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Kenya:
Natural Resource Management Project
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Inspection Panel Case 84

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List of Abbreviations

BP	Bank Procedure
FPP	Forest Peoples Programme
GoK	Government of Kenya
IDA	International Development Association
IP	Inspection Panel
IPPF	Indigenous People Planning Framework
KFS	Kenya Forest Service
NRMP	Natural Resource Management Project
NGO	Non-Governmental Organization
OMS	Operational Manual Statement
OP	Operational Policy
PDO	Project Development Objective
REDD+	Reducing Emissions from Deforestation and Forest Degradation
RPF	Resettlement Policy Framework
WB	World Bank

1. Timeline

To provide a better overview, some of the main events regarding the process of inspection are listed below:

- 01/14/2013 Request for Inspection received
- 01/30/2013 Request Registered
- 03/30/2013 Management Response received
- 05/29/2013 Eligibility Report and Recommendation sent to the Board
- 06/28/2013 Second Request for Inspection received
- 08/01/2013 Second Notice of Registration
- 08/07/2013 Investigation Plan
- 09/13-17/2013 Investigation
- 05/22/2014 Investigation Report
- 07/07/2014 Management Report and Recommendation
- 10/02/2014 Press Release on Board Discussion
- 10/2014 WB President Jim Yong Kim visited Kenya
- 09/17/2015 First Management Progress Report

2. The Kenya Natural Resource Management Project

2.1. General Information

The NRMP, Environmental Category B (Inspection Panel), is a Specific Investment Loan (Notice of Registration 2013, 1), which was approved by the World Bank's (WB) Board on March 27, 2007 and became, because of delays in the elaboration of secondary credit agreements between the Ministry of Finance and the Implementing Agencies (IAs), effective first on December 10, 2010. The time of implementation was also affected by the election turmoil in December 2007 (Bank Management 2013, vii). The actual project costs of this were approximately 61.9 million US\$ and financed by the International Development Association (IDA). Originally the Project Development Objective (PDO) was to enhance "*institutional capacity to manage water and forest resources, reduce the incidence and severity of water*

shocks such as drought, floods and water shortage in river catchments and improve the livelihoods of communities participating in the co-management of water and forest resources” (Inspection Panel 2013, 4).

The NRMP comprised of four components:

1. Water Resources Management and Irrigation

Actual cost: 31.8 million US\$ / Appraisal cost: 44.2 million US\$

The focus was on *“strengthening the capacity of the Water Resources Management Authority (WRMA) including direct investments in the Upper Tana Catchment”*, as well as, the *“Consolidation of irrigation reforms and investments”*.

2. Management of Forest Resources

Actual cost: 19.9 million US\$ / Appraisal cost: 20.0 million US\$

This component contained *“institutional reforms in the forest sector”*, *“community participation and benefit sharing”* and *“community and private sector investments in commercial forestry”*.

3. Livelihoods Investments in the Upper Tana Catchment

Actual cost: 5.6 million US\$ / Appraisal cost: 5.5 million US\$

The third aspect *“supported a Community Driven Development (CDD) approach for managing catchments and forest perimeters”*.

4. Management, Monitoring and Evaluation

Actual cost: 4.6 million US\$ / Appraisal cost: 4.3 million US\$

Component four *“promoted an integrated approach to management and measuring results”*

(Inspection Panel 2013, 4).

The NRMP was implemented by the Ministry of Environment and Natural Resources, Ministry of Water and Irrigation and the Kenya Forest Service (KFS) (Inspection Panel 2013, 4). The Project was restructured two times during its implementation. The first restructuring was carried out in June 2011: the PDO was simplified, components 1 and 2 were overworked, 21% of the loan were reallocated and outcome indicators were modified. Some outdated covenants were also erased and disbursement percentages by category were raised. The second restructuring followed in June 2013: the unspent credit of 7.24 million US\$ was cancelled and some of the remaining finances were reallocated under disbursement categories (Independent Evaluation Group 2016). The NRMP was closed on June 30, 2013 (Bank Management 2013, vii).

