

Inspection Panel Investigation Kenya: Natural Resource Management Project

Initial Investigation Plan (August 2013)

I. Introduction and Panel's Recommendation

The Panel received the Request for Inspection with regards to the Kenya: Natural Resources Management Project (NRMP) on January 14, 2013. Following the receipt of the Management Responses to the Request for Inspection on March 15, 2013, the Panel conducted its eligibility visit in May, 2013. Following the visit, the Panel recommended to the Board of Directors 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 Board approved the Panel's recommendation and initiated the investigation phase effective as of June 7, 2013.

The Panel noted in its Report that there are conflicting assertions and differing views on issues of harm and compliance with policies and procedure. 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 considered that there are *"plausible linkages between activities under the Project and the concerns of the people relating to eviction and resettlement."*

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.

What proceeds in the following sections is a broad outline of the investigation design. It briefly summarizes the key questions and issues which the investigation is expected to address while also providing a tentative timeline of the investigation process as a whole.

It should be noted that this is an initial investigation plan that has been prepared during the early phases of the investigation process. It should be expected that the plan may be modified and adjusted accordingly as the investigation moves forward.

II. Generic Questions for Investigation

1. Is there a violation by the Bank of its applicable policies and procedures in the design, appraisal and implementation of the Project that may have contributed to the harm alleged in the Request?
 - i. What issues of harm raised in the Request can be linked to the Project? Is the harm of a serious nature?
 - ii. How did Management address these issues during preparation, appraisal and implementation of the Project?
 - iii. Were these actions sufficient to meet the requirements of the applicable policies?

- iv. Can the issues of harm in question at least be partly attributable the Bank's non-compliance?
2. Did Management take any steps and actions during the course of the investigation to address the issues of compliance and the concerns raised by the Requesters?
 - i. Are these actions sufficient to meet the requirements of the applicable policies, and the concerns of raised by the Requesters?

III. Issues of Harm and Compliance raised in first Request for Inspection

1. The application of policies in relation to evictions and issues of resettlement of affected Sengwer people

- a. The Request alleges a number of negative impacts/harms including: forceful eviction and subsequent displacement of indigenous families, destruction of property and excessive force/violence directed towards communities by forest staff. In addition, it suggests that these undesirable actions took place in the absence of adequate consultations with the Sengwar community and without adhering to the Bank's policy on involuntary resettlement.
- b. Assessing harm-Project links:
 - i. What are the impacts of Project activities on the Sengwer communities living in the Project area including the establishment of boundaries/forest protected areas?
 - ii. Who was evicted? Which communities in the Cherangany Hills were subject to evictions and when? In which context were the people in Kapolet forest arrested? Who was arrested and when? Were these incidents related to the Project?
 - iii. Are the evictions/relocations an impact of Project activities? If so, which project activities? What kind of link exists between these activities and the alleged harm?
- c. Describing Project/Management actions:
 - i. Were potential Project impacts on communities identified and analyzed in the Project safeguard documents? Were evictions identified as one of the potential impacts? If so, what measures were taken to address this impact?
 - ii. Were consultations carried out with people living in gazetted forests concerning evictions and resettlement prior to and during project activities? How was these consultations carried out?
 - iii. Did Management react to issues of evictions as they were brought to its attention? If so, how? Were these responses sufficient to meet the requirements of the policies?
 - iv. Has Management supervised the capacity building component of the Project with respect to KFS staff? Was this issue taken up following repeated incidents of evictions?
- d. Reviewing policy compliance:
 - i. Is the policy on Involuntary Resettlement applicable to the evictions that occurred in the project area? Was the OP 4.12 on Involuntary Resettlement applied? Did the Bank comply with the provisions of the policy on involuntary resettlement, OP 4.12?

- ii. Is OP 4.10 on Indigenous Peoples applicable to the evictions/relocations complained about in the Request? If so, were the relevant policy provisions applied?
- iii. Is there compliance with the policy on Bank supervision OP 13.05?

2. The consideration of customary rights of the affected Sengwer people, including consultations on this issue.

- a. Summary of the allegations of harm and non-compliance in the Request:
 - i. Actions taken during project implementation have failed to safeguard the Sengwers' customary rights to the forests. The Project does not recognize the rights of the Sengwers to live, use and access the forest and its natural resources in their ancestral forest.
 - ii. The Bank did not comply with its policies:
 - 1. Bank failed to ensure that the Project's Indigenous Peoples Planning Framework (IPPF) was implemented
 - 2. Bank allowed the term "vulnerable and marginalized groups" to be used instead of "indigenous peoples," in detriment to the rights of the indigenous groups like the Sengwer
 - 3. Bank did not conduct adequate consultations with communities throughout project implementation, especially with respect to the project restructuring and the changes to the IPPF
- b. Assessing harm-Project link:
 - i. Who are the people that claim customary rights to the Project areas? What are these claims? Rights to what?
 - ii. Were customary rights of the people to access and use the forest denied or diminished in Project areas?
- c. Describing Project/Management actions:
 - i. Has the Project recognized and assessed customary rights of Sengwer indigenous peoples pertaining to land that they traditionally own or occupy and customarily use and to natural resources in these lands on which they depend economically and culturally?
 - ii. Were project impacts on Sengwers' right to land and natural resources assessed? Was a social assessment of customary rights prepared? Were mitigation measures identified with respect to adverse impacts of the project on the enjoyment of these rights? Did the project prepare a process framework to address potential loss of access to natural resources in the forest?
 - iii. Were adequate consultations with the Sengwer carried out during design and implementation of the project – i.e. during the preparation of the social assessment, Process Framework and Vulnerable and Marginal Groups (VMG) Plans? Were indigenous people consulted about the project restructuring?
 - iv. Were plans for co-management of forest resources prepared and implemented?
- d. Reviewing policy compliance:
 - i. Were indigenous peoples' plans prepared to mitigate project impacts on the livelihood of the indigenous groups? Are they adequate and in compliance with OP 4.10?

- ii. Did Project authorities achieve broad community support as required by OP 4.10? Were consultations carried out in accordance with policy requirements?
- iii. Is the project as restructured in compliance with the policies with respect to the project's impacts on Sengwer people living in project area? Is there a difference between the project as originally designed and the project as restructured with respect to the application of OP 4.12 and OP 4.10?

IV. Steps/Methodology

- 1. Fact-finding activity
 - i. Detailed analysis of all project documents, including safeguard documents: ESMF and RPF, as originally designed and after restructuring; IPPF and VMG Plans; Social Assessment and Process Framework.
 - ii. Meetings with Bank staff involved in the Project.
 - iii. Field visit, which entails visit to Project area and meetings stakeholders in Kenya: Requesters, Sengwer communities who did not submit the Request; KFS staff, both at local and national level; national authorities and others.
- 2. Report drafting

V. Investigation Steps – Tentative Chronology

The Panel intends to conduct a field visit in the month of September, 2013. Subsequently, it expects to submit an Investigation Report to the Board of Directors in early 2014. The Panel's Investigation Report, along with the Management Report and Action plan are to be made public following the Boards consideration of both reports.