

REPUBLIC OF KENYA



**MINISTRY OF PUBLIC SERVICE, YOUTH
AND GENDER AFFAIRS**

**KENYA YOUTH EMPLOYMENT AND
OPPORTUNITIES PROJECT**

**VULNERABLE AND MARGINALIZED GROUPS
FRAMEWORK**

FEBRUARY 2016¹

¹The present version of the document (dated February 2016) includes minor adjustments to implementation arrangements based on discussions held following the disclosure forum

ABBREVIATIONS AND ACRONYMS

CoK	Constitution of Kenya
CPS	Country Partnership Strategy
CSO	Civil Society Organizations
ESIA	Environmental and Social Impact Assessment
FPIC	Free, Prior and Informed Consultation
GOK	Government of Kenya
GRM	Grievance Redress Mechanism
ICT	Information and Communication Technologies
IDA	International Development Association
KEPSA	Kenya Private Sector Alliance
Ksh	Kenyan Shilling
M&E	Monitoring and Evaluation
MLSSS	Ministry of Labour, Social Security and Services
MSEA	Micro and Small Enterprises Authority NGO
NGO	Non-Governmental Organization
NITA	National Industrial Training Authority
OP	Operational Policy
BP	Bank Policy
PAD	Project Appraisal Document
PAP	Project Affected Persons
PCU	Project Coordination Unit
PDO	Project Development Objective PSC
PSC	Project Steering Committee
PRA	Participatory Rural Appraisal

RRA	Rapid Rural Appraisal
UN	United Nations
UNDRP	Declaration on the Rights of Indigenous Peoples
US\$	United States Dollars
VMG	Vulnerable and Marginalized Groups
VMGF	Vulnerable and Marginalized Groups Framework
VMGP	Vulnerable and Marginalized Groups Plan
WB	World Bank

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EXECUTIVE SUMMARY

Introduction

This Vulnerable and Marginalized Groups Framework (VMGF) has been prepared by the Government of Kenya (GOK), Ministry of Public Service Gender and Youth Affairs (MPGY) under the proposed **Kenya Youth Employment and Opportunities Project (KYEOP)** because the project triggered World Bank Operational Policy (OP) 4.10 on indigenous people which stipulate that, in the event, that indigenous people are likely to be affected by a Bank supported project, then Indigenous People Planning Framework (IPPF) is prepared to ensure that development process fully respects the dignity, human rights, economies and cultures of indigenous people. Since the Kenyan constitution (2010) does not use the term “indigenous” but “vulnerable communities or groups”, the framework adopts the name “Vulnerable and Marginalized Groups Framework” which shall focus on both Bank defined indigenous people and Government of Kenya defined vulnerable and marginalized groups that are likely to be affected by a Bank supported project.

This VMGF for the KYEOP has been prepared in accordance with the OP4.10 of the World Bank (“Bank”) and the applicable laws and regulations of the Government of Kenya. It is to guide the preparation of KYEOP sub projects’ investments that may affect Indigenous/ Vulnerable and Marginalized Groups (VMGs) in the different areas in the country. OP 4.10 contributes to the Bank's mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples. For all projects that are proposed for Bank financing and affect Vulnerable and Marginalized Groups (VMGs), the Bank requires the borrower to engage in a process of free, prior and informed consultation. The Bank provides project financing only where free, prior and informed consultation results in broad community support to the project by the affected vulnerable and marginalized groups. Such Bank-financed projects include measures to:

- a) Avoid potentially adverse effects on the Indigenous Peoples’ communities; or
- b) When avoidance is not feasible, minimize, mitigate or compensate for such effects; and
- c) Ensure that the vulnerable and marginalized people receive social and economic benefits that are culturally appropriate and gender as well as inter-generationally inclusive.

