized group communities has been successfully concluded with 30 community members attending. The Colloquium provided an important and unique opportunity for the engagement of indigenous forest-dependent communities with the Kenya Forest Service and other relevant Government agencies, private sector, civil society, research and academia and Development partners.

### **Other Initiatives to Deepen Dialogue among Key Stakeholders in the NRM Sector**

23. Management is working closely with the GoK in pursuing a number of important initiatives to engage the GoK and Development Partners, and to further promote the dialogue between the GoK and indigenous forest-dependent communities, including the Cherangany-Sengwer. These activities include:

- The Bank will continue coordination and facilitation of meetings of the Donors’ Forest Group in Nairobi. To date, two meetings have been held, on April 29 and August 26, 2015, at the Embassy of Finland. The Bank was represented at both meetings.
- From September 26 to October 3, 2015, the Bank coordinated a knowledge and sharing exchange visit of the Kenya National Land Commission to Ghana to be hosted by the Ghana Lands Commission Secretariat. The visit provides an opportunity to share experiences on managing land tenure challenges in the two countries.

- The Bank will also coordinate quarterly meetings of the GoK/ Donors' Forest Group. The last quarterly meeting was held at KFS in June 2015.
- The Bank, the Center for International Forestry Research (CIFOR), and the Kenya Forestry Research Institute (KEFRI) discussed preparation of a study on “*Transforming rights, responsibilities and relationships through collaborative forest governance: An evidence-based approach for addressing current and historical forest conservation challenges in Kenya.*” The Bank will help in sourcing finances for the execution of the study.



**Figure 2: Photographs from the Colloquium**

(a) Heavily deforested landscapes used by communities for cattle grazing



(b) Colloquium was attended by over 300 participants with rich representation from the indigenous forest-dependent communities.



## **Annex 1: Integrated Matrix of Key Issues and Inputs from the National Forum for Indigenous Forest Communities (held in Nakuru<sup>1</sup>) and the Colloquium (held in Eldoret<sup>2</sup>)**

### **Cross-cutting Issues**

- Community representatives were overall grateful and considered the initiative unique, historic and opportune, which they hope will be sustained and realize binding outcomes.
- While broader themes emerged within and across communities, unique and specific community context should be recognized as per the submitted memorandum.
- Need to agree on the name/term to be used in describing the relevant communities – the discussion on 3<sup>rd</sup> March 2015 at Starbucks hotel, Eldoret narrowed down to three possible names, namely: Indigenous Forest Peoples, Indigenous Peoples, Minority and Indigenous Peoples, with majority of those present endorsing the name *Indigenous Forest Peoples* (IFPs).<sup>3</sup>
- Recognition, consideration and conclusion of existing Court cases, rulings and Taskforce and Commission reports related to Indigenous Peoples' claims.<sup>4</sup>
- The Constitution provisions on marginalized communities, i.e., articles 56 and 100 should inform subsequent policy legislation and programmes targeting Indigenous Forest Communities/Indigenous Peoples, including those related to affirmative action.
- Clarion call for recognition of the relevant Indigenous communities<sup>5</sup> as distinct ethnic groups with a dedicated code under the National Census.
- Call for a Comprehensive Indigenous Peoples policy and programme to respond to the issues raised.

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<sup>1</sup> Held at Hotel Cathay, Nakuru, January 18th – 21st 2015.

<sup>2</sup> Held at Boma Inn, Eldoret, March 3<sup>rd</sup> – 6<sup>th</sup> 2015.

<sup>3</sup> Constitution of Kenya, 2010, art. 260; Definition of marginalized communities: traditional, indigenous community, e.g., pastoral, nomadic and hunter gatherers.

<sup>4</sup> Ogiek of Mau, Ilchamus Taskforce on Mathenge weed, Endorois Taskforce on dispossession of Mochongoi, Mau Taskforce.

<sup>5</sup> Yiaku, Ilchamus and Sengwer.