2.2. Requests for Inspection

Regarding the NRMP, the IP received two requests (Inspection Panel 2014, 4). The subject of both requests was component 2, which contained the Management of Forest Resources (Inspection Panel 2013, 2). The IP received the first Request for Inspection on January 14, 2013. It was sent by members from Sengwer communities who “*live and represent others who live*” in the western highlands of Kenya. More precisely, in four areas of the Cherangany Hills: Kapolet Forest in Trans-Nzoia District, Talau and Kaipos in West Pokot District and Embobut Forest in Marakwet District (Inspection Panel 2014, 4f.) (Figure 1). Names and contacts are confidential (Request for Inspection 2013, 1). At that time, the NRMP was 62.59% disbursed (Jerve 2013, 1). The second request was received by the IP on June 28, 2013, which was presented by four representatives of the Cherangany Indigenous Peoples Community. The claims of the second request were similar to the claims in the first request. So it was absorbed into the ongoing investigation (Inspection Panel 2014, 6f.).

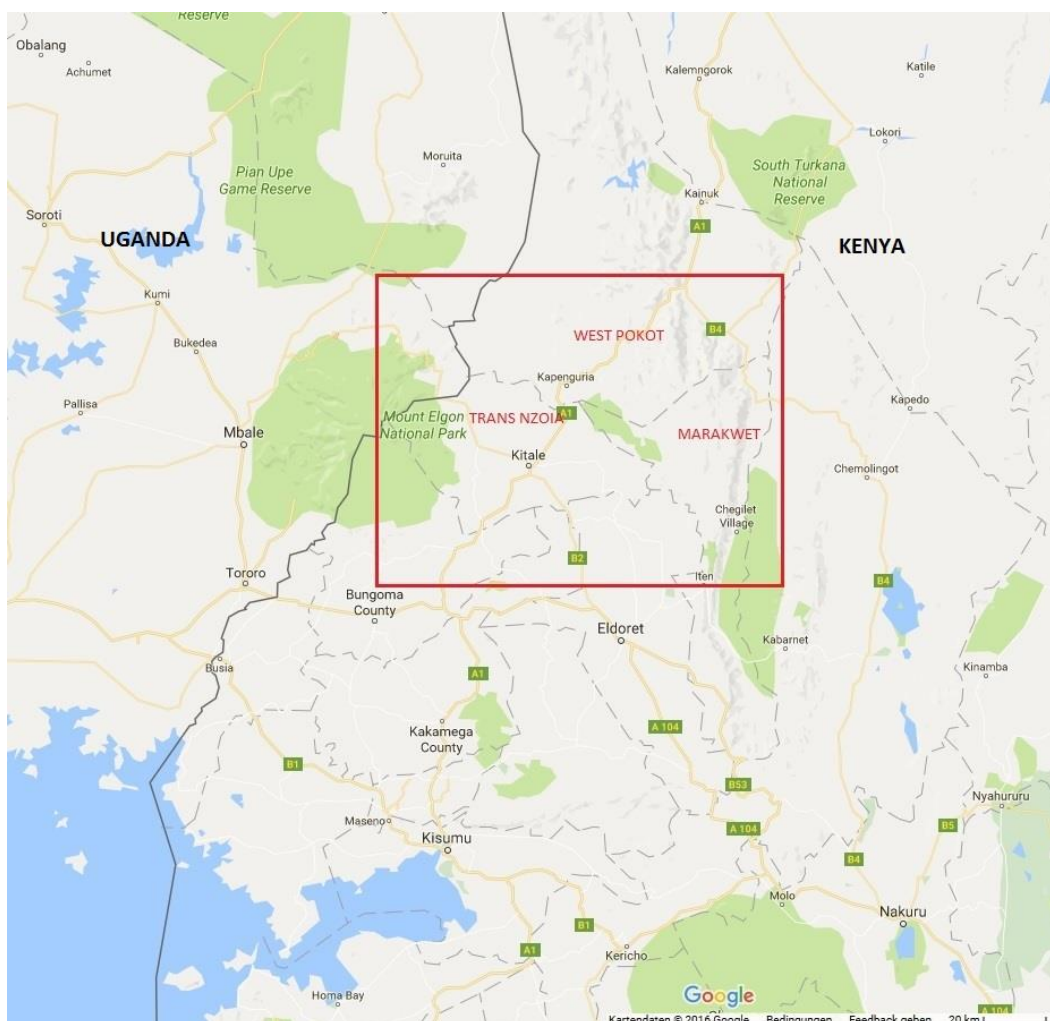


Figure 1: Kenya NRMP Map (Google Maps 2016 edited by the author)

2.3. First and Second Request

Due to of the similarities between the first and second request (Inspection Panel 2014, 6) in this section I will focus on the first one.

