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July 8, 2014

**For meeting of
Board: Date to be determined**

FROM: The Corporate Secretary

Inspection Panel

Kenya - Natural Resource Management Project

**Management Report and Recommendation in Response to the
Inspection Panel Investigation Report**

1. Attached is a Memorandum from the President entitled "Management Report and Recommendation in Response to the Inspection Panel Investigation Report – Kenya - Natural Resource Management Project (IDA Credit No. 42770-KE). The Inspection Panel Investigation report was distributed on May 27, 2014 (INSP/R2014-0001).
2. Both reports will be considered by Executive Directors in a meeting to be held on a date to be determined.

Distribution:

Executive Directors and Alternates
President
Bank Group Senior Management
Vice Presidents, Bank, IFC and MIGA
Directors and Department Heads, Bank, IFC and MIGA
Inspection Panel

THE WORLD BANK
Washington, DC 20433

Office of the President

July 7, 2014

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT**

KENYA

**NATURAL RESOURCE MANAGEMENT PROJECT
(IDA CREDIT NO. 42770)**

1. Attached for consideration by the Executive Directors is Management's Report and Recommendation in Response to the Inspection Panel's Investigation Report No. 88065-KE dated May 22, 2014 on the Kenya Natural Resource Management Project (IDA Credit No. 42770).
2. I recommend that the Executive Directors approve the actions set out in Section VI of the attached Management Report and Recommendation.

Jim Y. Kim
President

By Sri Mulyani Indrawati
Managing Director

International Bank for Reconstruction and Development
International Development Association

INSP/88065-KE

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE
INSPECTION PANEL INVESTIGATION REPORT**

KENYA

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

July 7, 2014

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT
OF THE
KENYA
NATURAL RESOURCE MANAGEMENT PROJECT
(P095050) (IDA Credit No. 42770)**

Pursuant to paragraph 23 of the Resolution Establishing the Inspection Panel (IBRD Resolution 93-10 and IDA Resolution 93-6), attached for consideration by Executive Directors is Management's Report and Recommendation in response to the findings set out in the Investigation Report No. 88065-KE dated May 22, 2014, of the Inspection Panel on the captioned Project (Kenya Natural Resource Management Project, P095050, IDA Credit No. 42770).

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE
INSPECTION PANEL INVESTIGATION REPORT NO. 88065-KE**

**KENYA
NATURAL RESOURCE MANAGEMENT PROJECT
(P095050)**

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ABBREVIATIONS AND ACRONYMS

BP	Bank Procedures
CDD	Community Driven Development
CFA	Community Forest Association
GoK	Government of Kenya
GRM	Grievance Redress Mechanism
IDA	International Development Association
IDP	Internally Displaced Persons
IP	Indigenous Peoples
IPN	Inspection Panel
IPP	Indigenous Peoples Plan
IPPF	Indigenous Peoples Planning Framework
KFS	Kenya Forest Service
MoFW	Ministry of Forestry and Wildlife
NGO	Nongovernmental Organization
NIB	National Irrigation Board
NRMP	Natural Resource Management Project
OMS	Operational Manual Statement
OP	Operational Policy
PAD	Project Appraisal Document
PDO	Project Development Objectives
PFM	Participatory Forest Management
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
SA	Social Assessment
VMG	Vulnerable and Marginalized Group
VMGP	Vulnerable and Marginalized Group Plans
WRMA	Water Resources Management Authority

I. INTRODUCTION

1. On January 30, 2013, the Inspection Panel registered a Request for Inspection, IPN Request RQ 13/02, concerning the Kenya Natural Resource Management Project (“the Project”) financed by the International Development Association. 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 District), Talau and Kaipos (in West Pokot District), and Embobut Forest (in Marakwet District) (hereafter referred to as the “Requesters”).
2. 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. On August 1, 2013, the Panel requested the Board to approve the Panel’s recommendation to process this Request as part of the ongoing investigation relating to the first Request for Inspection. The Panel proposed to verify the technical eligibility of the Requesters and the Request during the planned investigation visit. The Board approved the Panel’s request to process the second Request jointly with the first Request and, if deemed eligible, that the Panel address the claims presented in this additional Request in the context of the already approved investigation.
3. The Executive Directors and the President of IDA were notified by the Panel of receipt of the Request. The Management responded to the claims in the Request on March 15, 2013.
4. In its 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.
5. On May 22, 2014, the Panel issued its report outlining the findings of the investigation. Management appreciates the Panel’s clear and thorough presentation of its findings. This report, responding to the findings of the Panel, is organized as follows: Section II presents the Project; Section III discusses special issues; Section IV provides a summary of the findings of the Panel; Section V contains Management’s response to the Panel’s findings; Section VI presents Management’s Action Plan in response to the Panel’s findings, and Section VII contains the conclusion. The Panel’s findings, along with the Management’s responses, are described in detail in Annex 1.

II. THE PROJECT

The Project Context

6. Kenya's natural resource endowment is the foundation for much of the country's economic activity, but it is vulnerable to floods and drought, mismanagement, and depletion. High demand has been putting tremendous pressure on Kenya's natural resource base, including water and forests. The country remains highly water scarce, and how forests are managed has a direct impact on water resources and therefore poverty, prosperity, and resilience.

7. **Watershed Management.** Key watershed management issues include: (i) watershed degradation as a result of deforestation and poor land use practices; (ii) lack of storage capacity; and (iii) poor management frameworks, although recent policy reforms have begun to address this. The Water Act of 2002 provided a basis for implementing water sector reforms. The national Water Resources Management Authority (WRMA) was designated to address: (i) institutional coordination, (ii) decentralization and local accountability, and (iii) sustainable financing of WRM.

8. **Forest Resource Management.** Depletion and unsustainable use has reduced Kenya's relatively small forested area from about 10 percent of its land area at independence in 1963 to an estimated 1.7 percent (or 1.24 million ha) today. There are four categories of forest, including state indigenous forests, state plantation forests, farm forests, and forest and woodlands on local authority land, including dryland forests. Plantation forests were established to help create a viable, dynamic and diversified forest industry, while reducing dependence on indigenous forests for raw material supplies. Indigenous forests play a critical role in Kenya's society and culture and were planned to be managed to conserve water supplies, to reduce soil erosion and (to a lesser extent) to produce timber raw material. However, a number of problems have led to poor plantation management, abuse in the disposal of forest land and produce as well as preferential licensing, which contributed to a decline in supply of timber and other products. In addition, the steady growth of Kenya's rural population continues to place strain on forest land, which is often considered the only remaining "land reserve" in the country.

9. Recognition of acute problems in the forest sector led the Government of Kenya (GoK) to prepare a Forest Policy and a Forest Act, which received parliamentary approval in 2005. The main goals for the reform of the forest sector were to raise efficiency, ensure protection and sustainable forest use, and promote poverty reduction. Strengthening forest governance is critical for the success of these efforts. The Forest Act embraced participatory forest management, whereby community forest associations (CFAs) would be recognized as partners in management. The Forest Act also promoted private sector participation to enhance the competitiveness of the sector.