Thematic Issues	Specific issues	Recommendation	Timelines	Lead Agency	Action by, Institutions, Agency, Ministry
To have clarity and security of Indigenous Peoples' Land tenure, including forest ownership <sup>6</sup>	Dispossession, Displacement <sup>7</sup> /eviction/ Lack of/inadequate compensation  Ogiek Squatters & landless by the roads	<ul style="list-style-type: none"> <li>• Restitution and compensation</li> <li>• Settlement of historical land claims<sup>8 9</sup></li> <li>• Indigenous Peoples to be returned back to their ancestral land<sup>10</sup></li> <li>• Emergency humanitarian response, i.e., stop-gap measure<sup>11</sup></li> </ul>	3 years	NLC	ME&NR, NLC, MoL, KNHRC, AG, CJ, CAJ
	Lack of demarcation and titling  Unfulfilled promises	<ul style="list-style-type: none"> <li>• Access to relevant land records,<sup>12</sup> settlement of boundaries disputes</li> <li>• Issuance of titles<sup>13</sup></li> <li>• Facilitate recognition of forest ownership</li> </ul>	1 year	NLC	MoL, NLC
	Contested resettlement and relocation efforts <sup>14</sup>	<ul style="list-style-type: none"> <li>• To be audited and rectified</li> </ul>	1 year	MoWNR	MoL, NLC
	Lack of recognition of forest ownership	<ul style="list-style-type: none"> <li>• Facilitate recognition of forest ownership</li> <li>• Release and update of Ogiek register<sup>15</sup></li> </ul>	1 month	MoWNR	MoL, NLC

<sup>6</sup> Affected counties, Nakuru, Kericho, Baringo, Nandi, Uasin Gishu, Narok, Nakuru, e.g., Mt. Eburu (Oloidonyio o-puru), fenced –in and landless; Transzoia, Elgeyo Marakwet, Laikipia.

<sup>7</sup> Ichamus, dispossession of Perkerra Irrigation Scheme, Baringo County.

<sup>8</sup> Constitution of Kenya, 2010 art.67e on National land Commission.

<sup>9</sup> National Land Policy Sessional no. 3 2009 - Land Issues Requiring Special Intervention art. 3.6.

<sup>10</sup> Ogiek of Mau, Ogiek Elgeyo Marakwet.

<sup>11</sup> Ogiek Communities squatting by the road side in South of Elgeyo Marakwet.

<sup>12</sup> Yiaku of Mukokodo forest – access to Group ranch Original Map as per original title, Notice of declaration to subdivide and Surveying of the Land.

<sup>13</sup> Kaya's of the Miji-kenda ...”Mabwenyenye wanapata cheti milki ya ardhi na sisi hatupati”; Ilchmaus. E.g., enkapune Oloiboni.

<sup>14</sup> Chepyuk of Mt Elgon Ogiek; Sengwer of Embobut forest.

<sup>15</sup> Ogiek, Eastern Mau.

	Illegal allocation of Land	<ul style="list-style-type: none"> <li>• Revocation of titles</li> <li>• Eviction of illegal allottees</li> <li>• Reallocation to the bona fide people<sup>16</sup></li> </ul>	1 year	NLC	NLC, MoL
Recognition of forest dwellers/Indigenous Peoples, and protection of Traditional livelihoods /occupation	Disregard of Indigenous knowledge systems	<ul style="list-style-type: none"> <li>• Recognition, promotion and integration of Indigenous knowledge<sup>17</sup></li> <li>• Documentation of Indigenous Knowledge</li> <li>• Recognition and respect for traditional institutions<sup>18</sup></li> </ul>	2 years	MoWNR	Museums of Kenya, NEMA, Ministry of devolution and planning (MoDP)
	Privileging of <ul style="list-style-type: none"> <li>• Forest conservation models</li> <li>• Concessionaires</li> <li>• Acceptable Shamba system</li> <li>• Degradation and deforestation of Indigenous forest ecosystems through Plantations establishment &amp; Livelihoods improvement (Pellis)</li> <li>• Encroachment of riparian land</li> </ul>	<ul style="list-style-type: none"> <li>• Facilitate land-use mapping<sup>19</sup> &amp; natural resource inventory</li> <li>• Rights based integrated approach to conservation<sup>20</sup></li> <li>• Indigenous Peoples and communities Conserved Areas (ICCA)</li> <li>• Recreation and restoration plans of Indigenous Peoples landscapes</li> <li>• No more replacement of Indigenous forests ecosystems with plantations,</li> <li>• Facilitate development of community bio-cultural protocols</li> <li>• Develop policy on rehabilitation and restoration of degraded natural habitats, e.g., forest ecosystems and protection of riparian land</li> </ul>	3 year	MoWNR	MoEWNR, MoDP
	Disregard/stigmatization of Indigenous belief systems/ATR	<ul style="list-style-type: none"> <li>• Recognition and respect for customary law &amp; values</li> <li>• Respect of community protocols</li> </ul>	2 years	MoWNR	MoEWNR, NEMA, Museums of Kenya, MoDP

<sup>16</sup> Ogiek of Mau Ref. Mau Ecosystem Taskforce report, Ndungu Report.

