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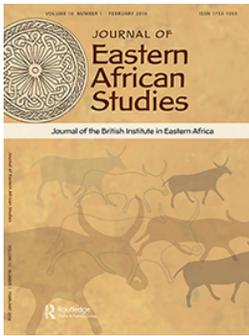
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What's in a name? The politics of naming ethnic groups in Kenya's Cherangany Hills

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ABSTRACT

This article analyses the politics of names and naming among the Sengwer–Cherangany community from Kenya's Cherangany Hills. Two requests submitted to the World Bank Inspection Panel (WBIP) by Sengwer and Cherangany leaders in 2013 in protest of alleged harms that resulted from a World Bank supported National Resources Management Project are the focus of the analysis. The requests articulated a dispute as to whether 'locals' were 'indigenous peoples', or 'vulnerable and marginalised groups', and whether they should be called 'Sengwer' or 'Cherangany'. The struggle that ensued illustrates the local and extraversion strategies that are deployed to assert rights over cultural, socio-economic, ecological and political space through an insistence upon a specific ethnic label or brand. The case illustrates the extent to which names are imbued with cultural and legal meaning, and used to help legitimise certain engagements and interventions while delegitimising others. The analysis also highlights how bodies such as the WBIP can be used to protect and promote community interests through their recommendations and the production of 'authoritative' accounts or documentary archives.

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The names we give to people, places, events and things are more than mere labels.¹ They help to 'structure and nuance the way we imagine and understand the world';² with accepted names embedded in 'a larger politics of storytelling'.³ As a result, names, and the ability to name, are inherently political due to the power relations involved and the discourses and actions they facilitate and hinder. For example, the question of whether someone is referred to as a 'terrorist' or 'freedom-fighter',⁴ or whether a place is called a 'front garden' or a 'development area',⁵ assigns a set of characteristics to the subject or object in question that can help legitimise certain forms of inquiry, engagement and action, and delegitimise others.⁶ For such reasons, small and self-proclaimed marginalised groups sometimes prefer the term 'indigenous' to alternative names due to the particular relations between people and place that the word implies. Similarly, some may favour a particular ethnic designation – out of a number that have been used over time –

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because of the leadership or territory that the name is associated with, or because of the levels of inclusion or exclusion it suggests.

In recent years, such politics of naming has become the focus of increased attention through studies on the negotiation and renegotiation of ethnic identifiers and processes of ethnic migration, assertions of difference, ethnic amalgamation, and ethnic branding or positioning.⁷ This paper builds upon this work by analysing the Cherangany and Sengwer examples as articulated in requests for inspection submitted to the World Bank Inspection Panel (WBIP) (hereinafter ‘the Panel’).

The Panel was established as an accountability body within the World Bank (‘the Bank’) in 1993. It is independent from the Bank Management (‘the Management’) and reports to the Bank’s Board of Executive Directors (‘the Board’). The Panel responds to requests for inspection from people who believe that they have been adversely affected by a Bank-financed project as a result of non-compliance by the Bank with its *own* policies and procedures. The Panel may investigate the complaint to determine non-compliance and occurrence of harm. After a request is submitted, the Panel determines eligibility, and then, if a recommendation for a full investigation is made and approved by the Board, the Panel conducts further investigations and writes a final report. Management is then given time to respond, and the Board makes a final decision on ways forward.⁸

Ultimately, the Panel’s powers are limited to the documentation of findings and recommendations, which the Board can choose to ignore, for example, on the basis of the Management’s response. However, even in such instances, findings and recommendations are not inert. Instead, just as with commissions of inquiry, the Panel’s independence and involvement of ‘experts’ is designed to imbue its truth-seeking procedures with an authoritative voice.⁹ As a result, the Panel helps to make rather than just uncover history.¹⁰ Thus, the final report – together with requests for inspection, the eligibility report, and initial and final Management response – are posted on the Panel’s website ensuring that these documents become part of the public archive and ‘a sliver of social memory’.¹¹

In July 2013, I was asked by the Panel – as a political scientist who had studied ethnic identities and politics in the Rift Valley – to work as an expert consultant on a request submitted by a group of Sengwer. The requesters had asked that their identity be kept confidential, but noted that they ‘live and represent others who live in the area known as Kapolet Forest (Trans Nzoia County), Talau and Kaipos (West Pokot County), [and] Empoput Forest (Elgeiyu Marakwet County)’, which together comprise part of the larger Cherangany Hills. Sengwer – and similarly Cherangany – are generally regarded to be a sub-group of the larger Kalenjin community, and sometimes of the Marakwet sub-group. The terms Kalenjin and Marakwet both emerged during the colonial period to embrace a number of culturally and linguistically similar communities.¹² However, while the majority of Kalenjin-speakers have strong oral histories of migration from the north, the oral histories of the Cherangany–Sengwer include references to migration from the north *and* original residence in and around the Cherangany Hills. In recent years, this oral history has enabled some community members to assert their difference to Kalenjin neighbours in the three counties in which they reside.¹³

The initial request was compiled by self-identified community representatives (rather than by the community as a whole) and presented the Sengwer as ‘an ethnic minority hunter-gatherer Indigenous Peoples’ (IPs), and alleged that community members had suffered harm as a result of Bank failures and omissions in a National Resources Management

Project ('the Project'), which the Bank had approved in March 2007, and supported from April 2008 until the Project closed in June 2013. The Project comprised of four components including one on the management of forest resources, which was implemented in various water catchment areas including the Cherangany Hills. Specific harms cited included a series of forced evictions that occurred during the Project's lifespan, as well as a decision made half way through the Project to use the term 'vulnerable and marginalised groups' (VMGs) instead of IPs without free, prior and informed consultation.¹⁴