The Project

10. It was in this context that the Natural Resource Management Project (NRMP) was prepared to assist the GoK to better manage water resources and forests, through strengthening of the information base, enhancing the legal and regulatory framework, financing investments in capital works such as irrigation in Mwea, and engaging communities as partners in co-management of water and forest resources. In doing so, two critical watersheds of the Tana and the Nzoia Rivers were supported, with investments planned in the

upper catchment of the Tana River and two watersheds of the Nzoia River catchment, the Kakamega Forest and Mt. Elgon.

11. The NRMP, a Specific Investment Loan, was approved by the Board of Directors in March 2007 and became effective on December 10, 2007. Once it became effective, it was almost immediately affected by the turmoil that followed the disputed December 27, 2007 general election, which caused implementation delays until April 2008.

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

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

- *Component 1 – Water Resources Management and Irrigation (US\$38.1 million).* This Component: (i) strengthened the capacity of the WRMA, with direct investments in the Upper Tana Catchment; and (ii) contributed to sustainable irrigation development through consolidation of National Irrigation Board (NIB) reforms and development of irrigation in the downstream part of the Nzoia river basin.
- *Component 2 – Management of Forest Resources (US\$21.1 million).* With the passage of the Forest Act, Kenya sought to move from government to joint management by local communities and the private sector, in order to improve forest governance and participation and investment by stakeholders. To operationalize the Act, the Ministry of Forestry and Wildlife (MoFW) and the Kenya Forest Service (KFS) foresaw a Forest Management Component that would provide assistance in creating a transparent and accountable regulatory and institutional framework, and targeted support to implement the Act. Sub-components focused on: (i) operationalizing institutional reforms to enhance forest governance and improve revenue capture, improve the information base, improve development and management of forest plantations and better protect and manage indigenous forests; (ii) enabling community participation and benefit sharing, identifying and prioritizing an array of partnership models to implement the legislative framework and improve benefit sharing; and (iii) strengthening institutional support services to create an enabling environment for community and private sector involvement in development and management of production forests.

Many of the planned activities under Component 2 were overly ambitious, given the deeply entrenched nature of the underlying issues and the limited mandate of the Project’s implementing agency, and were significantly scaled back in the 2011 restructuring described below.

- *Component 3 – Livelihood Investments in the Upper Tana Catchment (US\$4.5 million).* Financing was provided for Livelihood-based Multisectoral Management Investments in the Upper Tana Catchment, using a Community Driven Development (CDD) approach, where proposals were sought from communities to fund micro-projects to be carried out using district-based delivery mechanisms. Management was decentralized, with a Secretariat based in the WRMA offices in

Embu, and a steering committee of key natural resources management organizations to vet the proposed projects. Technical assistance was provided through WRMA, NIB and KFS staff on the ground to ensure a coordinated approach and sustainability.

- *Component 4 – Management and Monitoring and Evaluation (US\$ 4.3 million).* The Project was managed through two line ministries, Water and Irrigation, and Forestry and Wildlife, and the respective implementation agencies (WRMA, NIB, KFS), supported by a coordination office hosted within the Ministry of Water and Irrigation.

14. ***Project Restructuring.*** The Project was restructured in 2011 to introduce changes in Component 2. This was done to address unrealistic aspirations in Project documents, specifically those relating to the Project’s mandate and capacity to address longstanding and systemic land issues as suggested in the Project’s Indigenous Peoples Planning Framework (IPPF). The restructuring also introduced three enhancements to the existing activities as set out below:

- *First*, to assist the GoK in implementing a livelihood and rural development program, focusing on Indigenous Peoples and other forest communities through the community led development of Project financed Vulnerable and Marginalized Group Plans (VMGPs).
- *Second*, technical assistance, as originally planned under the Project for formulation of a strategy to improve forest management, to cover integration of guidelines for vulnerable and marginalized communities.
- *Third*, to strengthen the decentralized structure of CFAs and other local groups. In this context, together with the other components dealing with water resources management and irrigation, the restructured Project improved the overall impact on the country’s participatory approach to sustainable development and poverty reduction programs.

15. In June 2011 the restructured Project was approved by the Bank’s Board of Executive Directors to introduce the following changes: (i) a revision and simplification of the PDO (“to improve the management of water and forest resources in selected districts”);¹ (ii) a revision of the results framework, including changes to outcome indicators; (iii) a reallocation of about 21 percent of credit proceeds; (iv) an increase in the disbursement percentages by category, in line with the new Bank rules that allow up to 100 percent Bank financing for Project activities; and (v) the elimination of two outdated covenants. The reallocation of Project funds among existing categories was necessary to cover cost overruns on some components, in particular, in Component 2 (Management of Forest Resources), where implementation progress was affected as further detailed below.

16. The restructuring aimed to adjust Project outcomes so that they were within the control of and could be delivered by the implementing agency, and could be achieved during the life of the Project. This included: (i) an acknowledgment that achieving the

¹ 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.

comprehensive resolution of land issues was beyond the remit and time-horizon of the Project; (ii) an understanding that the Project did not propose to address all vulnerability issues associated with Indigenous Peoples' land and forest resource access issues; and (iii) advancing the IPPF into concrete Indigenous Peoples Plans (IPPs) for communities in Project areas, focusing on livelihoods and CDD-type activities so that communities could receive tangible benefits.

17. The restructuring also placed particular focus on updating the safeguard instruments and improving their implementation to respond to the needs of Indigenous Peoples in Project areas related to land use and access issues. The Project prepared an updated Process Framework for Involuntary Resettlement, as well as VMGPs, which is the Government-preferred nomenclature for the IPPs that are required under OP 4.10 (Indigenous Peoples). Investments to provide livelihood benefits to currently marginalized and vulnerable communities have been under implementation since mid-2012. The restructured Project also supported capacity-building for KFS.

18. **Project Status.** The Project closed on June 30, 2013. The Project disbursement rate was 92 percent as of December 4, 2013. The Project was rated moderately satisfactory overall in the Implementation Completion Report.

III. SPECIAL ISSUES

Land Issues in Kenya

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

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

21. ***There has also been during this period an emerging recognition by both the GoK and the Sengwer that a permanent solution to this problem will require the resettlement of forest-dwelling Sengwer to suitable land outside the gazetted forest.*** It is recognized that such resettlement needs to be accompanied by the provision of clearly demarcated and secure legal rights to land, and agreement on rules concerning access to the forest that balance the needs of conservation and traditional livelihoods. In the absence of alternative land, the recurring pattern of evictions followed by re-entry in the forest is likely to continue. The SA

documents several efforts by the GoK to identify and provide alternative land over the last decade. In some cases this has led to relocation and provision of title for some households. For the most part, however, resettlement has stalled. The situation has been further complicated by the influx of non-indigenous groups, including Internally Displaced Persons (IDPs) after the 2007 elections, which has added a frequently tense inter-community dynamic to an already complex land and forest situation.