<sup>17</sup> Constitution of Kenya – 2010 –art. 11 and 44.

<sup>18</sup> Kayas, Yaku - Traditional age set leaders, Council of elders.

<sup>19</sup> Sacred sites, grazing, conservation and eco-tourism, human settlement.

<sup>20</sup> Ilchamus of Ilmukuntani and Lemaitai forests; Mt Elgon forest between Ogiek national conservation agencies.

	Denied access to cultural/sacred sites <sup>21</sup>	<ul style="list-style-type: none"> <li>Facilitate sacred sites identification, community mobilization, demarcation, survey and gazettelement</li> <li>Respect for positive traditional totems related to flora and fauna</li> <li>Establishment of cultural centers and general support of indigenous culture</li> <li>Enhanced recognition and regulation of multiple functions of forests, including spiritual value</li> </ul>	3 years	MoWNR	Museums of Kenya, MoEWNR, MoDP
Ensuring robust <b>consultation, effective representation</b> and <b>participation</b> including timely access to relevant information - decision making processes, political representation in County & national governments including constitutional commissions	Lack of consultation	<ul style="list-style-type: none"> <li>Establishment of meaningful, sustainable and structured engagement framework with government and its agencies that yield practical, implementable and binding outcomes informed by community protocol and Free, Prior and Informed Consent</li> <li>Define clear mandate, legal nature and the relations of the newly established Ogiek and Sengwer representation structure to other pre-existing governance including Council of Elders</li> <li>Seek financial support to implement above challenges</li> </ul>	3 years	MoDP	MoDP; MoENR, Treasury, CRA, DeP-WB, EU, Finns
	Poor/lack of representation in institutions of governance	<ul style="list-style-type: none"> <li>Affirmative action<sup>22</sup> in natural resource management</li> <li>Affirmative action in political representation<sup>23</sup></li> </ul>	2 years	NCIC	NGEC, MoENR, Treasury, CRA, DeP-WB, EU, Finns

<sup>21</sup> Ilchamus, Sengwer.

<sup>22</sup> Affirmative action also includes women, youth, and vulnerable groups.

<sup>23</sup> Informed by relevant constitutional provisions, arts. 56, 100.

	Language/illiteracy barriers/access to information	<ul style="list-style-type: none"> <li>The landscape is a library of knowledge in Indigenous Peoples' language</li> <li>Language conservation or revitalization programs</li> </ul>	5 years	NMK	Museums of Kenya
	Minority status	<ul style="list-style-type: none"> <li>Access to information in a language, form and place friendly to local communities</li> <li>Establishment of a national political minority constituency for affirmative action</li> </ul>	2 years	NCIC	MoDP, NGEK
Guaranteed and <b>equitable access to benefits</b> accruing from exploitation of natural resources within Indigenous communities' territories and in distribution of equalization fund, affirmative action public service employment	Highest burden of conservation borne by the communities	<ul style="list-style-type: none"> <li>Establishment an Indigenous Peoples Policy/legislation with FPIC</li> <li>Support to form CFA<sup>24</sup></li> <li>No/Review design of CFAs<sup>25</sup></li> <li>Consider establishment of Indigenous and community Conserved Areas (ICCA) models</li> </ul>	1 year	MoWNR	MoDP
	Restricted access to forest related resources including, e.g., honey, herbal medicine, fire wood	<ul style="list-style-type: none"> <li>Dedicated structure for benefit sharing</li> <li>Harmonization of existing policies on benefits sharing</li> <li>Say no to proposed constitutional amendment on the equalization fund clause</li> </ul>	1 year	MoWNR	MoDP, Parliament and Presidency
	Investment within Indigenous Peoples' territories	<ul style="list-style-type: none"> <li>Percentage share of income revenue (proposed share 60%)</li> <li>Review the current policy on equalization<sup>26</sup> fund to target communities as opposed to Counties</li> </ul>	10 years	MoDP	MoDP, CRA, County governments
	Carbon credit/REDD+	<ul style="list-style-type: none"> <li>Establishment of a national Indigenous Peoples Special Trust Fund<sup>27</sup></li> </ul>	1 year	MoDP	CRA, DeP

<sup>24</sup> Ilchamus, Yiaku.