Once I had been hired on a temporary contract, the Panel sent an array of documents, which included a second, and less technically savvy request for inspection submitted by representatives of the 'Cherangany Indigenous Peoples Community' in June 2013. This Request insisted that local residents of the Cherangany Hills were indigenous, but also that, by recognising the Sengwer and not the Cherangany, the Bank had failed to determine the real IPs.¹⁵ The Panel decided 'for reasons of economy and efficiency' that the second Request be processed jointly with the first.¹⁶

As a consultant, I participated in Panel interviews with Bank staff, Government of Kenya officials, and community members in Nairobi and the Cherangany Hills in September 2013, and in several telephone interviews with current and former Bank staff members thereafter. I was also privy to confidential Bank documents. Due to research ethics and contractual obligations, this paper does not draw upon information gleaned from such sources, but from public documents and interviews conducted as an independent researcher. This is important because, as a Panel member, the informed consent of interviewees was gained and confidential documents were released on the understanding that information would be used for the final report. However, even where the paper draws upon independent interviews, comments are not attributed to a particular individual due to the sensitivity of the subject matter, which has already led one leader to be threatened with a curse by community elders.

This paper analyses the politics of naming and the realities, political understandings and strategies such battles reveal. The paper highlights the local and extraversion¹⁷ strategies involved in becoming indigenous, and the use made of external bodies such as the WBIP by community spokesmen as a way to insist upon a particular ethnic label and brand, which leaders believe will help protect and promote community interests, such as land use and ownership rights. In turn, the paper reveals how both requests recognise that 'Sengwer' and 'Cherangany' constitute different names for the same ethnic community – division and tension instead revolving around the question of which ethnic label is the correct one, the assumed motivations that 'others' have for insisting upon the alternative name, and the real and presumed benefits attached to public acceptance of one's favoured name.

The paper reminds us of the constructed and negotiated nature of ethnic identities. It also highlights the extent to which names are imbued with cultural and legal meaning, which can help legitimise certain engagements and interventions and delegitimise others, and the power that successful name-givers consequently enjoy. Finally, it envisions how bodies such as the WBIP can be used to protect and promote community interests through their recommendations, but also through the production of authoritative accounts, which become part of documentary archives that community members and leaders can draw upon, revisit and reinterpret in their efforts to validate local historical narratives and associated claims.

The paper starts by outlining the understanding of ethnic identities and labels upon which the analysis builds. The paper then provides an overview of the Project and requests before moving on to the politics of naming and the significance attached to various labels. Finally, the paper concludes with some preliminary thoughts on the future of the Panel's report as an 'archival residue'.¹⁸

Understanding ethnicity, autochthony and indigeneity¹⁹

An ethnic group is an essentially contested concept, since there is no formulation for the delimitation of group membership that holds for every recognised group. Nevertheless, ethnic groups can be distinguished from other kinds of groups – nations, races, classes and interest groups – due to 'the symbolism which they employ'.²⁰ This symbolism relates to a sense of in-group connectedness and distinctiveness that is rooted primarily in a notion of cultural peoplehood, whereby individuals of different ages, status and wealth are linked (and simultaneously differentiated from ethnic others) through a conjoining of cultural similarity and perception of common descent. At the same time, ethnic groups are socially constructed imagined communities²¹ that struggle, not because they exist, but because they have come into existence out of a process of struggle.²²

Pre-colonial African identities were relatively fluid and flexible and the more bounded identities of today stem from interconnected processes of invention and imagining by Africans and Europeans during the colonial period.²³ However, while colonial experiences encouraged Africans to think and act ethnically, they did not leave a legacy of fixed and unchanging ethnic signifiers. Instead, contemporary processes of construction include instances of ethnic migration, assertions of difference, and amalgamation, as people debate and renegotiate relevant ethnic content, boundaries, friends and foes. People can also debate ethnic typology in efforts to renegotiate ethnic brands in response to economic, socio-legal and political 'markets' or audiences.²⁴ In contemporary Africa, two of the most common examples of ethnic branding or positioning are assertions of autochthony or indigeneity, which are similar and sometimes overlap, but are subtly different.

Autochthony refers to the apparently simple notion of being born from the soil. In some accounts, assertions of autochthony are said to rely 'on nothing but the claim to have been in a certain space first'.²⁵ However, on closer inspection the language of belonging lacks even that requirement. There are numerous communities that recall histories of migration and recognise local indigenous communities, but still employ the notion of being 'sons of the soil' as a means to differentiate themselves from more recent migrants.²⁶ Such examples show how claims to autochthony can be 'claims to have arrived first, but also second'.²⁷ More important than original residence therefore, is the relativity of claims and the idea of belonging *more* than others.²⁸ In turn, autochthony's appeal stems from the suggestion of a natural association with the land and associated presumptions regarding the rights that should be enjoyed by 'local' citizens vis-à-vis more recent migrants.

In contrast, the idea of 'being indigenous' has at least two meanings in the African context. At one level, all Africans and Kenyan Africans are indigenous to Africa and Kenya, respectively. As Balaton-Chrimes notes, in Kenya, indigeneity 'is the norm. Full citizens in Kenya are full citizens because they are tacitly considered indigenous'.²⁹ This fact is reflected in the list of 'indigenous African communities' used in the national

census, and contested status of communities often deemed to be non-indigenous, such as Kenya's Nubian, Somali, Indian and White communities.³⁰

At the same time, the idea of 'being indigenous' can be used as 'a niche anthropological or political category that denotes distinction and a prestigious kind of belonging and bundle of rights'.³¹ According to this more specific conceptualisation, indigeneity is no longer the norm but a 'human rights construct', which links threats and rights faced by particular communities to histories of injustice, non- or mis-recognition, and the assumed importance of place due to the land-based nature of culture and livelihoods.³²