The claimants state that they suffered harm because of the WB's failure to comply with the standards. Hereafter, I would like to mention a few examples. In 2007, 2008, 2009, 2010, 2011 and 2013 the KFS carried out evictions of Sengwer Indigenous Peoples in Embobut forest. Over 500 Houses were burned down and property like food grains, house utensils, etc. were destroyed. In 2009, over 40 Sengwer and other local community members were arrested and charged because of illegal cultivation of forests. In this year, a woman was wounded during shootings while Sengwer families were arrested. Another complaint was related to the use of the term Vulnerable and Marginalized Groups instead of Indigenous Peoples by KFS and Government of Kenya (GoK). The main problem in this context is, that the Kenyan constitution does not have a definition of Vulnerable and Marginalized groups. Sengwer people were not only threatened and intimidated, but were also forced to resettle. The GoK implemented these plans through the KFS/ Natural Resources Management Project and Ministry Special Programmes and without consultations of the involved Sengwer (Request for Inspection 2013, 1ff.).

The claimants believe that the rights of Indigenous Peoples have been violated as defined in the United Declaration on the Rights of Indigenous Peoples, African Charter on Human and Peoples Rights, Indigenous People Planning Framework (IPPF) for NRMP and Social Assessment Report for NRMP. Furthermore, they believe that the WB's OP 4.10 (Indigenous Peoples Policy) and OP 4.12 (Involuntary Resettlement) have not been observed (Request for Inspection 2013, 1ff.).

2.4. Investigation Results of the Inspection Panel

The IP evaluated whether the WB complied with the following OPs:

- Environmental Assessment (OP/BP 4.01)
- Indigenous Peoples (OP/BP 4.10)
- Involuntary Resettlement (OP/BP 4.12)
- Project Appraisal (OMS 2.20)
- Project Supervision (OP/BP 13.05)

(Inspection Panel 2014, 10).

The IP came to the following conclusions (Table 1):

Table 1: IP Conclusions (Inspection Panel 2014, Annex, A)

Eviction Risks	<ul style="list-style-type: none"> - the NRMP did not support evictions - more attention would have been necessary to minimize risks for affected people
Resettlement	<ul style="list-style-type: none"> - non-compliance with OP/BP 4.12 - but no resettlement was planned
Analysis of Institutional Aspects	<ul style="list-style-type: none"> - non-compliance with OMS 2.20 - multi-agency interventions would have been required → component 2 was implemented only through KFS
Project Supervision	<ul style="list-style-type: none"> - good supervision by the Bank Management - but non-compliance with OP/BP 13.05 → no stop of evictions
Use of Vulnerable and Marginalized Groups instead of Indigenous Peoples	<ul style="list-style-type: none"> - in compliance with OP/BP 4.10 - but for Sengwer the term of Indigenous Peoples is important to their identity
Customary Rights and Livelihood Programme	<ul style="list-style-type: none"> - overlooking customary rights after restructuring → non-compliance with OP/BP 4.10 - mixed communities also benefited → in compliance with OP/BP 4.10
Consultations	<ul style="list-style-type: none"> - at the beginning in compliance with OP/BP 4.10 - non-compliance with OP/BP 4.10 after restructuring the NRMP in 2011

In addition, it is important that the evictions violate Article 63(d) of the Kenyan Constitution, which acknowledges the rights of communities to own ancestral lands traditionally occupied by hunter-gatherers, as well as the international law on human rights, biodiversity conservation and sustainable use (Forest Peoples Programme 2014c).

2.5. Management's Action Plan & Press Release on Board Discussion

Because of the Report created by the IP and after discussions with the affected communities the Bank Management committed to undertake two main actions. First of all, it was deemed important to hold a Colloquium between forest stakeholders. The objective is to enhance dialogue and cooperation on land and legacy issues. The Colloquium would include affected communities people, the Bank, government agencies like National Land Commission and KFS, NGOs and other development partners. Key themes would be global best practices in

- developing process framework for customary rights, resettlement, Indigenous Peoples plans
- applying participatory forest management
- community driven development
- mechanisms for resolving land and legacy issues.