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

23. ***In light of this improving policy environment, the Project as originally designed aspired to support the resolution of land issues in several ways, as described in the IPPF and the Project Appraisal Document (PAD).*** While a comprehensive solution to land issues in the Project area remains a high priority of both the GoK and groups within the Project area, Management recognized during restructuring that there was a need to more narrowly define what contributions the Project itself could realistically make to this larger agenda. These more targeted contributions have included the development of the VMGPs, capacity building and sensitization within KFS to improve forest governance methods, and the establishment of grievance redress and dispute resolution mechanisms in which, among other issues, tensions around land and forest access can be addressed.

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

24. ***The turmoil that followed the 2007 election had a major impact on the start of Project activities on the ground, particularly in Western Kenya and Rift Valley provinces.*** Some areas remained “off-limits” for both Bank and implementing agency staff until about June 2008, and inter-ethnic conflicts also led to large numbers of IDPs seeking refuge in gazetted forest areas, including the Cherangany Hills.

25. ***This situation was further aggravated by a prolonged drought and the general recognition that ecosystem degradation and encroachment in the five remaining montane forest areas (“water towers”²) was a leading cause of reduced water flows into critical water bodies.*** In response, the GoK decided to address this situation and initiated a campaign to “reclaim” areas that had been encroached upon and cleared of forest cover, starting with the Mau Forest Complex (not within the Project area). These efforts led to the eviction of persons who were unable to claim land tenure and access rights.

26. ***Downstream communities in the Cherangany Hills began to demand that the GoK evict communities living inside gazetted forest areas of Embobut.*** The demand was accompanied by a threat to unilaterally evict upstream communities if the GoK did not take action. The GoK felt obliged to act swiftly and sought to avoid an escalation by organizing community meetings with elders and convincing the majority of settlers to leave the

² Aberdare Range, Cherangany Hills, Mau Forest Complex, Mt. Elgon, Mt. Kenya.

encroached area voluntarily by providing the prospect of a settlement scheme. Once the encroachers had left the area, Administrative Police, supported by guards from KFS and the Kenya Wildlife Service, burned existing structures to dissuade people from returning. However, no alternative land was provided for resettlement at the time and people moving out of Embobut settled along the main road in the area. Eventually and as a result of the 2009 Embobut Forest Task Force recommendations, the majority of those communities identified as eligible for settlement were allowed to return to stay in the seven glades within Embobut Forest, until a lasting resettlement solution was found.

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

Evictions in 2013/2014 after Project Closure

28. In late 2013 and early 2014 the GoK embarked on a renewed effort to remove and resettle forest dwellers, including the Sengwer communities in Embobut, Cherangany Hills, Western Kenya.

29. The Directorate of Special Programs (now under the Ministry for Devolution and Planning) was leading the compensation process for forest dwellers to be resettled. Embobut was the second-to-last community of affected IDPs/forest dwellers to be compensated. The compensation drive was launched in Marakwet by President Uhuru and Deputy President Ruto in mid-December 2013. Shortly thereafter, the GoK announced that the compensation process was complete and that compensation had been paid into bank accounts of the Embobut IDPs and forest evictees' accounts in December.

30. There have subsequently been reports from the field alleging inadequacies in the compensation process and disagreements about the amounts paid as compensation. Many Sengwer claimed that they had not received any compensation. Evictions continued, however, and by early February 2014, had intensified, including the alleged destruction of some 800 houses with involvement of GoK security forces.

31. The Bank issued a statement on February 6, 2014 expressing its concern about the reports of possibly unlawful evictions and called upon the GoK to apply international good practice in dealing with issues of resettlement and indigenous communities. The Country Director has held several meetings with the GoK at various levels to raise these concerns, emphasizing that although the NRMP was closed as of June 30, 2013, since project beneficiaries were among those affected, the continuing evictions threatened to weaken, indeed unravel the sustainability of project accomplishments.

32. On February 25, 2014, the GoK National Treasury sent a formal letter to the Bank, providing a detailed background of the problem from its perspective, assuring the Bank that consultations were held, thanking the Bank for its role, and reiterating the GoK's commitment to "bring a sustainable and lasting solution to the plight of the Sengwer and other Kenyans

facing similar challenges,” noting that “in doing so, the Government will strike the right balance between their rights and conserving our heritage and natural resources especially our five water towers which are vital for the livelihood of all Kenyans.”

33. On February 16, 2014, Mr. Jim Yong Kim, President of the World Bank Group, issued a public statement, expressing the Bank’s concern and stating that Bank Management was “alarmed by reports of recently evicted families in the Embobut Forest and Cherangany Hills areas of Kenya. We understand that underlying this issue is a critical effort to protect watersheds in Kenya’s forest and hill areas. However, we strongly encourage the Kenyan authorities to thoroughly investigate claims made by civil society, including the affected communities, that the evictions are not following the legal process.” The Bank has continued to maintain a dialogue with members of the affected Sengwer community, concerned nongovernmental organizations (NGOs) and the GoK.

IV. SUMMARY OF PANEL FINDINGS

Issue	Panel Findings
1. Evictions Risks	<p>The Panel finds that no evictions were supported as part of the NRMP. More attention should have been given from the outset to identify risks for affected people and adequately mitigate for such risks as required by Bank Policies on Environmental Assessment, Project Appraisal, Indigenous Peoples, and Involuntary Resettlement.</p> <p>While commending Management for securing a moratorium on evictions in 2011, and acknowledging the challenges posed by the political and ethnic complexities as background, the Panel notes that the moratorium could instead have been identified as a critical risk mitigation measure during Project preparation.</p>
2. Resettlement in the NRMP	<p>The original Project design included frameworks to address the risk of evictions through the IPPF and the RPF, but no planning for their implementation occurred, and no resettlement plan was prepared for any forested area under the Project.</p> <p>The Panel finds that the lack of follow-up actions to the RPF through a RAP represents non-compliance with OP/BP 4.12 on Involuntary Resettlement.</p> <p>The Panel found incongruity between the Project documents and Management’s position that no resettlement was planned under the NRMP.</p>
3. Analysis of Institutional Aspects	<p>The Panel finds non-compliance with the key provisions of OMS 2.20 (Project Appraisal), during initial Project design as they relate to the proper institutional analysis of the capacities of KFS. In this context, the Panel particularly highlights the challenges resulting from the implementation of activities that would have required multi-agency interventions, such as resettlement operations, given that Component 2 of the NRMP did not target any agencies beyond the KFS.</p>
4. Project Supervision	<p>The Panel finds that Management responded repeatedly and firmly and brought to the attention of the Borrower instances of non-compliance with social safeguards obligations, as required by OP/BP 13.05, including securing a moratorium on evictions.</p>
5. Use of VMGs instead of Indigenous Peoples	<p>The Panel finds that the use of the term VMGs instead of Indigenous Peoples does not in itself amount to non-compliance with OP/BP 4.10 because the policy does not require its use to ensure protection of the rights included therein.</p> <p>At the same time, the Panel notes that for the Cherangany-Sengwer the term Indigenous Peoples is central to their self-identity and therefore for the protection of their customary rights. It is the Panel’s view that meaningful compliance with the Indigenous Peoples policy calls for more consideration to be given to a community’s attachment to a particular designation through greater consultation and, in ensuring that the use of any other designation does not dilute the full customary rights of Indigenous Peoples as enshrined in OP 4.10.</p>
6. Customary Rights and Livelihood Program	<p>The Panel notes that the focus on livelihood support, whilst beneficial to recipients, represented a move away from a focus on the protection of customary rights to forest resources. The Panel finds that overlooking customary rights after restructuring represents non-compliance with OP/BP 4.10</p> <p>On the question of whether or not non-indigenous peoples living in the mixed communities with indigenous people should have benefitted from livelihood activities under the Project, the Panel finds that by ensuring that benefits from livelihood activities in mixed communities reach Indigenous Peoples as well as non-indigenous peoples the Bank is in compliance with OP/BP 4.10.</p>