In the Americas and Australia the term IP is usually 'used to represent original inhabitants such as Native Americans who have become culturally, economically and politically marginalised by dominant, colonising powers'. In contrast, in Africa the term has been used by a range of self-identified 'distinct cultural minorities' to lay claims to territory and resources on the basis of remembered histories of repression at the hands of 'majority populations of Africans who control the state apparatus'.³³ What matters, activists argue, is not the longevity of people's residence, but 'their domination by others'³⁴ and their special relationship with the land. In this vein, the African Commission on Human and People's Rights (ACHPR) holds that IP does not simply refer to 'first people' but has become a 'wider internationally recognised term by which to understand and analyze certain forms of inequalities and suppression'. In its view, the term refers to:

a global movement fighting for rights and justice for those particular groups who have been left on the margins of development and who are perceived negatively by dominating mainstream development paradigms, whose cultures and ways of life are subject to discrimination and contempt and whose very existence is under threat of extinction.³⁵

This potential for internal colonialism also informs international thinking. The Bank, for example, now accepts that IP describes 'social groups with a social and cultural identity that is distinct from the dominant groups in society and that makes them vulnerable to being disadvantaged in the development process'.³⁶ Similarly, in May 2000, the United Nations' (UN) Working Group on Indigenous Populations (WGIP) concluded that the term indigenous was 'useful in Africa' and that it referred to 'peoples with specific identities, histories and cultures' who 'could be characterised as non-dominant, vulnerable and disadvantaged'. For the WGIP, the difference between IPs and minorities in Africa was that the former 'had an attachment to a particular land or territory and/or had a way of life ... which was threatened by current state policy and affected by the shrinking of their traditional resource base'.³⁷ The UN Special Rapporteur to Kenya put it even more bluntly: 'from a human rights perspective, the question is not "who came first" but the shared experience of dispossession and marginalisation'.³⁸

This complex and inherently political understanding of whether a group constitutes an IP informs the Bank's safeguard document Operational Policy (OP) 4.10 on IPs, which is one of the documents that the Panel refers to in its investigations to determine whether the Bank has complied with its own policies. OP 4.10 does not define IP and accepts that IPs may be referred to by different names in different contexts. Instead, the document notes that the term:

is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; b) collective attachment

to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; c) customary cultural, economic, social or political institutions that are separate from those of the dominant society and culture; and d) an indigenous language, often different from the official language of the country or region.³⁹

This distended understanding of indigeneity renders it relatively easy for Africans to position themselves as indigenous, given complex family and communal histories, and the tendency for all ethnic groups to have a close association with place from burial and spiritual sites to livelihoods and political representation.⁴⁰ One motivation to take advantage of this opportunity stems from the real and perceived benefits at the global level. This includes involvement in the IP's movement, new international agreements and laws and possibility of assistance from international non-governmental organisations (INGOs). In these instances, becoming and being indigenous becomes a strategy of extraversion or means to mobilise resources and moral, political and legal advantage at the global level.⁴¹

At the same time – and due to the importance vested in an association between one's ethnic identity and claims to belong to a particular place for claims of political representation, administrative positions and patronage⁴² – claims of indigeneity can also be a means of asserting autochthony. Somewhat paradoxically, the employment of indigeneity as a niche category to argue that Group X belongs to an area *more* than others, appears to hold particular appeal for those communities who enjoy relatively weak or contested claims to space.

In this vein, Balaton-Chrimes notes how Nubians in Nairobi's Kibera, 'rest their claim to indigeneity upon being the first to develop' the area and have adopted 'the strategy of an almost autochthonous claim to Kibera not *despite* their relatively weak claim to autochthony but *because* of it'.⁴³ A weakness that stems from the community's history of moving into Kenya during the colonial period, their treatment as a foreign race, and settlement in an area that now constitutes the country's most densely populated informal settlement.⁴⁴

Similarly, assertions of indigeneity by Kenya's self-proclaimed forest-dwelling hunter-gatherer communities can be linked (at least in part) to the fact that the areas they lay claim to are often gazetted forests, where, according to Kenyan law, no one has the right to reside. In this context, notions of ecological indigenism and an asserted cultural affiliation with, and natural protection of 'their' environment, can be used to support communal demands for access, use and ownership of forestland in the face of heightened competition and push for ecological conservation.⁴⁵ However, before discussing such claims and associated politics of naming in more detail, this paper turns to the Project, the requests for inspection, Panel findings and Management response.

The natural resources management project

The Bank approved the Project on 27 March 2007. The original objective was to enhance Kenya'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 participating in the co-management of water and forest resources.⁴⁶

Initial Project documents were developed in the aftermath of the 2002 elections in which the National Rainbow Coalition ousted the Kenya African National Union: the ruling party since independence. This political transition prompted a series of institutional reforms including the 2005 Forest Act, which replaced the Forest Department with the Kenya Forest Service (KFS) and provided for the co-management of gazetted forests by KFS and adjacent communities. In this context, Component 2 of the NRMP (Natural Resources Management Project) – the management of forest resources (which forms the subject of both requests) – sought to assist ‘in creating a transparent and accountable regulatory and institutional framework in forest resource management from an exclusive Government conservation model to joint management with local communities and the private sector’.⁴⁷ To this end, initial activities included: ‘realigning and demarcating boundaries in selected gazetted forests, identifying partnership models for community participation and benefit sharing, supporting the implementation of a resettlement policy framework, and developing and implementing resettlement action plans’.⁴⁸

In line with Bank procedures, various documents were produced during the planning phase. This included an Indigenous Peoples Planning Framework (IPPF), which extended the Project to include the Cherangany Hills, where local IPs were specified to be the Sengwer (with no reference made to the Cherangany). Together with other Project documents, the IPPF also interpreted Component 2’s mandate in a broad manner. This included introducing a number of specific land-related commitments; namely that the Project would:

- i) hasten the provision of land titles for land presently occupied and used by the communities in the Project areas including support for necessary steps, such as land survey, demarcation and registration of titles; ii) establish a comprehensive strategy to rehabilitate livelihoods of evicted people to the level of December 2002; and iii) offer assistance within the land restitution process to indigenous peoples to claim all lands over which they have lost control between 1895 and 2002.⁴⁹

The promise of land restitution was almost inevitably doomed to fail given complex local histories, the difficulty of determining who is or is not Sengwer, the lack of buy-in from relevant government departments, and contradictions in Kenya’s legislative frameworks. Regarding the latter, a 2006 draft National Land Policy suggested that ‘land issues requiring special intervention, such as historical injustices, land rights of minority communities (such as hunter-gatherers, forest dwellers and pastoralists) and vulnerable groups will be addressed’ and that ‘the rights of these groups will be recognized and protected’.⁵⁰ However, while this implied that IP rights to reside in and to use gazetted forests might be considered, the 2005 Forests Act explicitly forbade residence in forests.