Secondly, technical assistance on social safeguards in Kenya to the GoK and to indigenous communities has to be offered (Bank Management 2014, 17).

The Bank's board mentioned that the NRMP achieved good results. For example, more than 145.000 rural people profited from irrigation works and 320.000 hectares of forest area were brought under management plans. So all in all, the indigenous forest communities were benefited from improved livelihood opportunities and incomes. Because of the long history of tension on land and resource rights and due to the election turmoil in December 2007, the project environment was very challenging from the beginning. Prospectively, the Bank wanted to be viewed as a partner to support dialogue. Jim Yong Kim, president of the WB Group, said:

"I Will personally reach out to President Kenyatta and the Government of Kenya to offer our full support in order to bring together the Cherangany-Sengwer people and all the key parties. Everyone's goal is surely to find a lasting, peaceful resolution to this long unfinished business of land rights in Kenya."

(Bank Management & Inspection Panel 2014).

2.6. Progress Report

In relation to section 3.5, concrete actions followed the Action Plan in 2014 and 2015. Inter alia on march 19-21, 2014 a training in Nakuru on social safeguard policies for vulnerable and marginalized groups were organized by the WB. Before the Colloquium in 2015, the Ministry of Environment and Natural Resources, in

cooperation with the WB, organized a National Forum for Forest Dependent Communities in Nakuru. Over 200 people from mostly indigenous forest communities attended. To expand the dialogue with stakeholders in the forest sector a Colloquium was hosted in Eldoret on March 3-6, 2015 and was held by the WB and the Ministry of Environment, Water and Natural Resources and different communities. Over 300 people were present and more than 170 Cherangany-Sengwer community members were included (Bank Management 2015, 3f.).

3. Background

3.1. Sengwer

Traditionally the Sengwer were hunter-gatherers. A population census in 2009 registered 33,187 Sengwer. Their ancestral lands are located in and around the forests of the Cherangany Hills. Keeping bees and gathering honey has always been a big part of their way of life. Today, they also partake in cultivation and pastoralism (Kidd 2016). As a result of the colonial period, when the land was converted into settlement areas and agricultural lands, the Senger were pushed by the GoK to retreat to the Cherangany Hills Forest with the intention of dissolving their identity. They are still living currently near or in the Cherangany Hills forests. Since the 1990's, the Sengwer has to struggle with the GoK for the right and access to the resources of the forest like Kapolet or Embobut Forest (Larsen 2015, 5).

The GoK describes the Sengwer as squatters (Forest Peoples Programme 2014d) or Internally Displaced Persons (Kiptum 2015).

3.2. Cherangany Hills

The Cherangany Hills cross four administrative districts in Rift Valley. The forests of this area are very important for water catchment. It is one of Kenya's five water towers. Streams to the east flow into the Kerio river system, while streams to the west lead to the Nzoia river system. So the rivers provide water for irrigation, hydroelectric generation, industrial and agricultural processes (Kenrick 2014b, 2f.).

4. Analysis of the Situation at Cherangany Hills

4.1. Benefit of Natural Resource Management Project

Among other things, the NRMP originally should ensure a fair and effective management of Cherangany Hills, which was welcomed by the Sengwer. However, this task was deleted because of severe difficulties (Forest Peoples Programme 2014b).

The daily newspaper “the guardian” wrote on November 16, 2014:

“[...] Forest peoples are being removed to protect water resources for burgeoning urban areas. [...]” (Vidal, 2014).

The NRMP was created to solve water problems in Kenya. So the WB’s main goal was to secure the water supply for large populations living downstream. In this context, the Gok and especially the KFS justified the evictions, which were essential for the project (Kenrick 2014b, 11).

4.2. Involved Actors

First of all, it is worth mentioning that there were no NGOs that deal with land right issues operating in Cherangany Hills. In 2011, the british NGO Forest Peoples Programme (FPP) received a call for help through the Ogiek of Mount Elgon. At this time, FPP became familiar with the situation of the Sengwer community. After a bit of support, full work with the Sengwer began after the evictions in 2013 (Kenrick 2014b, 8).