The VMGF recognizes the distinct circumstances that expose VMGs to different types of risks and impacts from development projects. The VMGF also recognizes the VMGs as social groups with identities that are often distinct from dominant groups in their national societies. Besides, they have collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories. They also have customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and an indigenous language, often different from the official language of the country or region. VMGs are frequently among the most marginalized and

vulnerable segments of the population. As a result, their economic, social, and legal status often limit their capacity to defend their rights to lands, territories, and other productive resources, and restricts their ability to participate in and benefit from development. At the same time, the policy recognizes that VMGs play a vital role in sustainable development and emphasizes the need for them to participate and benefit from development projects.

This VMGF describes the policy requirements and planning procedures that KYEOP will follow during the preparation and implementation of sub projects' investments especially those identified as occurring in areas where VMGs are present. It outlines the processes and principles of screening to determine if a proposed investment impacts adversely on vulnerable communities, the process of social assessment consultations and stakeholder engagement, disclosure procedures, communication and grievances redress mechanism. The purpose of this VMGF is to ensure that management of issues related to vulnerable and Marginalized Groups are integrated into the development and operation of proposed investments to be financed under the KYEOP to ensure effective mitigation of potentially adverse impacts while enhancing accruing benefits.

To ensure compliance to this Bank policy, a VMGF must be prepared in order to comply with this policy that stipulates that in the event that vulnerable and marginalized groups are likely to be affected by a Bank-supported project then a framework must be prepared.

Project Background

The KYEOP consists of four components, including:

Component 1: Improving youth employability. This component responds to Kenyan employers who assert that youth who come out of schools and training centres frequently lack the relevant work experience and competencies, including behavioral skills, needed for employment. The component will scale up the pilot Kenya Youth Empowerment Project providing targeted youth with training and work experience in the private sector with the goal of improving youth employment outcomes. This component will be jointly implemented by the MPYG and NITA. The MPYG will be responsible for the initial life skills and core business skills training while NITA will assume responsibility for technical training and internships that follow. An Advisory Committee will be formed to provide advice to NITA with representatives of youth, employers, master craftsmen, and public and private training providers as members. An output-based financing formula will be used by NITA for disbursements for technical training with possible outputs focused on internship completion and certification rates. Implementation will subsequently extend to all 47 counties, but during the first year, the program will be phased in to allow time for testing a decentralized management structure and building of the capacity needed for scaling up the program nationally. The initial subset of selected counties will be balanced across the country geographically. The delivery of the life skills and core business skills training will require further planning by the MPYG which will assume responsibility for this training. In the absence of larger organizations with adequate capacity for national coverage, multiple providers will likely be required for delivery of life skills and core business training. The direct and indirect cost of residential

training will have to be weighed against the challenge of delivery to a large number of settings accessible to beneficiaries. Ensuring quality and uniformity in delivery in a decentralized framework will also require attention.

Component 2: Support for Job Creation. This component will address key constraints and market failures that limit the demand for youth employment and their productivity once in employment. This component will support employment and earnings generation among urban and rural youth by financing business start-up grants and relevant business development services, and will be implemented jointly by the Micro and Small Enterprise Authority (MSEA) and the MPYG. This component will be jointly implemented by the MPYG and MSEA. The BDS component will be implemented by MSEA, with the MPYG taking the lead role in outreach and intake at the local level (as part of component 4) as well as in the follow-up of beneficiaries also at the local level. This activity will be implemented at the county level. For the business plan competition, MSEA will be in charge of contracting competitively the independent firm who will manage the business competition, managing this contract, and coordinating the associated BDS on accessing government procurement opportunities. The independent firm managing the business competition will be selected in transparent and competitive manner, and this firm will in charge of marketing and outreach, the application process, screening, training, and evaluation, and identification of high potential proposals to be awarded. The responsibility to disburse the awards and hold award ceremonies rests with the MPYG.