<sup>25</sup> Mt Elgon Ogiek.

<sup>26</sup> Constitution of Kenya 2010, Equalization fund art. 204(2), 0.5% share of national revenue for a period of 20 yrs.

<sup>27</sup> Proposed by Sengwer, Ogiek.

Conflict resolution	Cattle rustling	<ul style="list-style-type: none"> <li>Use of alternative income generation activities</li> </ul>	3 years		MoICNG, Treasury, CRA, DeP-WB, EU, Finns
	Involuntary resettlement and relocation <sup>28</sup> by GoK	<ul style="list-style-type: none"> <li>Adequate negotiated compensation based on Free, Prior and Informed Consent</li> </ul>	3 years	MoEWNR	KNHRC, AG
	Forced political assimilation through force and scattering of resettlement	<ul style="list-style-type: none"> <li>Consider ethnic identity and implication on political representation in resettlement</li> </ul>		MoEWNR	
	Human-wildlife <sup>29</sup>	<ul style="list-style-type: none"> <li>Dispute resolution mechanism</li> <li>Clear Grievance Redress mechanism incorporating pre-existing customary approaches</li> </ul>	1 year	MoEWNR	MoEWNR; Judiciary and police service
	Politically instigated violence	<ul style="list-style-type: none"> <li>Pro-active provision of security, especially to threatened minority<sup>30</sup></li> </ul>	Immediately	MoICNG	MoICNG
	Illegal harvesting of forest products	<ul style="list-style-type: none"> <li>Recognition and strengthening of Community Based Monitoring Information Systems (CBMIS)</li> </ul>	Immediately	MoEWNR	MoEWNR
	Lack/insufficient of consultation	<ul style="list-style-type: none"> <li>Establish clear consultation guidelines, informed by Free, Prior and Informed Consent and ensure enforcement</li> </ul>			MoDP
Access to basic government services and rights as citizens	Access to basic infrastructure - Education, roads, electricity, health	<ul style="list-style-type: none"> <li>Dedicated full scholarship across levels</li> <li>Sustainable livelihood support system<sup>31</sup></li> <li>Dedicated Ministry on forest dwellers/Indigenous Peoples affairs</li> <li>Enhanced provision of school infrastructure</li> </ul>	Immediately	CRA,	CRA, MoDP
Human rights violations	Violent eviction, loss of property, gender-based violence, torture,	<ul style="list-style-type: none"> <li>Investigation and redress of human rights violations</li> <li>No more violations</li> </ul>	Immediately	KNHRC,	KNHRC, CAJ

<sup>28</sup> Chepyuk of Mt Elgon Ogiek; Sengwer of Embobut forest.

<sup>29</sup> Ilchamus and Yaku.

<sup>30</sup> Ilchamus.

<sup>31</sup> Ogiek of Mau, as informed by the Economic and Social rights – Constitution of Kenya 2010, art. 43, i.e., health care, water, education & emergency treatment.

	criminalization, destruction of property				
Gender, youth and Peoples with Disability (PWDs)	Lack of recognition of women and youth roles in conservation and natural resource management	<ul style="list-style-type: none"> <li>• Recognition of privileged Indigenous knowledge held by women</li> </ul>	Immediately	GEC	KNHRC, CAJ
	Internal marginalization of women and PWDs within specific Indigenous Peoples groups on ownership of property and participation in decision making	<ul style="list-style-type: none"> <li>• Enforcement of constitutional provisions on equity across gender and affirmative action on gender, youth and PWDs</li> </ul>	Immediately	GEC	KNHRC, CAJ
	Women and PWDs disproportionately affected by forceful evictions	<ul style="list-style-type: none"> <li>• Stop forceful eviction</li> <li>• Ensure humanitarian aid in current situations</li> </ul>	Immediately	GEC	KNHRC, CAJ
Monitoring and evaluations	Need to ensure sustained and progressive and productive engagement	<ul style="list-style-type: none"> <li>• Annual Indigenous Peoples/forest dependent communities dialogue forums with government to monitor progress</li> <li>• Facts findings and familiarization field missions/outreach to communities by relevant GoK Ministries, agencies, commissions</li> <li>• Periodic leaders forums to address emerging issues</li> </ul>	Immediately	MoEWNR MoEWNR	MoEWNR