Moreover, while the Project was conceived and articulated at a moment of national optimism, the loan only became effective in December 2007. The Project was then delayed by the post-election violence of 2007/2008, which saw over 1000 people killed and almost 700,000 displaced in two months, with implementation starting in April 2008. The violence substantively altered the Project context. First, it reinvigorated debate about environmental degradation and the need to resettle those displaced by the post-election violence *and* those who had illegally encroached into gazetted forests. Second, it triggered a flurry of reforms. This included the inauguration of a new Constitution in August 2010 and drafting of three new land bills, which ensured that land policies were in flux for the duration of the Project.

The new Constitution also offered a definition of minorities, marginalised communities, and IPs – where IPs are understood as a type of marginalised community ‘that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy’.⁵¹ This definition includes groups such as the Cherangany–Sengwer, but is at odds with more general and internationally recognised definitions. The Constitution’s failure to explicitly recognise IP rights to traditional lands (including forest land) also contradicts emerging international jurisprudence.⁵²

Given the NRMP’s objectives and tumultuous political context, it is unsurprising that the Bank restructured the Project in June 2011. In this process, land-related commitments were removed from the Project, while a livelihood and rural development program for IPs and forest communities was introduced and the term ‘IPs’ replaced by ‘VMGs’. This restructuring – together with allegations of insufficient consultation and frustrated expectations – largely motivated the submission of both Requests.

Requests for inspection, the panel investigation and management response

In the first request, which was submitted in January 2013, Sengwer leaders argued that they had suffered a number of specific harms. This included periodic forced evictions from Empopot Forest, on the eastern edge of the Cherangany Hills, between 2007 and 2011, and the planned resettlement of Sengwer from Empopot without their free prior and informed consent. It was claimed that the evictions were conducted in the name of conservation and by Bank trained officers, and that they occurred during the Project’s lifespan.

In addition, Sengwer complained of how 45 people had been arrested in 2009 for illegal cultivation in Kapolet Forest on the southern edge of the Cherangany Hills, while one woman had been shot and seriously injured by forest guards. According to the Request, arrests were unlawful because Kapolet Forest constituted part of the Sengwer’s ancestral homes, and because the place in which the arrests occurred fell within Phase II of a settlement scheme that (although never degazetted) was promised to Sengwer by President Moi in 1993 and again in 1997.⁵³ For requesters, these arrests, and the fact that cases were still pending four years later, meant that they had been ‘subjected to torture, poverty, oppression and segregation as peoples within their ancestral lands’.⁵⁴ The Request accordingly complained of intimidation and threats by local officials, and of harm associated with a change in terminology mid-way through the project; and recommended that their rights to reside in, and to use forest land in the Cherangany Hills, which they claimed in its entirety as indigenous hunter-gatherers, be respected and that they be compensated for harms suffered.

In its response, Management emphasised the challenging local and national political environment and the ambitious nature of the initial Project design. Management denied that any resettlement had been planned or financed, or that any evictions had occurred as part of the Project. Instead, they insisted that evictions had occurred before the project was operational *or* that Management had ‘acted swiftly when it became aware of cited incidents’, for example, by securing a government moratorium on further evictions from Empopot in 2011 until a resettlement plan was agreed.⁵⁵ It also downplayed the significance of the change in terminology.

Nevertheless, the Panel recommended an investigation, citing ‘plausible linkages between activities under the Project and the concerns of the people relating to eviction

and resettlement’;⁵⁶ and argued that concerns about customary rights and a change in terminology raised ‘issues of potential serious non-compliance with Bank policy, namely with respect to whether the Project has adequately taken into account such rights, and the adequacy of consultation’.⁵⁷

The second request submitted by Cherangany representatives also insisted that evictions and a change in terminology constituted harms suffered as a result of the Project. In addition, they complained of the non-disclosure of Project documents and alleged that the Bank had failed to ‘determine the real indigenous peoples’ by using the term Sengwer and by consulting with Sengwer leaders, rather than Cherangany. They argued that there were distortions in project documents regarding ‘the rightful owners of the Cherangany Hills Territory’ and that non-recognition had led the community to suffer an ‘identity crisis’.⁵⁸

Ultimately, the Panel concluded that no evictions had been supported by the Project but that, given a history of evictions in the area, the institutional culture of KFS, and Project activities (such as boundary realignment), ‘more attention should have been given from the outset to identify risks for affected people and adequately mitigate for such risks’.⁵⁹ They also found that a shift in focus from customary rights to livelihood activities constituted non-compliance with OP 4.10 on IPs, and that the restructured project ‘contrasted with OP4.10’s spirit and letter because it was developed without proper consultation’.⁶⁰ The Panel also objected to the way in which the term IP had been replaced with VMG.

In its response, Management reiterated many of its initial points and dismissed the Panel’s conclusions on non-compliance. For example, Management argued that they could not have mitigated for potential evictions from the outset since Cherangany Hills was not initially included in the Project area, while the fast-changing political environment precluded the kind of projections required for mitigation. Significantly, one of the many areas in which Requesters, Panel and Management differed was on the significance and implications of choosing one name over another – be it IP or VMG, or Sengwer or Cherangany.

From IPs to VMGs

A harm detailed in both Requests was the change from using the term IP to VMG in violation of OP 4.10. According to this safeguard document, ‘the Bank provides project financing only where free, prior, and informed consultation results in broad community support to the project by [any] affected Indigenous Peoples’.⁶¹ The document also sets out requirements for project preparation; special considerations relating to land, natural and cultural resources and physical relocation; and development policies.