The NRMP of the WB and the pursuing occurrences are described in Detail in Chapter 3. This section focuses on the response of the WB to the Investigation Report of the IP in a short way. The management agreed with the IP that the evictions were not caused by the NRMP. The overall situation was challenging from the onset including tensions over historic land issues and conflicts between indigenous communities and the KFS. As a result of this situation and due to the overly ambitious project design, the NRMP was restructured. In spite of the difficult circumstances, the management believes that the participating communities profited by the project (Bank Management 2014, 11).

The KFS was established under the Forest Act 2005. The main task of this institution is to develop, conserve and sustainably manage forest resources of the land. The KFS receives financial support from the WB and the Government of Finland (KFS) since 2007 (Forest Peoples Programme 2014c). They thought the KFS would be a “weak” organization. However, the opposite turned out to be true. The quality of the implementing agency determined the impact of funding and the KFS follows the approach that forests are a means for making money (Kenrick 2014b, 8).

4.3. Support for Sengwer Indigenous Peoples?

Even before the publication of the Investigation Report on May 22, 2014, the current circumstances were made public.

In July 2013, the UN Committee responsible for the UN Convention on the Elimination of all forms of Racial Discrimination, of which Kenya is a member, received a complaint about the situation of the Sengwer. On August 30, 2013, the Committee sent a letter to the GoK and asked for information on the situation of the Sengwer and attached their calls for state parties:

"to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories"

(Forest Peoples Programme 2014b).

On January 13, 2014, the UN Special Rapporteur on the rights of indigenous people, James Anaya, worded serious concerns:

“Indigenous peoples shall not be forcibly relocated from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement of fair and just compensation and, where possible, the option of return.”

(United Nations 2014).

On March 23, 2013, the High Court at Eldoret forbade the evictions and violations to the Sengwer, on November 13, 2013, this injunction was renewed. Despite a public statement of UN Special Rapporteur James Anaya (see Chapter 5.3) and in spite of a national, African and international Appeal, the violence did not stop. On January 18, 2014, the High Court ordered the police to enforce the injunction and to arrest anyone who breaches it. However, since the police and the KFS work together it is highly unlikely that they will do so (Kenrick 2014a).

The FPP, which supported the Sengwer communities people since 2013, visited the indigenous communities and informed the WB about the evictions (Forest Peoples Programme 2014e). In January 2014, FPP and over 60 international organizations send an appeal to protect the rights of all indigenous Sengwer at Cherangany Hills to the government and parliament of Kenya as well as to the UN authorities on human rights and biodiversity (Forest Peoples Programme 2014a).

4.4. Satisfied Claimants?

At the first request, the claimants made some advices to stop the suffering. They recommended that:

- *“GoK [...] respects and protects the rights of Sengwer forest indigenous peoples to live within their ancestral homes in Kapolet and Embobut Forests [...]*
- *GoK reviews all discriminatory policies, acts and laws that are against recognition and promotion of the rights of forest indigenous peoples [...]*
- *GoK [...] compensates Sengwer Indigenous Peoples families whose houses and property were burnt [...]*
- *GoK [...] compensates members of Sengwer Indigenous Peoples who were arrested [...]*
- *GoK [...] compensates the Sengwer woman who was shot by a forest guard [...]*
- *GoK recognizes and promotes the use of Indigenous Peoples as it did while preparing Indigenous Peoples Planning Framework and Social Assessment Report for Natural Resources Management Project and with respect to international human rights instrument [...]*
- *GoK transfers with immediate effect the current Zonal Manager for Trans Nzoia County Mr. Wahome for he has been the main person who directed*

the arrests of members of Sengwer community and shooting of a woman [...]

- *World Bank suspends any funding towards REDD+ until the said violations, injustice, concerns and fears are addressed"*

(Request 2013, 3-4).

On November 15, 2013 – after the first and second Request, but before the Investigation Report was released – the Kenyan President, Deputy President and Senator Kipchumba Murkomen sent a delegation to Embobut to promise 400,000 Kenyan Shillings per family, which he termed forest evictees. However, at no time were Sengwer families consulted about this kind of compensation in relation to the government resettlement plans. Another representative of the government said to the Sengwer that they could take the money for past sufferings (Kenrick 2014a). The list of the ones who should get the money to this day still has not been made public. Many believe that the money was given to distract the communities and the public from the real problems, it should look like a fair exchange (Forest Peoples Programme 2014d).