## Annex 2: Lessons Learned from Kenya Natural Resources Management Project – A Case Study

### Introduction:

This case study presents the Kenya Natural Resources Management Project (NRMP) and discusses challenges of its preparation and implementation, including political and social context the Project was operating in, including Inspection Panel case. The case study aims to review the lessons learned from the NRMP preparation and implementation.

### Project Description:

1. **Overview:** An IDA credit (US\$68.5 million equivalent) for Kenya NRM Project (P095050) was approved by the Board of Executive Directors in March 2007. The Project's development objective was to improve the management of water and forest resources in selected districts. The Project included 4 components:

- Water Resource Management and Irrigation (US\$38.1 million),
- Management of Forest Resources (US\$21.1 million),
- Livelihood Investments in the Upper Tana Catchment (US\$4.5 million), and
- Management and M&E (US\$4.8 million).

2. **Project location:** As defined in the PAD, the Project locations included two critical watersheds of the Tana and the Nzoia Rivers (Figure 1). Project investments concentrated on the upper catchment of the Tana River and two key watersheds of the Nzoia river catchment, the Kakamega Forest and Mt. Elgon.

3. **Project results:** Kenya NRMP was one of the first projects in the Bank in 2007 that utilized a landscape approach to natural resource management and delivered good results on the ground, at the Project closure in 2013:

- >145,000 rural people benefitted from irrigation works or through community-driven micro-projects;
- 320,000 hectares of forest area was brought under approved forest management plans;
- 172 community-user groups established collaborating with the GoK institutions in water and forest activities, with 50.5% women beneficiaries;
- 713 of livelihood based micro-projects supported, with 51% women beneficiaries;
- 7,124 Ha of new area was brought under forest cover in Project intervention areas;
- 9,500 Ha of land under irrigation in Project intervention areas.

### Political Context:

4. From the Board preparation and approval, the Project was operating in a challenging operating environment given the long history of tension on land and resource rights. The Project progress has come to a complete stall during the ethnic unrest that followed the 2007 elections.

#### **Box 1: Use of Shamba system in Kenya:**

The 2005 Forests Act, reintroduced the Shamba system under the new “plantation establishment and livelihood improvement scheme (PELIS)”, which involved farmers tending tree saplings on state-owned forest land in return for being permitted to intercrop perennial food crops until canopy closure. The system was supposed to mutually benefits to both local people and the government. However the system has had mixed success in Kenya due to widespread malpractice and associated environmental degradation. In many cases, the

#### **Box 2: Kenyan crisis 2007–08:**

2007-2008 Presidential elections marked a political, economic, and humanitarian crisis that erupted in Kenya after incumbent President Mwai Kibaki was declared the winner of the presidential election held on December 27, 2007. Supporters of Kibaki's opponent, Raila Odinga of the Orange Democratic Movement, alleged electoral manipulation. This was widely confirmed by international observers, perpetrated by both parties in the election. In the aftermath there

farmers tending to a plot of forest area were never allocated a new piece of land and were forced to stay in the forest and eventually cut the trees to continue subsistence farming.

were more than a 1,000 people killed and almost 500,000 people displaced as a result of this conflict.

### Project Safeguards Arrangements and Implementation:

5. Environmental and social safeguards for the document followed a framework approach due to community driven development nature of the Project and the investments which were small or medium size (water storage and check dams) with environmental, human health and safety, and trans-boundary impacts that were easy to identify and mitigate. It was assigned **category B** for environmental assessment and triggered seven safeguards policies<sup>32</sup>. The Project prepared **Environment and Social Management Framework, the Resettlement Policy Framework, and the Indigenous Peoples Planning Framework (IPPF)**. All safeguards instruments were prepared on time, were cleared by the GoK and the World Bank RSA and publicly disclosed in Kenya and in the InfoShop. During Project implementation a **Process Framework** was developed and approved after widespread consultations, which addressed customary rights of forest dependent populations and established a grievance mechanism.