In both its initial and final response, Management downplayed the significance of this change and insisted that the Bank had adopted this term at the request of the Kenyan government ‘in order to be consistent with the terminology of the 2010 constitution’.⁶² Both requests rejected this argument on the basis that the new Constitution defines indigenous groups, but does not mention VMGs. In addition, Management drew attention to the fact that ‘OP4.10 allows flexible adaptation of terminology’, arguing ‘that the adoption of the term VMG does not diminish the substantive protections and benefits available to beneficiary communities under the policy’.⁶³

The Panel found that the replacement of the term IP with VMG did not in itself amount to non-compliance because OP 4.10 'does not require its use to ensure protection of the rights included therein'. Nevertheless, the shift constituted non-compliance and harm, since:

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 OP4.10.⁶⁴

The Panel found that although the Project mapped customary rights in its early stages, 'it then moved away from the concept ... after restructuring', and that this also represented non-compliance.⁶⁵

In valuing a 'community's attachment to a particular designation' the Panel recognised that names are embedded in a larger politics of storytelling, which ensures that they assign characteristics to the subject in question and help legitimise particular discourses and actions. In this vein, it is critical that 'VMG' has not been the focus of local or international debate or regulations, and could – as interviewees were wont to remind one – refer as easily to street children in urban areas as to IPs. In contrast, as a specific category, IP is now recognised by various international bodies as a particular kind of marginalised group that enjoys a close association with place, and which, as a result, should enjoy particular ownership and access rights over ethnic territory.⁶⁶ As a consequence, IP implies a certain kind of human-geographic relationship and specific set of rights, and facilitates membership in various international networks, which VMG does not. It is therefore unsurprising that Cherangany-Sengwer insist on the term IP and reject VMG.

First, recognition as IP facilitates participation in the global IPs movement, which started making inroads into Kenya in the early 1990s, and associated networks. Sengwer representatives already benefit from these affiliations and have attended IP meetings at the UN since the early 1990s, while Sengwer Aid is a registered UK charity that 'supports the indigenous Sengwer tribe in the west of Kenya'.⁶⁷ Such connections have brought direct benefits: from support for a local cultural centre and student scholarships to technical assistance for community lobbying as provided by the UK's Forest Peoples Programme for the Sengwer's request for inspection.

More importantly, IP implies a particular relationship between a community and geographic space. This relationship assumes that land and associated resources are central to the community's sense of self and well-being, but also that the community is, as a consequence, inherently disposed to protect and promote the environmental integrity of their territory. For example, according to OP 4.10:

The Bank recognizes that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend ... [and] that Indigenous Peoples play a vital role in sustainable development.⁶⁸

This assumption of ecological indigenism has relevance at both the global and local levels.

At the global level, this particular story of people-space relations justifies a burgeoning body of international regulations and jurisprudence, which provides IPs with a remarkable range of rights that far exceeds those enjoyed by other minorities. In short, if communities:

represent themselves to the international community as a national minority, they get nothing other than generic minority rights premised on the integration model; if they come, instead, as an indigenous people, they have the promise of rights to land, control over natural resources, political self-government, language rights, and legal pluralism.⁶⁹

The potential benefits of being able to apply IP jurisprudence to local contexts should not be underestimated. One example is the ACHPR's 2010 decision on the Endorois situation, which Cherangany–Sengwer leaders are well versed in due to regular communications through local networks. This decision recognised the Endorois as indigenous to Kenya's Lake Bogoria; held that various rights had been violated as the result of earlier evictions; and recommended, among other things, that the Kenyan government recognise rights of ownership and restitution, that they enjoy access rights, and be paid compensation and royalties.⁷⁰ Despite this landmark ruling, little progress has been made in implementing the Endorois decision, and the Kenyan government has responded to most follow-ups with excuses and silences.⁷¹ The Endorois case thus exemplifies the limits of such strategies of extraversion⁷² and draws attention to the importance of recognition at the national level.⁷³ However, given ongoing constitutional and institutional reforms, many self-proclaimed IPs have reason to hope that international recognition will also help bring local-level benefits in terms of political representation and protection of community rights.

In the aftermath of the post-election violence of 2007/2008, the need to resettle internally displaced persons and to counter the depletion of Kenya's water towers prompted renewed debate about human encroachment into gazetted forests and need to evict squatters. In this context, and in the face of periodic evictions from gazetted parts of the Cherangany Hills throughout the colonial and post-colonial periods, Cherangany–Sengwer have sought to draw upon their IP status to counter popular narratives of forest dwellers as illegal encroachers. More specifically, leaders argue that the Kenyan government should recognise, respect and protect their rights 'to live within their ancestral homes in Kapolet and Empoput Forests as part of the ecosystem while carrying out livelihood activities that promote sustainable conservation and protection of natural resources'; and that the government should also review 'all discriminatory policies, acts and laws that are against recognition and promotion of the rights of IPs to live harmoniously within their ancestral homes in the forest'.⁷⁴ In so doing, they explicitly draw upon the assumed characteristics of 'being indigenous' that are embedded in the stories behind the name.