The innovation challenge for the hard-to-serve youth will be implemented by the MPYG. The MPYG will contract an expert consultant to provide support in the design of the innovation challenge. As with the business plan competition, the management of the challenge and the selection of awardees will be in the hands of an independent firm or NGO with a relevant track record. This firm or NGO will be selected competitively through a process managed by the MPYG

Component 3: Labour Market Information System. This component responds to the problem of obtaining timely information about labour demand and supply, as well as career prospects in Kenya. Labour market information (LMI) helps stakeholders/actors in the labour market make decisions and formulate policies. This component will provide support to strengthen Kenya's Labour Market Information System (LMIS) in the form of providing a one-stop shop for access to information through the following: (i) Identification of LMIS users and information needs; (ii) Production of LMIS Content; and, (iii) Dissemination of LMI Content and Creation of Awareness.

Component 4: Strengthening Youth Policy Development and Project Management. The Component will support capacity building for the Ministry of Youth, Gender and Public Service in management and overall coordination of the project. It includes three sub-components: (i) building youth employment policy development capabilities; (ii) evaluation of youth employment policies; and (iii) strengthening project management and coordination. The overall implementation, coordination and

progress reporting of the activities under this component will be assigned to a Project Coordination Unit (PCU).

World Bank's Operational and Procedural Policies, specifically OP 4.10 requires the Government of Kenya to prepare a VMGF which establishes a mechanism to determine and assess future potential social impacts of Ministry of Youth, Gender and Public Service planned sub projects under the proposed KYEOP on vulnerable and marginalized groups.

Free and Prior Informed Consultation

Projects affecting the vulnerable and marginalized, whether adversely or positively, therefore, need to be prepared with care and with the participation of affected communities. The requirements include social analysis to improve the understanding of the local context and affected communities; a process of free, prior, and informed consultation with the affected vulnerable and marginalized communities in order to fully identify their views and to obtain their broad community support to the project; and development of project-specific measures to avoid adverse impacts and enhance culturally appropriate benefits.

This VMGF sets out:

- *The types of investments likely to be proposed for financing under the project.*
- *The potential positive and adverse effects of such investments on VMGs.*
- *A plan for carrying out the social assessment for such investments.*
- *A framework for ensuring free, prior, and informed consultation with the affected VMGs at each stage of project preparation and implementation.*
- *Institutional arrangements (including capacity building where necessary) for screening project-supported investments, evaluating their effects on VMGs, preparing VMGFs, and addressing any grievances.*
- *Monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the project.*
- *Disclosure arrangements for VMGs to be prepared under the VMGF.*

OP 4.10 requires that a process of free, prior, and informed consultation, with the affected vulnerable and marginalized communities, of the potential adverse and positive effects of the project be designed and used. It is unlikely that the proposed investments will result in any adverse impacts for vulnerable and marginalized communities, but the VMGs should be informed of project impacts, positive and negative and consulted with prior to project implementation.

Free, prior and informed consultation (FPIC), in relation to activities taking place on indigenous lands, refers to a process whereby affected vulnerable and marginalized communities, freely have the choice, based on sufficient information concerning the benefits and disadvantages of the

project, of whether and how these activities occur, according to their systems of customary decision making.

This VMGF establishes an appropriate gender and inter-generationally inclusive framework that provides opportunities for consultation at each stage of project preparation and implementation among KYEOP, and other local civil society organizations (CSOs) identified by the affected VMGs.

Free, prior and informed consultation of the vulnerable and marginalized communities will be conducted at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project.

Screening, Preparation and Implementation of VMGFs

The steps to be undertaken in the implementation of VMGF for each sub-project investment will include a screening process, to determine whether VMGs are present in, or have collective attachment to, the project area. This screening will be conducted by social specialists within KYEOP/Project Coordination Units (PCU) in collaboration with the agencies executing the specific sub project investment under the KYEOP and using consultants with expertise on the social and cultural groups in the project area. Ideally the screening should consider the GOK's framework for identification of VMGs according to the New Constitution of Kenya (CoK). However, the Bank criteria for identification of VMGs as per OP. 4.10 will be used to make a final determination.