6. In the Project Implementation Completion Report, the original Project design was evaluated as overly ambitious, including aspirations in the IPPF to resolve long-standing land and forest conflicts nationwide that were not realistic given the scope and timeframe of the Project. This ambition 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. These items were not related to the mitigation of the foreseen Project intervention and raised unrealistic expectations contributing to unresolved conflicts between sections of some communities and the GoK. In addition, it was not always clear which were the appropriate and representative entities the Project team should engage with given the dissenting voices of the indigenous people organizations.

#### **Box 3. Indigenous People Policy Framework:**

In Chapter 2, in the section on mitigation measures (page 36) the document states that the “legal access to forests and to natural resources is an important element of sustainable natural resource management. Due to that, the Government of Kenya:... will in line with the Draft Land Policy (§ 190-191) pay special attention and offer specific assistance within the land restitution process to indigenous peoples to claim all lands over which indigenous peoples have lost control between 1895 and December 30e 2002. A very important element is that past actions don't change the entitlements of the indigenous peoples.”

7. Complicating safeguards compliance issues is the underlying fact that the Project documentation at entry was not internally consistent on safeguards obligations, raising expectations of what NRMP (or any project) could accomplish on a decades-old simmering legacy of land access issues that continue to punctuate national politics. This issue could have been further compounded by the turnover in social safeguards staff/consultants during Project preparation and implementation.

8. The Project took a proactive approach to help the GoK, the indigenous communities and the Bank to build trust so that progress can be made on the ground on poverty alleviation, community resource rights, and conservation in a way that satisfies the vast majority of stakeholders. In general, the GoK and Bank have erred on the side of caution, reacting promptly to complaints as they have come to their attention, carrying out exceptionally intensive field supervision (every 10 weeks on average) and verifications, and strongly advising the GoK to implement solutions

<sup>32</sup> Safeguards policies triggered by the Kenya NRMP project: OP 4.01 – Environmental Assessment, OP 4.36 – Forests, OP 4.11 - Physical Cultural Resources, OP 4.10 - Indigenous Peoples, OP 4.12 - Involuntary Resettlement, OP 7.50 - Projects in International Waterways, and OP 4.04 - Natural Habitats.

consistent with Project safeguard frameworks and international best practices with regard to environmental and social safeguards.

9. One year before Project closure in 2012, the Project team and Bank management worked internally with the Operations Policy and Country Services Vice Presidency to prepare a dispute resolution approach (complementing the local Project-level grievance redress mechanism (GRM) led by KFS) to support resolution of community concerns. The specific actions included 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.

#### **Inspection Panel Case and Follow up Actions:**

10. **Request:** In January 2013 the Inspection Panel of the World Bank received a request for inspection sent by individuals from Sengwer communities who “live and represent others who live” in four areas of the Cherangany Hills – an area, which was not originally considered for Project implementation (Figure 1) – claiming that they have suffered harm as a result of the Bank’s “failure and omissions” in the Project for incidents between 2007 and 2011.

11. **Inspection Panel Findings:** The Panel found that evictions were not supported as part of the NRMP. However, it noted that more attention should have been given from the outset to better identify and mitigate the risk that evictions might occur and that the correct application of the safeguard policies may have prevented or mitigated these harms. The Panel also found an inadequate institutional analysis of KFS.

12. The Panel found that Management responded repeatedly, and firmly brought to the attention of the GoK instances of non-compliance with social safeguards obligations during Project implementation and succeeded in securing a moratorium on evictions. The Panel noted that the livelihood activities implemented after the restructuring of the Project in 2011 was appreciated by, and beneficial to, community members but it was not part of a broader strategy to protect customary rights, and this is in non-compliance with the safeguard policy on Indigenous Peoples.

13. After reviewing the issues raised, Bank Management concluded 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. Management stated that in spite of the difficult operating environment which included complex and sensitive legacy issues, the Bank had complied with the policies and procedures applicable to the matters raised in the request.