In addition to efforts to legitimise rights to reside in the forest, the story behind being an IP is used to justify special access rights. Thus, while 'relatively few people reside inside the forests and most of those who do are located in the glades in Embobut or in deforested areas along the periphery ... many community members still have a strong attachment to the forest' due to the presence of sacred sites and cultural materials (including foods and medicine) and contribution to livelihoods (including firewood and hunting).⁷⁵ Once again, the likelihood of achieving access rights is strengthened if Cherangany–Sengwer are popularly recognised as IPs. This is due to international protections, but also local articulations. For example, Kenya's new constitution recognises a citizen's 'right to participate in the cultural life of the person's choice',⁷⁶ and simultaneously defines an indigenous community as one 'that has retained and maintained a traditional lifestyle and livelihood based on a hunter and gatherer economy'.⁷⁷

The Cherangany–Sengwer's claim to belong to the Cherangany Hills as IPs, and to thus be the relevant autochthons, is also important for political reasons. In interviews with Sengwer in

2004/2005, it became clear that community leaders linked their socio-economic problems to the fact that their small community was divided between three constituencies in three different districts. They felt marginalised by larger neighbours, who appeared to care little for their predicament, and politically encumbered by the fact that they lacked any community representative higher than a Deputy Mayor.⁷⁸ However, recent developments offer some hope. Thus, while the community is now divided between three counties, the new constitution recognises the need for minority groups to enjoy political representation and calls upon parliament to enact legislation to ensure ‘that the community and cultural diversity of a county is reflected in its county assembly and county executive committee’.⁷⁹ Yet, this clause begs the question of who the relevant ethnic minorities are in any particular area with many interviewees feeling that acknowledged IP status would bolster claims for special representation.

Indeed, perhaps most important is the fact that, ‘in a country where ethnic identities are associated with particular territories and are also assumed to be central to politics and the distribution of resources, the Cherangany Hills is the only place that Cherangany-Sengwer can claim as “theirs”’.⁸⁰ The importance of this reality is evident when local residents talk of the potential costs of evictions, which bring immediate suffering, but also threaten to throw out and disperse community members. As Balaton-Chrimes notes in her work on Nubian claims to Kibera,

[...] the fear and experience of being pushed not just to the margins of society and politics, but of being pushed out altogether – that is, the fear of abjection – is most apparent in the fear of being expelled from what they perceive as their land ... If they were to be expelled from Kibera the Nubians would be forced to find an alternative place to live in a country with little land left, where moving to another area entails the ever-present threat of violence inflicted against those ‘who do not belong’.⁸¹

Cherangany–Sengwer fear eviction from the Cherangany Hills on similar grounds – where would they move to and how secure would they be? They also object to it on the basis that the community would be broken up and removed from the only space in which they can claim to be the relevant local minority, which has ramifications for political representation and full citizenship rights in a country where indigenous Kenyans – in the general sense – are all believed to have a homeland.⁸² Indeed, from interviews with community leaders the greatest fear seemed to be that, if they were not recognised as IPs, they would lose their claim to the Cherangany Hills and thus their territory and be in danger of being rendered politically irrelevant through relocation, dispersal and future absorption by ‘others’. Interviewees feared that they would continue to lack political representation, and that they would be ignored in the distribution of patronage more generally – from state recruitment and appointment processes to the distribution of school bursaries. The implication of the claim made in being an IP – that is, of belonging to an area *more* than others and of knowing traditional ways of managing natural resources – can thus help us understand people’s attachment to the term and rejection of VMG.

From violating indigenous rights to failing to recognise the real indigenous

The politics of naming revealed in requests for inspection did not stop at ethnic brands, but extended to the specific name used. In this vein, the second request posited that the Project

had not ‘determined the real indigenous peoples’, that is, the Cherangany, and that ‘reports continue distortions on the rightful owners of the Cherangany Hills Territory’. In their view, misinformation that ‘Cherangany is only hills and not a people’ was wrong and disenfranchising, and had helped bring ‘unfair competition and conflicts which might lead to internal friction and tribal war from prospecting tribes, as people now scramble to exploit resources in total disregard of whose territory it is’.⁸³ The second request thus revealed another level of debate: of whether people within the project area should be called Sengwer or Cherangany.

This debate is linked to a division that has emerged since I first conducted interviews in the area in 2004/2005. Significantly, and as the Panel notes:

Both of these ethnic groups recognize that the labels constitute different names for the same ethnic community since they share a dialect, oral histories, a tradition of being forest-dwelling hunter-gatherers, and an identity of being indigenous to the Cherangany Hills.⁸⁴

Instead, the Panel found that ‘division and tension revolves around the question of which ethnic label is the “correct one”, and the assumed motivations that “others” have for insisting upon a particular name’.⁸⁵ More specifically:

In meetings with the Panel team, community members who advocate for the name Sengwer were criticized by Cherangany for being too exclusive and for mainly comprising of members of one clan, with the underlying feeling that these individuals were trying to impose the name Sengwer onto the whole community so that they can control the community’s political economy, including access to external resources. Advocates of the Cherangany term also complained that the Sengwer label is less well known and is rarely used in colonial documents, and that its use could undermine community claims to land and resources in the Cherangany Hills which are by virtue of its name immediately associated with the Cherangany.

In turn:

Those advocating the use of the term Cherangany were criticized by Sengwer for being too inclusive and for including many people who ‘really’ hail from neighbouring Kalenjin-speaking communities such as the Pokot, Sabaot, and Marakwet. Under this view, they were allowing ‘others’ undeserved access, rights and influence and not using a real name known to communities in the diaspora, but a derogatory name used by the Maasai. Cherangany rejected the latter and argued that the term actually stems from an old tradition of blessing the sun as it rises and sets.

This conflict over the appropriateness and reach of names was not captured in the original IPPF, which simply stated that the Sengwer are ‘also referred to as Cherangany, a nickname given to them by the Maasai’.⁸⁶

This debate had important repercussions for the project, and especially for efforts to ensure free, prior and informed consent. For example, in its final response, Management noted challenges ‘related to a lack of clarity as to standing within communities of various individuals and groups who purported to speak on their behalf’, and of how project implementation was delayed on numerous occasions ‘as the Project team attempted to sort out the real will of the communities, by reviewing and assessing the comments of a diverse group of self-appointed community leaders holding inconsistent or contradictory positions’.⁸⁷

Once again, these struggles had outward and inward-looking dimensions. At one level, competition stems from the NGO-isation of aid,⁸⁸ which has been associated with the extension of INGOs and externally funded local NGOs into nearly every aspect of socio-economic and political life in a context where organisations often want to work

with small and politically marginalised communities.⁸⁹ In this context, the names Sengwer and Cherangany are associated with rival NGOs, which compete for access to limited resources; namely, the Sengwer Indigenous Development Project (SIDP) headed by David Kiptum Yator, and the Cherangany Multipurpose Development Programme headed by Simon Cherongos. Initially, both Yator and Cherongos worked together in SIDP, however, due to disagreements over resource management, Cherongos left SIDP, which has become relatively well known within the international IP movement, and established an alternative organisation, which remains less well networked. In this context, it is felt that recognition of one name over another will lead one group – and thus the area in which they are concentrated – to benefit from international aid and charitable contributions to the neglect of the other.