Issue	Panel Findings
7. Consultations	<p>The Panel finds that the earlier Project documents including the PAD, IPPF and SA led to strong support from parts of the community because of their wide coverage of key substantive issues in line with Indigenous Peoples' claims in a manner that was consistent with OP/BP 4.10.</p> <p>The restructured Project, on the other hand, contrasted with OP 4.10's spirit and letter because it was developed without proper consultation. The Panel finds that the absence of prior consultation as well as the delay in disclosure of information regarding Project restructuring raises an issue of compliance with OP 4.10.</p>

34. The Panel also noted that it wished to re-emphasize the critical importance and transformational nature of this Project and its development objectives in terms of capacity building of institutions to manage water and forest resources in a sustainable and participatory manner. These objectives are even more relevant in a country with high population growth rates, coupled with unsustainably high pressure on its natural resources. Furthermore, the Panel recognized the significant achievements under the project to strengthen the management of water, forests, and other natural resources in the country.

V. RESPONSE TO FINDINGS BY THE PANEL

35. *Management shares the Panel's view that the NRMP has not caused the evictions. At the same time, Management acknowledges that the evictions were symptomatic of a complex underlying tension between GoK and forest communities that the Project was not well equipped to address.*

36. *Management notes that the overall environment of the NRMP has been challenging from the outset, and is characterized by tension over historic land issues, longstanding grievances of indigenous communities, and unresolved conflicts between those communities and the KFS.* Additional implementation challenges included the widespread ethnic violence that took place in Kenya following the 2007 elections, the significant influx into forest areas of people displaced by that violence and the security related mobility restrictions for Bank staff until mid-2008.

37. *Given this context, Management considers that the original Project design was overly ambitious in several respects, including aspirations expressed in the safeguard instruments concerning the resolution of long-standing land and forest conflicts that were not realistic given the scope and time-frame of the Project.* As a result, some Project documents, including safeguard instruments such as the IPPF, promised more than the Project itself could realistically accomplish. As this became clear during Project implementation, Management decided to restructure the Project to better respond to the situation on the ground and to secure the delivery of benefits from the Project's livelihood component to community members.

38. *One of the main reasons for this is rooted in the inconsistency between some key Project documents, which led to an expansion of the Project area beyond the original intent of Project design, resulting in very complex challenges that the original Project did not foresee and in fact was not provisioned to address.*

39. *Despite these difficult circumstances facing Project implementation Management still believes that the Project provided many benefits to the participating communities, a fact that was recognized in the Panel report.* In addition the Project has helped to put in place important tools, such as the VMGPs, the Process Framework and the approaches to grievance redress, to help enable the communities to better participate in the Government's forest management activities. The Project also helped in securing a Government moratorium on evictions in the Embobut Forest, which allowed the Sengwer to reside in the glades in that forest during the remainder of Project implementation, and enabled them to benefit from the livelihood enhancement activities of NRMP.

40. *Management has viewed with concern the evictions that occurred during Project implementation and has responded diligently to those incidents, including bringing this to the attention of the borrower and facilitating a moratorium on evictions.* Likewise, after Project closure Management has reacted to the reports of the widespread evictions that started in early 2014 and has called upon the borrower to

adhere to good international practice in dealing with issues of resettlement and indigenous communities.

A. Project Approach to Risks Posed by Evictions

41. **Panel Finding:** *The Panel has found that “no evictions were supported as part of the NRMP.” At the same time, the Panel also noted that “more attention should have been given from the outset to identify risks for affected people and adequately mitigate for such risks....” The Panel commended “the swift and consistent response of Bank Management when it became aware of [the] evictions” and “for securing a moratorium on evictions in 2011, and acknowledging the challenges posed by the political and ethnic complexities as background, [while noting] that the moratorium could instead have been identified as a critical risk mitigation measure during Project preparation.” The Panel also recognized Management’s proactive stance towards the forceful evictions that took place after the closing of the Project, reflected in the Bank President’s statement.*

42. Management agrees with the Panel’s finding that no evictions were supported as part of the NRMP. Management believes that eviction risks were adequately documented in the initial Project design, and risk mitigation measures were also well articulated. The initial Project design in the PAD reflected the wishes of the GoK to exclude Cherangany Hills in the Project intervention area precisely because of unresolved land and legacy issues and increasing tensions that made forest conservation and poverty reduction operations on the ground impractical. At the same time, Management and the Panel have both noted the difference between the PAD and the IPPF, the latter of which committed the Project to resolving the century-old land ownership and related conflicts in Cherangany Hills and nationwide. ***In hindsight these circumstances weakened the effectiveness of the mitigation measures that had been developed for the initial Project design and Project area.***

43. Management appreciates the Panel’s commendation for securing the 2011 moratorium on evictions. Management notes that it would have been difficult to secure such a moratorium during Project preparation because: (i) the background events surrounding the national elections that displaced hundreds of thousands of people who sought refuge in Cherangany and other forest zones were just starting to unfold as the Project was delivered; and (ii) the GoK had requested the Project not to be implemented in Cherangany, which was only formally included in the Project as an intervention area as a result of the 2011 Project restructuring. A moratorium did thus not appear to be needed during the 2007-2008 Project preparation. Management notes that after the Project was prepared, implementation included: (i) frequent dialogue on land access and legacy issues; (ii) intensive implementation support, such as a mission every ten weeks on average; and (iii) highly responsive follow up directly and through the borrower to concerns or complaints received from stakeholders – as was recognized in the Panel report. Management believes that these and other efforts have helped to identify and mitigate risks of eviction of displaced people, landslide victims and indigenous forest communities to some degree.