If, based on the screening, it is concluded that VMGs are present in, or have collective attachment to, the project area, a social assessment/analysis will be undertaken by executing partner agencies of KYEOP, with direct support of the environmental and social specialists in the PCU to explore best ways to reach out to the targeted youth in a culturally acceptable manner. The project executing agencies will evaluate the projects' potential positive and adverse effects on the VMGs, and examine project alternatives where adverse effects may be significant. The breadth, depth and type of analysis in the social assessment will be proportional to the nature and scale of the proposed project's potential effects on the VMGs. Whether such effects are positive or adverse, consultation and participation of VMGs is required in the spirit of free, prior, and informed consultations.

The need for VMGFs will depend on (a) the presence of VMGs and (b) the nature and scale of the subproject impact groups that meet the OP 4.10 criteria. The VMGFs will capture the nature and scale of the subproject impact and vulnerability of VMGs, including (i) adverse impacts on customary rights of use and access to land and natural resources; (ii) negative effects on the socioeconomic and cultural integrity; (iii) effects on health, education, livelihood, access to the project benefits, and social security status; and (iv) other impacts that may alter or undermine indigenous knowledge and customary institutions. It will also identify ways in which to bring benefits of the project to VMG communities if technically feasible. The social assessment will identify

requirements for preparing a VMGF and/or incorporation of VMGF elements in other project design documents.

The VMGFs will set out the measures whereby the executing agency will consult with VMGs and ensure that (i) affected VMGs receives culturally appropriate social and economic benefits; and (ii) when potential adverse impacts on VMGs are identified, these will be avoided to the maximum extent possible. Where this avoidance is proven to be impossible, VMGF will outline measures to minimize, mitigate, and compensate for the adverse impacts.

Consultation and Stakeholder Engagement

The framework seeks to ensure that VMGs are informed, consulted, and mobilized to participate in the relevant subprojects. The KYEOP-PCU to be established by the MPYGs will undertake consultation from the very beginning and will continue till end of the project. The implementing agencies will undertake prior consultations with any likely impacted VMGs and those who work with and/or are knowledgeable of VMGs development issues and concerns. To facilitate effective participation, the VMGF will follow a timetable to consult VMGs at different stages of the project cycle, especially during project preparation. Also, the PCU will undertake a social Assessment (SA) to gather relevant information on demographic data; (i) social, cultural and economic situation; and (ii) social, cultural and economic impacts - positive and negative - on the indigenous communities.

Grievance Redress Mechanisms

A redress mechanism will be developed for addressing the grievances from the affected VMGs related to subproject implementation. The procedure of grievance redress will be incorporated in the project information pamphlet to be distributed during admission process. Participatory consultation with the targeted VMG youth will be undertaken during project planning and implementation stages.

The assessment will establish a mechanism to receive and facilitate resolution of affected VMGs concerns, complaints, and grievances about the project's safeguards performance at each subproject having VMGs impacts, with assistance from Non-Governmental Organisations (NGO), community based organizations, chiefs, village elders and religious leaders. Under the Grievance Redress Mechanism (GRM), a Grievance Redress Committee (GRC) will be formed for the project with involvement of VMGs representative & local stakeholders. The GRCs are to be formed and activated during the VMGFs implementation process. The grievance redress mechanisms is designed with the objective of solving disputes at the earliest possible time and at the lowest levels where the PAPs reside for quick resolution.

The traditional dispute resolution structures existing for each of the VMGs will be used as the first step in resolving grievances. The GRM may draw on and be part of that proposed in the Resolution Policy Framework for the KYEOP project. The grievance mechanisms will include representatives from the youth office, NGOs, community based organizations, chiefs, village elders and religious leaders.

Marginalized and vulnerable communities will be provided with a variety of options for communicating issues and concerns, including in writing, orally, by telephone, over the internet or through more informal methods as part of the grievance redress mechanism. In the case of marginalized young people a more proactive approach may be needed to ensure that their concerns have been identified and articulated. Prior to the approval of VMGF, the affected VMGs will have been informed of the process for expressing dissatisfaction and seeking redress. The grievance procedure will be simple and administered as far as possible at the local levels to facilitate access, flexibility and ensure transparency.