At the local level, the dominant ethnic name also has implications for who the relevant community representatives are believed to be. Interestingly, while the Sengwer have been relatively successful at achieving international recognition, the Cherangany have made greater inroads at the local level. For example, the Kalenjin Council of Elders, which includes representatives from each Kalenjin sub-group, recognises the Cherangany group and rejected a request by Sengwer for a separate representative.

However, ethnic names are not only associated with different leaders, their home areas and organisations, but also with different stories. More specifically, the fact that Sengwer is believed to be more exclusive has ramifications for programmes that target the community with competition over names stemming, at least in part, from a government settlement scheme in Kapolet Forest. In summary, in 1993, President Moi directed that land in Milimani Agricultural Development Corporation (ADC) and Kapolet Forest in Trans Nzoia District be given to Sengwer. However, following complaints that the Sengwer had been left out of the former and associated demonstrations, the community was again promised land in Kapolet. Phase I began in 1998 and involved Trust Land Areas. However, Phase II involved gazetted government forest and has been the focus of an ongoing dispute, and it seems unlikely that people will ever be settled in the area. In 2004, people invaded Phase II to protest delays and were subsequently evicted. This invasion included people from neighbouring West Pokot District who claimed Sengwer ancestry on the basis of previous migration and assimilation. The situation was further confused by the fact that Sengwer–Pokot were accompanied and followed by a number of Pokot. But while some Pokot leaders argued that Sengwer–Pokot had been invited to boost numbers and had subsequently been sidelined, Sengwer leaders blamed ‘fake Sengwer’ or Pokot for damage to the forest and insecurity associated with increased cattle raids.⁹⁰ This debate over whether Sengwer–Pokot are members of the community or not eventually fed into the politics around names. In this context, Sengwer is presented as being more exclusive – either purer or limited to a particular clan – while Cherangany is seen as more inclusive, and either applauded for recognising all community members, or criticised for allowing ‘outsiders’ to benefit from community resources.

Conclusions: of names and archives

The requests for inspection submitted by Sengwer and Cherangany representatives were not just about the politics of naming. Instead, they included harms suffered from evictions and frustrated promises to deal with historical land injustices. Nevertheless, the fact that

names were central to both requests provides insights into the constructed and negotiated nature of ethnic identities, the importance attached to naming, the consequent power of the name-giver or denier, and the role of self-appointed community spokespersons who articulate narratives. Critically, this obsession with names is far from unique to the Cherangany–Sengwer as reflected in the arguments presented by other marginal groups in the region, such as Endorois around Lake Bogoria,⁹¹ or Maasai in northern Tanzania.⁹²

With respect to the question of whether Cherangany–Sengwer are IPs or VMGs, the politics of naming stems from the characteristics and associated rights linked to IPs and lack of debate on VMGs. The insistence on IP is as much about the future – and the recognition that people hoped the Panel would provide – than to specific harms suffered during the Project. As a result, people’s hopes for the Panel’s investigation were pinned not just to specific recommendations and Management response, but also to its archival residue.

The Panel’s production of an authoritative document ensures that the Panel’s work can be drawn upon to support community narratives in ways that render the report a moment of commencement, rather than closure.⁹³ Research suggests that some community leaders in the Cherangany area are cognisant of this fact and seek to use the Panel, not just to issue supportive findings and recommendations in the short-term, but also to produce an archival residue that can be used to endorse future campaigns. Ultimately, the Panel recognised that Cherangany–Sengwer are indigenous and also noted the value attached to this particular label. As a result, the Report may be drawn upon by IP leaders in the future as evidence of their particular claims to belong. In contrast, the Panel opted not to become an arbiter of local political contests between the Cherangany and Sengwer, and offered no specific findings or recommendations on much of the Second Request.

As an archived document, which can claim an authoritative voice, the Panel’s report will join a litany of other documents that community representatives regularly draw upon to support their claims. Currently, many of these documents are drawn from colonial archives on the basis that they reveal the ‘real’ history of the community and relevant ethnic brand and label. However, use of these documents – and perhaps the Panel’s report in the future – is complex and contested. This is reflected in the fact that people use the same colonial documents to support opposing arguments with Sections of the 1932–1934 Carter Land Commission held up, for example, as evidence that the correct name is Sengwer in one interview and that it is Cherangany in the next.

The Panel report will also be available to people from other parts of Kenya and beyond. In this way it is significant that the Sengwer’s request, just as with most requests that the Panel has received since its establishment, was supported by INGOs; organisations such as the Forest Peoples Programme have an interest in the work of the Panel to further its advocacy work vis-à-vis the Bank. For example, by the time the Sengwer and Cherangany requests were made, the Forest Peoples Programme had been involved in a long-standing effort to ensure that periodic revisions of safeguard policies, including OP 4.10, did not dilute Bank policies, but instead led to full implementation in ways that brought clear benefits to local communities particularly through lobbying for free, prior and informed consent.⁹⁴

It is therefore possible that this local politics of naming and archival residue will help shape – although likely in minimal ways – local and international lobbying efforts. The process of documentation and archiving once again revealed to be a moment of commencement rather than closure, as reports are kept for consultation, but in reality are revisited, interpreted and contested, and potentially abused and manipulated.