14. Following the Inspection investigation the Management committed to an action plan, which included holding a **Colloquium to promote dialogue and cooperation on land and legacy issues among forest stakeholders**; and providing **technical assistance on social safeguards in Kenya**. The key objectives of the Action Plan were to: (i) facilitate constructive dialogue and foster cooperation among key stakeholders in the forest sector in Kenya; (ii) share national and global experience and best practices on the management of forest resources for win-win solutions for poverty reduction, livelihoods improvement and environmental sustainability; and (iii) support and increase capacity of the clients and forest stakeholders to understand and apply social safeguards policies under the WB financed projects.

15. Despite these efforts, before, during and after delivery of the Colloquium, certain stakeholders continued to generate negative messages and allegations about the connection between the Bank and alleged evictions. The Bank team continues to implement a proactive communications plan to manage these, however, such negative messages will be promulgated by certain groups almost irrespective of what the Bank and the GOK are able to do in the near term.

## Lessons Learned

### 16. At preparation stage:

Be realistic about Project Development Objectives and define project boundaries very carefully.

Given the scope and timeframe of the Project, the original Project design was overly ambitious concerning the resolution of long-standing land and forest conflicts. This has contributed to difficulties in maintaining a clear distinction between Project activities and activities outside the Project, and blurred the line defining appropriate boundaries of Project safeguard obligations in forested intervention areas. The approach set forth in the IPPF on resettlement and restoration of livelihoods was overly ambitious and difficult to implement given the scope of NRMP's forest component and the limited mandate of the implementing agency, the KFS. This view implies that the original Project design underestimated the complexity of the Project context.

17. The CDD livelihoods micro-projects can be a good approach for helping incentivize local communities in co-managing natural resources with the government while enhancing livelihoods. Much work needs to be done at the same time to incentivize Government agencies to likewise move toward co-management of the resource. For some forest agencies around the world, such a transformation is a paradigm shift that requires longer-term engagement than a 3-5 year project allows. The CDD project manual was a useful tool to promote activities that can allow communities to conserve more and produce more. NRM-based livelihoods can effectively improve community participation in sustainable co-management of resources while improving their livelihoods and mitigating destruction of catchments.

Provide required attention to ensure project quality at entry:

- Difference in definition of the intervention areas in the PAD and IPPF which led to continuous misunderstanding of the Project scope by some stakeholders.
- Difference in PDO definition in the Financing Agreement and PAD.
- Unrealistic indicators and over-optimistic targets.
- Weak implementation readiness by the Implementing Agencies.
- No consistent assignment of social safeguards specialist, with occasional consultants assigned safeguards responsibilities, which led to lack of sufficient attention to quality of the safeguards instruments.

### 18. Transition from Preparation to Implementation stage:

Ensure continuity, preferably maintaining staff throughout the project cycle.

Project staff changes at implementing agencies should be kept to a minimum to maintain the learning curve. Before the start of the project, it is important to spend the time and resources needed to provide solid baseline information, based on consistent and realistic indicators, so that project impacts can be effectively assessed. It is equally important to document the baseline information and make provisions for training and capacity building of project staff to ensure common understanding of the project design and goals.

Ensure the government's team understanding and ownership of the project documents.

Mainstreaming project implementation activities within the implementing agencies enhances ownership and ensures sustainability. Capacity building of institutional staff involved in implementation of project activities should be encouraged throughout the project period. In this way a critical mass for implementing future similarly funded projects is created and momentum can be gained on the delivery of project outputs.

### 19. Takeaways from Project Implementation:

- a) Communicate with all stakeholders on an ongoing basis.
- b) Document and archive relevant communications at all times.
- c) Fulfill all commitments made in PAD on project supervision.
- d) Be appreciative of local traditions; develop solutions around these.
- e) Ensure to engage to confirmed representatives of beneficiaries and stakeholders.

- f) Be aware of potential elite capture by individuals not representing project stakeholders.
- g) Be proactive, especially when Request for Investigation is filed.
- h) Establish trust, and work closely with the project sponsors for solutions.

20. **Takeaways from the Inspection Panel case:**

There were several lessons that could be learned, particularly, that sustainable forest management is constrained in many parts of Kenya by conflicts over or uncertainty concerning the respective rights of local people and government to forest resources and to the land in and around forests. Land issues have a deep, historical legacy in Kenya. While untangling such a legacy is beyond the purview of any single project, the World Bank Group continues to be committed to playing an important role as a facilitator and a partner to help foster dialogue amongst various stakeholders in the forest sector.