B. Resettlement in the NRMP

44. **Panel Finding:** *The Panel has found that “the lack of follow-up actions to the RPF through a RAP represents non-compliance with OP/BP 4.12 on Involuntary Resettlement.” The Panel asserts that “the original Project design included frameworks to address the risk of evictions through the IPPF and the RPF, but no planning for their implementation occurred, and no resettlement plan was prepared for any forested area under the Project.”*

45. Management believes that it would have been neither possible nor required under OP 4.12 to prepare Resettlement Action Plans (RAPs) for actions that were not planned or conducted within the scope of the Project. Management acknowledges that Project documents had originally contemplated the possibility of support for resettlement and consequently envisioned the potential preparation of RAPs in accordance with the Resettlement Policy Framework (RPF). Had the Project supported activities that resulted in displacement as defined in OP 4.12, RAPs would have been prepared. However, no such activities were in the end supported by the Project. While a number of evictions did occur, as detailed in the eligibility phase Management Response, these were not Project-supported activities. ***Therefore, while agreeing that the risks of unplanned evictions should have been better provisioned for by the Project, Management remains of the view that RAPs are instruments designed to address the impacts of Project supported activities, not government actions that are neither planned nor supported by the Project.***

C. Analysis of Institutional Aspects

46. **Panel Finding:** *The Panel has found “non-compliance with the key provisions of OMS 2.20 (Project Appraisal), during initial Project design as they relate to the proper institutional analysis of the capacities of KFS. In this context, the Panel particularly highlights the challenges resulting from the implementation of activities that would have required multi-agency interventions, such as resettlement operations....”*

47. Management agrees with the Panel that any durable solution to the complex land and legacy issues requires multi-agency interventions, and notes that the Panel recognized the intensive efforts to bring other agencies and ministries into the dialogue as noted in Annex 1 (Item 3). At the same time, Management recognizes that KFS’s institutional and mandate limitations did not fully equip it to take the lead in concerted efforts to resolve complex land and legacy issues. These limitations contributed to Management’s decision to restructure the Project in 2011, as explicitly discussed in the Restructuring Paper.

48. Despite these limitations, the central role of KFS in forest governance is indisputable, and in Management’s view, the primary focus of the Project on helping KFS as a new agency develop the requisite capacity was an appropriate one.

D. Use of the Term “Vulnerable and Marginalized Groups (VMGs)” instead of “IPs”

49. *Panel Finding: The Panel finds that “the use of the term VMGs instead of Indigenous Peoples does not in itself amount to non-compliance with OP/BP 4.10....” At the same time, the Panel notes that “for the Cherangany-Sengwer the term Indigenous Peoples is central to their self-identity and therefore for the protection of their customary rights. It is the Panel’s view that meaningful compliance with the Indigenous Peoples policy calls for more consideration to be given to a community’s attachment to a particular designation through greater consultation and, in ensuring that the use of any other designation does not dilute the full customary rights of IPs as enshrined in OP 4.10.”*

50. Management appreciates the Panel’s finding that the use of the term VMGs does not in itself amount to non-compliance with OP/BP 4.10. As noted in the eligibility phase Management Response, the Bank has adopted this term in applying OP 4.10 in Kenya at the request of the GoK, in order to be consistent with the terminology of the 2010 constitution. It is Management’s view that OP 4.10 allows flexible adaptation of terminology, and that the adoption of the term VMG does not diminish the substantive protections and benefits available to beneficiary communities under the policy.

51. With respect to the Panel’s view that “meaningful compliance” with OP 4.10 calls for more attention to be paid to the attachment that a community itself has to a particular designation, Management would like to note (see Annex 1, Item 5), that there were extensive, substantive consultations with 1,137 Cherangany-Sengwer people on the terminology; only 2 people objected to the use of the term VMG instead of Indigenous Peoples. In short, it is Management’s view that during Project implementation, the Bank was sufficiently attentive to the issue of terminology, and confirmed through extensive consultations that adoption of the term VMG was of minimal concern to relevant communities. The results of these consultations are consistent with subsequent meetings with national IPOs that have similarly indicated satisfaction with efforts to more closely align OP 4.10 application with the Constitution of Kenya.

E. Customary Rights and Livelihood Program

52. *Panel Finding: The Panel notes that “the focus on livelihood support, whilst beneficial to recipients, represented a move away from a focus on the protection of customary rights to forest resources,” and that “overlooking customary rights after restructuring represents non-compliance with OP/BP 4.10,” specifically with regard to “Paragraph 21 of OP 4.10 because the proper steps required to address the potential loss of customary rights were not taken as provided by the Policy.” The Panel also reported on the appreciation expressed by project beneficiaries regarding the livelihood program implemented under the VMGPs. This included many community members requesting that the Project be extended beyond its closing date and that identified beneficiaries continue to benefit from the Project. The Panel noted that through the support for alternative and culturally appropriate livelihoods, the VMGPs had a significant and positive impact on many members of the affected communities.*

53. As previously noted, Management acknowledges that a number of the ambitious proposals for addressing land and forest resource rights contained in the IPPF were ultimately not pursued, for reasons expressed in the Restructuring Paper. However, despite adopting a more modest (and in the circumstances, realistic) approach to these issues, the Project nevertheless pursued a significant number of actions designed to protect Indigenous Peoples' customary rights to forest resources, in line with OP/BP 4.10.

54. As per OP 4.10 (paragraph 21), NRMP sought to avoid involuntary restrictions on Indigenous Peoples' access to legally designated parks and protected areas, in particular access to their sacred sites. KFS prepared, with the free, prior, and informed consultation of the affected indigenous communities, a Process Framework to be followed if it later became impossible to avoid restricting access to the gazetted forest. It was clarified during the extensive consultations described in Annex 1 (Item 6), that the Process Framework was, first and foremost, an instrument to enable indigenous communities and the KFS to address issues of restrictions of access to forests and forest resources, should such restrictions become unavoidable. The Process Framework also established a GRM, which was used by Indigenous Peoples and KFS during Project implementation.

55. The participatory preparation of VMGPs, initiated by KFS in 2011, was part of a comprehensive strategy to protect livelihoods dependent on customary rights and access, and should not be viewed as a standalone activity. To mitigate potential impacts identified during the SA, including restriction of access to forest resources, and as a poverty reduction strategy, indigenous communities had requested to be supported with livelihood micro-projects. The VMGPs were prepared with full participation of the indigenous communities, who decided on micro-projects that would suit both their land ownership status and also act as a boost to their current livelihood activities. Bank Management has expressed concern to the GoK that the good results from the livelihoods activities were compromised during the post-Project evictions in early 2014.

56. In addition, the NRMP supported activities to introduce co-management of forest resources including Participatory Forest Management (PFM). The Panel noted that PFM requires a very long time to put in place. In Kenya there was little experience with PFM. The NRMP strategy was to build trust over time among all forest stakeholders using a variety of measures including: (i) capacity building at KFS, (ii) capacity building of communities such as through their own VMGPs, and (iii) development of a PFM pilot intervention by the Ogiek indigenous community that could be scaled up later. The Ogiek PFM pilot has been successful and continues to date.

57. Lastly, whenever complaints were received by Management about alleged restrictions of forest access, Management consistently and quickly acted by reaching out to the borrower and responding to complainants, as was well documented in the eligibility phase Management Response. Through this intense implementation support, a number of instances of infringements on customary rights were resolved.