Notes

1. Parkin, "The Politics of Naming," 61.
2. Peteeet, "Words as Interventions," 153.
3. Schroeder, "Bandits and Blanket Thieves," 67.
4. Ibid.
5. Nash, Lewis, and Green, "Not in Our Front Garden."
6. Bhatia, "Fighting Words," 8.
7. For example, Comaroff and Comaroff, *Ethnicity, Inc.*; Hodgson, *Being Maasai, Becoming Indigenous*; or Lynch, *I Say to You*.
8. WBIP, "Investigation Report," 70.
9. Cf. Ashforth, *Politics of Official Discourse* on commissions of inquiry.
10. Cf. Stoler, "Archives and the Arts of Governance" on commissions of inquiry and archives.
11. Harris, "The Archival Sliver," 135.
12. Kipkorir, *The Marakwet*; Lynch, *I Say to You*.
13. Lynch, "Negotiating Ethnicity."
14. WB, "Request for Inspection," 1–2.
15. WB, "Second Request for Inspection," 1.
16. WBIP, "Second Notice of Registration," 2.
17. Cf. Bayart, "Africa in the World."
18. Harris, "The Archival Sliver," 135.
19. This section draws from Lynch, "Becoming Indigenous"; Lynch, *I Say to You*; Lynch, "Kenya's New Indigenes"; Lynch, "Politics of Ethnicity"; and Lynch, "The Wars".
20. Bates, "Modernization," 154.
21. cf. Anderson, *Imagined Communities*.
22. cf. Thompson, "Eighteenth-Century English Society," 147–9, on English class consciousness.
23. For example, Berman, "Ethnicity"; Ranger, "The Invention of Tradition Revisited".
24. Comaroff and Comaroff, *Ethnicity, Inc.*
25. Dunn, "Sons of the Soil," 121.
26. Leonhardt, "Baka and the Magic".
27. Jackson, "Sons of Which Soil?," 113.
28. Lynch, "The War".
29. Balaton-Chrimes, *Ethnicity*.
30. Ibid.; Lochery, "Rendering Difference Visible"; McCann, "Ties that Bind"; and Fox, "Race", respectively.
31. Balaton-Chrimes, *Ethnicity*.
32. Barume, "The Concept of Being Indigenous," 1.
33. Hodgson, "Precarious Alliances," 1086.
34. Kymlicka, "The Internationalization of Minority Rights," 13.
35. ACHPR, *Report of the African Commission's Working Group*, 87.
36. Ibid., 94.
37. Ibid., 100.
38. UN, *Report of the Special Rapporteur*, 6.
39. WB, "OP4.10 – Indigenous Peoples".
40. For example see Balaton-Chrimes, *Ethnicity*; Hodgson, *Being Maasai, Becoming Indigenous*; Igoe, "Becoming Indigenous Peoples"; Lynch, "Kenya's New Indigenes".
41. Igoe, "Becoming Indigenous Peoples". Also see Hodgson, *Being Maasai, Becoming Indigenous*; Lynch, "Kenya's New Indigenes".
42. Berman, "Ethnicity"; Balaton-Chrimes, *Ethnicity*; Lynch, *I Say to You*.
43. Balaton-Chrimes, *Ethnicity*. Emphasis in the original.
44. Ibid.
45. For example, Lynch, "Kenya's New Indigenes".
46. WBIP, "Eligibility Report and Recommendation," 2.
47. Ibid.

48. WBIP, "Investigation Report," v.
49. *Ibid.*, 4.
50. *Ibid.*, 15–16.
51. RoK, *Constitution of Kenya*.
52. Lynch, "Becoming Indigenous".
53. For more details, see Lynch, "Negotiating Ethnicity".
54. WB, "Request for Inspection," 2.
55. WB, "Management Response," ix.
56. WBIP, "Eligibility Report and Recommendation," 16.
57. *Ibid.*, 19.
58. WB, "Second Request for Inspection," 1.
59. WBIP, "Investigation Report," 58.
60. *Ibid.*, 59.
61. WB, "OP 4.10 – Indigenous Peoples".
62. WB, "Management Report and Recommendation".
63. *Ibid.*, 14.
64. WBIP, "Investigation Report," 58.
65. *Ibid.*, 56.
66. Lynch, "Kenya's New Indigenes".
67. <http://www.sengweraid.co.uk/index.htm>.
68. WB, "OP4.10 – Indigenous Peoples".
69. Kymlicka, "The Internationalization of Minority Rights," 16.
70. ACHPR, "Case 276/2003," 1.
71. Little has changed since progress was outlined in Lynch, "Becoming Indigenous".
72. Bayart, "Africa in the World".
73. Cf. Hodgson, *Being Maasai, Becoming Indigenous*.
74. WB, "Request for Inspection," 3.
75. WBIP, "Investigation Report," 14.
76. RoK, *Constitution*, Article 44 (1).
77. *Ibid.*, Article 260.
78. In the 2013 elections, the Senator elected for Elgeyo-Marakwet County self-identified as Sengwer. However, to maintain a broad base of support among Kalenjin he is often regarded as divorced from Sengwer community members at the local level.
79. RoK, *Constitution*, Article 197 (1a).
80. WBIP, "Investigation Report," 14.
81. Balaton-Chrimes, *Ethnicity*.
82. Cf. *Ibid.*
83. WB, "Second Request for Inspection," 1.
84. WBIP, "Investigation Report," 15.
85. *Ibid.*, 15.
86. *Ibid.*, 14.
87. WB, "Management Report and Recommendation," x.
88. Hearn, "The 'NGO-isation' of Kenyan Society".
89. Lynch, "Kenya's New Indigenes", 152.
90. Lynch, "Negotiating Ethnicity".
91. Lynch, "Becoming Indigenous".
92. Hodgson, *Being Maasai, Becoming Indigenous*.
93. Harris, "The Archive," 162.
94. For example, <http://www.forestpeoples.org/topics/safeguard-accountability-issues/news/2013/04/forwards-or-backwards-world-bank-s-safeguard-0>.

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