As promised in the Press Release on Board Discussion WB president Jim Yong Kim visited Kenya in October 2014 and had a personal conversation with president Kenyatta about the Sengwer indigenous communities living in Cherangany Hills. As mentioned in chapter 3.6, a Colloquium and a National Land Forum followed in 2015. Regarding the Colloquium, it was positive to discuss different visions of conversation integrating land rights recognition. However, there were no concrete outcomes (Tugendhat 2015).

On October 4, 2014, the Sengwer indigenous community send a letter to the Kenyan president Kenyatta about the "*World Bank pledge to resolve the land issue of the Sengwer forest indigenous community*". It was written that an acceptable solution for all parties involved is possible (Cheboi, Kibet & Kibiwot 2014). On March 30, 2016, another letter followed in which they carried out "*enough is enough to continued injustices – KFS guards MUST STOP the arrests and evictions. We are neither internally displaced persons (IDPs) nor squatters, the aborigines, the indigenous peoples of Embobut of forest.*" The Sengwer requested directly to the President:

- *"Ministries of Environment, Water and Natural Resources; Kenya Forest Service; Kenya Water Towers Agency and the Kenya Wildlife Service to*

adopt new conservation paradigm in which Forest Indigenous Communities are made the custodians of their forests under the supervision of the said conservation agencies.

- *The National Land Commission to actively, effectively and efficiently implement their constitutional mandate of resolving the issues faced by forest dwelling indigenous communities and more so addressing issues of Historical Land Injustices,*
- *Review of the Forest Act 2005 to be in line with Constitution of Kenya 2010 and National Land Policy with active, effective and efficient consultation and participation of Forest Indigenous Communities.*
- *Speedy enactment of Community Land bill, Historical Injustices bill that recognizes and protects the rights of forest indigenous peoples to live in, govern, manage and own their ancestral lands within the protected/conservation areas with close supervision of state agencies*
- *Kenya Forest Service to respect the rule of law (Conservatory Injunctive Orders issued by Eldoret High Court in March 2013 with respect to the case filed by Sengwer of Embobut forest) and to STOP continued harassment and any other form of forceful eviction and displacement (destruction of property, burning of houses, arrests, intimidation, etc) of members of Sengwer indigenous community from their ancestral homes and lands in Embobut forests.”*

(Kiptum 2016).

5. Current Status

The question is how the process of the investigation has affected the NRMP and how it has changed the way the WB does business. A significant test of the IP's is if the claimants have been satisfied by the outcome. For example, one problem is that the IP cannot stop a project by itself. Another difficulty can be, that the solution in the term of the Action Plan is proposed by the Bank Management which is supervised by the Board. Thus, there is no guarantee that the project will be improved by the claim. Furthermore, these claimants often need assistance from experts, like NGOs. Even it is an important role for the IP to support the affected people, they have no further influence except of their claim (Clark, Fox & Treakle 2003, 247-267).

In The First Management Report a detailed draft-matrix of follow-up actions is kept. Consequently, the WB wants to support the GoK in cooperation with other development partners to encourage the dialogue (Bank Management 2014, 4). Even though there were no concrete outcomes yet, hopefully step-by-step reforms continue (Tugendhat 2015). In this context, it is noteworthy that the WB wrote to the FPP on January 21, 2014 to deny any role in creating conditions for the evictions (Forest Peoples Programme 2014e).

The WB outlined lessons learned from the NRMP. The original project design was partially over ambitious, so it should have been more realistic and should have defined project boundaries more carefully. Moreover, it is very important to thoroughly assess the projects impacts before the implementation (Bank Management 2014, 19).

The IP's impact on the NRMP is hard to measure, not just because the Report of Inspection was published after the closure of the NRMP. Therefore, a modification of the NRMP is impossible, but an improvement of the situation for the Sengwer Indigenous Peoples should be feasible.

Even if the IP noticed that the NRMP did not support evictions, the WB should have imposed the stop of the violation at Cherangany Hills. As can be seen in the letter of March 30, 2016 to president Kenyatta it seems that nothing has changed for the Sengwer Indigenous Peoples. Although maybe the WB learned lessons from the NRMP for future projects, obviously, more is necessary than just supporting dialogue in Kenya.

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