F. Consultations

58. **Panel Finding:** *The Panel has found that “the earlier Project documents including the PAD, IPPF and SA led to strong support from parts of the community because of their wide coverage of key substantive issues in line with Indigenous Peoples’ claims in a manner that was consistent with OP/BP 4.10. The restructured Project, on the other hand, contrasted with OP 4.10’s spirit and letter because it was developed without proper consultation. The Panel finds that the absence of prior consultation as well as the delay in disclosure of information regarding Project restructuring raises an issue of compliance with OP 4.10.”*

59. Management acknowledges that there was strong community support for the original Project safeguard documents, including the IPPF. At the same time, Management believes that the subsequent decision to modify the approach outlined in the IPPF, made at the time of Project restructuring, was undertaken in a manner that was consistent with the letter and spirit of OP 4.10.

60. As referred to in the Restructuring Paper, the Project supported the preparation and implementation of the communities’ own VMGPs as a way to advance the IPPF in accordance with OP 4.10. These VMGPs included livelihood and CDD types of activities, building upon the SA that was completed in June 2010. Preparation of the VMGPs was based on the principle of free, prior and informed consultation resulting in broad community support as a prerequisite for Bank financing. The GoK and Management discussed the proposed restructuring with the affected people and IPO leaders on a number of occasions as detailed in Annex 1 (Item 7). These consultations included explicit discussion and explanation of the fact that the Project would not be able to support a number of measures mentioned in the IPPF concerning the resolution of land rights and hence such activities would not be included in the VMGPs, which were tailored to the specific conditions and contexts of the Indigenous Peoples communities.

VI. MANAGEMENT’S ACTION PLAN IN RESPONSE TO THE FINDINGS

61. Management has held discussions with the affected communities and the borrower to identify the actions best suited to address the Panel’s findings in the current circumstances, given that: (i) the NRMP closed on June 30, 2013; (ii) broader Government efforts to review and address related land issues are underway; and (iii) further Bank engagement in the country’s forest sector warrants an in-depth review of the issues that have significantly affected the implementation of the NRMP. Due to the closure of the Project and the latest evictions that have taken place in the Project area, Management has limited ways to engage at the Project level. However, the country team remains engaged in the dialogue about the broader issues of tenure and access to forests and provides advice to the GoK. In light of the above and in response to the Panel’s Report, Management commits to undertake the following actions:

1) ***Hold a Colloquium to Promote Dialogue and Cooperation on Land and Legacy Issues among Forest Stakeholders.*** This activity responds to requests from members of the Sengwer community provided at a video conference with Management on June 11, 2014. The Colloquium would include members of the affected communities (possibly including the anonymous Requesters), Government agencies such as the KFS and National Land Commission, NGOs, the Bank, and other development partners active in the forest sector. The Colloquium would build on the series of workshops and dialogues already held on land and legacy issues. The Colloquium would also allow the Cherangany-Sengwer stakeholders, and presumably 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 would 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., VMGPs in NRMP);
- Global best practices in applying participatory forest management;
- Global best practices in community driven development;
- Global best practices on mechanisms for resolving land and legacy issues; and

2) ***Provide technical assistance on social safeguards in Kenya, to indigenous communities and the GoK.*** This work has been initiated based on the rationale 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 is exploring options to expand this activity to include Government agencies.

62. These actions have been consulted upon with both sets of Requesters (since the first Request was submitted anonymously, Management was provided by the Panel with the contact details of a community member who declared that he represents the Requesters) through: (i) a video conference with the Bank team in Nairobi and Washington on June 11, 2014; and (ii) a meeting with the Bank-team in Nairobi on June 30, 2014.

VII. CONCLUSION

63. Management believes that the Bank has made every effort to apply its policies and procedures and to pursue its mission statement in the context of the Project. Management acknowledges the Panel's findings and believes that the proposed Action Plan is the most appropriate way to address these findings.

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT ON
KENYA: NATURAL RESOURCE MANAGEMENT PROJECT**

**ANNEX 1
FINDINGS AND COMMENTS**

No.	Issue/Finding	IP Para.	Comment
1.	<p>Evictions Risks The Panel finds that no evictions were supported as part of the NRMP. More attention should have been given from the outset to identify risks for affected people and adequately mitigate for such risks as required by Bank Policies on Environmental Assessment, Project Appraisal, Indigenous Peoples, and Involuntary Resettlement. While commending Management for securing a moratorium on evictions in 2011, and acknowledging the challenges posed by the political and ethnic complexities as background, the Panel notes that the moratorium could instead have been identified as a critical risk mitigation measure during Project preparation.</p> <p>The Panel commends the swift and consistent response of Bank Management when it became aware of [the] evictions. These actions included securing a moratorium on evictions in 2011, through which the GoK confirmed that no further evictions of people from the forests will be carried out until applicable safeguard instruments were put in place.</p> <p>The Panel also recognizes and appreciates Management’s proactive stance towards the forceful evictions that are taking place after the closure of the Project, encapsulated in the Bank President’s statement that the World Bank is not a “bystander.”</p>	9-10, 123, 126, 128	<p>Management agrees with the Panel’s finding that no evictions were supported as part of the NRMP. Management believes that eviction risks were adequately documented in the initial Project design and risk mitigation measures were also well articulated. The initial Project design in the PAD reflected the wishes of the GoK to exclude Cherangany Hills in the Project intervention area precisely because of unresolved land and legacy issues and increasing tensions that made forest conservation and poverty reduction operations on the ground impractical. At the same time, Management and the Panel have both noted the difference between the PAD and the IPPF, which committed the Project to resolving the century-old land ownership and related conflicts in Cherangany Hills (and nationwide). In hindsight these circumstances weakened the effectiveness of the mitigation measures that had been developed for the initial Project design and Project area.</p> <p>Management appreciates the Panel’s commendation for securing the 2011 moratorium on evictions. Management notes that it would have been impractical to secure such a moratorium during Project preparation because: (i) the background events surrounding the national elections that displaced hundreds of thousands of people who sought refuge in Cherangany and other forest zones were just starting to unfold as the Project was delivered; and (ii) the GoK had requested the Project not to be implemented in Cherangany, which was only formally included in the Project as an intervention area as a result of the 2011 restructuring. A moratorium did thus not appear to be needed during the 2007-2008 Project preparation.</p> <p>After the Project was prepared, implementation included: (i) frequent dialogue on land access and legacy issues; (ii) intensive implementation support, such as a mission every ten weeks on average; and (iii) highly responsive follow up directly and through the borrower to any concerns or complaints received from stakeholders – as was recognized in the Panel report. Management believes that these and</p>

No.	Issue/Finding	IP Para.	Comment
			other efforts have helped to identify and mitigate risks of eviction of displaced people, landslide victims and indigenous forest communities to some degree.
2.	<p>Resettlement in the NRMP The original Project design included frameworks to address the risk of evictions through the IPPF and the RPF, but no planning for their implementation occurred, and no resettlement plan was prepared for any forested area under the Project. The Panel finds that the lack of follow-up actions to the RPF through a RAP represents non-compliance with OP/BP 4.12 on Involuntary Resettlement.</p> <p>The Panel found incongruity between the Project documents and Management's position that no resettlement was planned under the NRMP.</p> <p>The Panel is fully appreciative of the significance of the Project objectives, and recognizes Management's efforts to respond to events as they evolved. The Panel notes that the Bank displayed a very high level of aspiration in attempting to respond to an intractable issue and support the long-standing claims of Indigenous Peoples.</p> <p>[T]he Panel throughout its investigation has found that the Bank was well regarded by all actors and continued playing a critical role, to the point that clear expectations for solving these long-lasting issues through the NRMP were raised.</p> <p>Given the substantive work undertaken in the Project and progress made, the Panel heard testimonies from the affected communities regarding their hope that the Bank will remain engaged in this sector as it is well equipped to play a vital and positive role in the future.</p>	10, 11, 114, 126, 128	Management believes that it would have been neither possible nor required under OP 4.12 to prepare Resettlement Action Plans (RAPs) for actions that were not planned or conducted within the scope of the Project. Management acknowledges that Project documents had originally contemplated the possibility of Project support for resettlement and consequently envisioned the potential preparation of RAPs in accordance with the RPF. Had the Project supported activities that resulted in displacement as defined in OP 4.12, RAPs would have been prepared. As the Management Response in the eligibility phase points out, however, no such activities were in the end supported by the Project. While a number of evictions did occur, as detailed in the eligibility phase Response, these were not Project-supported activities. While agreeing that the risks of unplanned evictions should have been better provisioned for by the Project, Management remains of the view that social safeguard instruments are designed to address Project-induced impacts, and not unrelated government action.
3.	<p>Analysis of Institutional Aspects The Panel finds non-compliance with the key provisions of OMS</p>	14, 133	Management agrees with the Panel that any durable solution to the complex land and legacy issues requires multi-agency interventions, and

No.	Issue/Finding	IP Para.	Comment
	<p>2.20 (Project Appraisal), during initial Project design as they relate to the proper institutional analysis of the capacities of KFS. In this context, the Panel particularly highlights the challenges resulting from the implementation of activities that would have required multi-agency interventions, such as resettlement operations, given that Component 2 of the NRMP did not target any agencies beyond the KFS.</p> <p>During the Panel's field visits, authorities described an evolution in their approach to address issues of relocation and land use rights during the years of Project implementation. [...]These officials also expressed an appreciation for the positive work under the Project to support their capacity efforts and to emphasize building dialogue and relations with local people, indicating that this had helped enhance their work and relations with these communities.</p>		<p>notes that the Panel recognized the intensive efforts to bring other agencies and ministries into the dialogue as noted below. At the same time, Management recognizes that KFS's institutional and mandate limitations did not fully equip it to take the lead in concerted efforts to resolve complex land and legacy issues. These limitations contributed to Management's decision to restructure the Project in 2011, as explicitly discussed in the Restructuring Paper.</p> <p>Despite these limitations, the central role of KFS in forest governance is indisputable, and in Management's view, the primary focus of the Project on helping KFS as a new agency develop the requisite capacity was an appropriate one.</p>
4.	<p>Project Supervision The Panel finds that Management responded repeatedly and firmly and brought to the attention of the Borrower instances of non-compliance with social safeguards obligations, as required by OP/BP 13.05, including securing a moratorium on evictions.</p>	16, 141	Management takes note of the Panel's finding.
5.	<p>Use of VMGs instead of IPs The Panel finds that the use of the term VMGs instead of Indigenous Peoples does not in itself amount to non-compliance with OP/BP 4.10 because the policy does not require its use to ensure protection of the rights included therein. At the same time, the Panel notes that for the Cherangany-Sengwer the term Indigenous Peoples is central to their self-identity and therefore for the protection of their customary rights. It is the Panel's view that meaningful compliance with the Indigenous Peoples policy calls for more consideration to be</p>	17-18, 202-204	<p>Management appreciates the Panel's finding that the use of the term VMGs does not in itself amount to non-compliance with OP/BP 4.10. As noted in the eligibility phase Management Response, the Bank has adopted this term in applying OP 4.10 in Kenya at the request of the GoK, in order to be consistent with the terminology of the new constitution. It is Management's view that OP 4.10 allows flexible adaptation of terminology, and that the adoption of the term VMG does not diminish the substantive protections and benefits available to beneficiary communities under the policy.</p> <p>With respect to the Panel's view that "meaningful compliance" with OP 4.10 calls for more attention to be paid to the attachment that a community itself has to a particular designation,</p>

No.	Issue/Finding	IP Para.	Comment
	<p>given to a community's attachment to a particular designation through greater consultation and, in ensuring that the use of any other designation does not dilute the full customary rights of IPs as enshrined in OP 4.10.</p>		<p>Management would like to note that out of the 1,137 Sengwer Cherangany Indigenous Peoples consulted during the Process Framework and VMGP preparation process, and the 170 Cherangany-Sengwer Indigenous Peoples representatives who participated in the public disclosure of the Process Framework on May 27, 2011, only 2 people objected to the use of the term VMG instead of Indigenous Peoples. The majority of the other speakers stated categorically that for them, it did not matter whether they were referred to as VMGs or Indigenous Peoples, but only that they benefited from the Project. During recent engagements with Indigenous Peoples' Organizations (IPOs) in Kenya as part of the ongoing Country Social Analysis on Social Exclusion, 21 representatives from 18 IPOs from across Kenya informed the Bank team that they had themselves played a critical role during the constitution-making process in Kenya, which resulted in the inclusion of the positive articles (see above) on marginalized groups and communities. In short, it is Management's view that during Project implementation, the Bank was sufficiently attentive to the issue of terminology, and confirmed through extensive consultations that adoption of the term VMG was of minimal concern to relevant communities. The results of these consultations are consistent with subsequent meetings with national IPOs that have similarly indicated satisfaction with efforts to more closely align OP 4.10 application with the Constitution of Kenya.</p>
6.	<p>Customary Rights and Livelihood Program The Panel notes that the focus on livelihood support, whilst beneficial to recipients, represented a move away from a focus on the protection of customary rights to forest resources. The Panel finds that overlooking customary rights after restructuring represents non-compliance with OP/BP 4.10. The Panel therefore finds non-compliance with Paragraph 21 of OP 4.10 because the proper steps required to address the potential loss of customary rights were not taken as provided by the Policy. On the question of whether or not non-indigenous peoples living in the mixed communities with indigenous</p>	20, 22, 210, 227	<p>As previously noted, Management acknowledges that a number of the ambitious proposals for addressing land and forest resource rights contained in the IPPF were ultimately not pursued, for reasons expressed in the Restructuring Paper. However, despite adopting a more modest (and in the circumstances, realistic) approach to these issues, the Project nevertheless pursued a significant number of actions designed to protect Indigenous Peoples' customary rights to forest resources, in line with OP/BP 4.10.</p> <p>As per OP 4.10 (paragraph 21), NRMP sought to avoid involuntary restrictions on Indigenous Peoples' access to legally designated parks and protected areas, in particular access to their sacred sites. KFS prepared, with the free, prior, and informed consultation of the affected indigenous communities, a Process Framework to be followed if it later became impossible to</p>

No.	Issue/Finding	IP Para.	Comment
	<p>people should have benefitted from livelihood activities under the Project, the Panel finds that by ensuring that benefits from livelihood activities in mixed communities reach IPs as well as non-indigenous peoples the Bank is in compliance with OP/BP 4.10.</p> <p>The Panel heard positive comments and appreciation regarding the benefits of the livelihood program implemented under the VMGPs. This appreciation was to such a great extent that many community members requested the Panel to convey to Management and KFS that the Project should be extended beyond its closing date and that identified beneficiaries should not be penalized because of procurement delays that have occurred at the Project level.</p> <p>From the outset, the Panel notes the many positive comments expressed by community members with whom the Panel interacted during its visits regarding the benefits of the livelihood support program implemented under the Project following the restructuring. It is clear to the Panel that through the support for alternative and culturally appropriate livelihoods, the VMGPs had a significant and positive impact on many members of the affected communities who received benefits under the Program. The Panel also heard comments by KFS officials who appreciated the VMGP as it provided a more constructive platform for communication and interaction with communities.</p> <p>The Panel also recognizes that the positive interaction between KFS and communities in the context of VMGP is likely to have contributed to better understanding and communication in what had been a tense relationship. The Panel notes that Management took a courageous decision to restructure the Project instead of simply cancelling it, which</p>		<p>avoid restricting access to the gazetted forest. It was clarified during the extensive consultations that the Process Framework was, first and foremost, an instrument to enable indigenous communities and the KFS to address issues of restrictions of access to forests and forest resources, should such restrictions become unavoidable. The Process Framework also established a GRM, which was used by Indigenous Peoples and KFS during Project implementation.</p> <p>This Process Framework was prepared in 2011 with full participation of the affected indigenous communities, in accordance with the principle of free, prior and informed consultations. The draft Process Framework was publicly disclosed to the Cherangany-Sengwer on May 26, 2011, with participation by 170 indigenous peoples' representatives. The public disclosure offered an opportunity for the indigenous representatives not only to learn about the outcome of the month-long consultations in which they had participated, but also to enhance, validate and adopt the draft Process Framework.</p> <p>During both the consultative process to prepare the Process Framework and its public disclosure, it was made clear that the objective of the Process Framework was to establish the principles and procedures by which members of potentially affected communities would participate in: (i) planning Project activities; (ii) determining measures necessary to achieve policy objectives; and (iii) implementing and monitoring Project activities.</p> <p>The Process Framework also established a four-step and time-bound grievances redress mechanism for any grievances that might arise during implementation. This mechanism was deployed by affected communities and KFS during Project implementation.</p> <p>Furthermore, by the close of the Project, KFS began working to apply the Process Framework nationwide – showing not only NRMP compliance with OP 4.10 but actively supporting mainstreaming of the principles of OP 4.10 into broader Government programs involving forests.</p> <p>The participatory preparation of VMGPs, initiated by KFS in 2011, was part of a comprehensive strategy to protect livelihoods dependent on customary rights and access, and should not be</p>

No.	Issue/Finding	IP Para.	Comment
	could have been an “easier way out” of the emerging situation.		<p>viewed as a standalone activity. To mitigate potential impacts identified during the SA, including restriction of access to forest resources, and as a poverty reduction strategy, indigenous communities had requested to be supported with livelihood micro-projects. The VMGPs were prepared with full participation of the indigenous communities, who decided on micro-projects that would suit both their land ownership status and also act as a boost to their current livelihood activities. Bank Management has expressed concern to the GoK that the good results from the livelihoods activities were compromised during the post-Project evictions in early 2014. In addition, the NRMP supported activities to introduce co-management of forest resources including PFM. The Panel noted that PFM requires a very long time to put in place. In Kenya there was little experience with PFM. The NRMP strategy was to build trust over time among all forest stakeholders using a variety of measures including: (i) capacity building at KFS, (ii) capacity building of communities such as through their own VMGPs, and (iii) development of a PFM pilot intervention by the Ogiek indigenous community that could be scaled up later. The Ogiek PFM pilot has been successful and continues to date.</p> <p>Lastly, whenever complaints were received by Management about alleged restrictions of forest access, Management consistently and quickly acted by reaching out to the borrower and responding to complainants. Through this intense implementation support, a number of instances of infringements on customary rights were resolved.</p>
7.	<p>Consultations The Panel finds that the earlier Project documents including the PAD, IPPF and SA led to strong support from parts of the community because of their wide coverage of key substantive issues in line with Indigenous Peoples’ claims in a manner that was consistent with OP/BP 4.10.</p> <p>The restructured Project, on the other hand, contrasted with OP 4.10’s spirit and letter because it was developed without proper consultation. The Panel finds that the absence of prior consultation as well as the delay in disclosure of information regarding Project restructuring raises an issue of</p>	23, 226	<p>Management acknowledges that there was strong community support for the original Project safeguard documents, including the IPPF. At the same time, Management believes that the subsequent decision to modify the approach outlined in the IPPF, made at the time of Project restructuring, was undertaken in a manner that was consistent with the letter and spirit of OP 4.10.</p> <p>As referred to in the Restructuring Paper, the Project supported the preparation and implementation of the communities’ own VMGPs as a way to advance the IPPF in accordance with OP 4.10. These VMGPs included livelihood and CDD types of activities, building upon the SA that was completed in June 2010. Preparation of the VMGPs was based on the principle of free, prior and informed consultation resulting in broad community support as a prerequisite for Bank</p>

No.	Issue/Finding	IP Para.	Comment
	compliance with OP 4.10.		<p>financing. These consultations included explicit discussion and explanation of the fact that the Project would not be able to support a number of measures mentioned in the IPPF concerning the resolution of land rights and hence such activities would not be included in the VMGPs, which were tailored to the specific conditions and contexts of the Indigenous Peoples communities.</p> <p>The GoK and the NRMP team discussed the proposed restructuring with the affected people and IPO leaders on a number of occasions. In May 2011 leaders of the Cherangany-Sengwer communities were informed of the proposed restructuring at a meeting with the then country director at the World Bank offices in Nairobi. Between April 7, 2011 and July 28, 2011, communities were informed of the proposed restructuring through the consultations held to develop the VMGPs and the Process Framework. The public disclosure of the VMGP for Sengwer was undertaken July 11, 2011. Over 1,137 Sengwer were consulted on the VMGP and Framework development. During those consultations it was made clear that the approach outlined in the IPPF was being adapted to allow the development of VMGPs that were within the remit of the Project. It was equally made clear that some aspects in the IPPF would not be achievable under the Project. The VMGPs were tailored to the specific conditions and contexts of the Indigenous Peoples communities.</p>