Disclosure

This VMGF was disclosed through national level forum with representatives from VMGs (youth and local leaders) and other stakeholders. It was presented by staff from the Directorate of Youth Affairs who had prepared the VMGF. The document was presented in a culturally appropriate form, manner, and language on 8th February 2016 at Youth Empowerment Centre, in Embakasi, Nairobi. The document was presented in both Kiswahili and English and small group discussions were used to help participants provide feedback at group and plenary levels. A total of 73 participants drawn from Youth and elders from VMG communities (42 participants) and other stakeholders (31) including Youth officers working in VMG areas, representatives from implementing agencies and county government officers attended.

Participants felt the following issues needed modifications;

- The project should provide Loans to be accessed by both individual youth and youth groups
- The project should provide Loan top up facilitates in case of genuine failure of business in situations beyond human control or in cases of those doing very well to act as role models
- The project should ensure that business initiatives financed through the project were ensured
- Project should provide grant awards to best performing individuals/groups
- Consider to penalize those who deviate from pursuit of the project's objectives as the plan presented by individuals
- Individuals not affiliated to a group be not eligible to a grant in order to ensure a mechanism for follow up
- Integrate peace building activities (e.g. youth sports) in areas with conflicts to promote unity and cohesion among communities
- Pastoralists and governments to provide land for business centres such as markets and workshops since rents in some towns like Isiolo were prohibitive for small businesses
- Incorporate mobile money services and banking since some places have no banking services
- The framework is in line with the constitution on public participation

Questions	Responses government team and other stakeholder
<ul style="list-style-type: none"> • Why could the loans not be high like from ksh100, 000 to 300,000? • Why was the project not considering youth beyond 30 years? • How do the youth below 18 years and without a national identity card access the benefits? • What will be the minimum period required for a group to qualify for a loan/grant? 	<ul style="list-style-type: none"> • The project targets poor vulnerable youth, who only need small grants to initiate a business. Youth at this level have limited capacity to manage huge amounts. • showed that youth between-16-29 were most vulnerable of all youth, hence the priority for this project • The project will use trusted guardian as provided by youth in case of mobile phones. One of the chiefs suggested that youth without IDs could use birth certificates but after a long discussion participants felt that most VMGs youth did not even have the birth certificates • The project grants were to individuals and not groups. However, most participants felt that youth groups should be used to vet the eligible beneficiaries since some were known jokers

Following the disclosure workshop, the Ministry will make the framework available to the public by posting it in the ministry website. The VMGF will also be made available to the public in soft and hard copies in; (i) County youth offices; (ii) civil society organizations working with VMGs in the respective counties thereafter, (iii) the Bank will disclose the same in the bank info shop.

Capacity Building and Training

Effective implementation of the Vulnerable and Marginalized Framework may require that adequate capacity enhancement within the implementing agencies is undertaken, especially in regard to monitoring and evaluation of the VMGF. There is need for capacity building through training to be conducted by the MPYG in collaboration with the Bank.

Monitoring and Evaluation

The implementation of VMGF will be monitored. KYEOP/PCU and the executing agency implementing specific sub components will establish a monitoring system involving KYEOP/PCU staff, partner implementing agencies, county governments and VMGs to ensure effective implementation of VMGF. A set of monitoring indicators will be determined during VMGF implementation and will be guided by the indicators contained in the project document. KYEOP/PCU will carry out monitoring. Appropriate monitoring formats will be prepared for monitoring and reporting requirements.

Annual Reporting and Performance Review Requirements

Annual progress reports will be prepared by the PCU and the preparation of the progress reports will be supported by the environmental and social safeguards specialists in the PCU. These reports will be submitted to the Bank.

Budget

All costs for implementation of VMGF will be financed by KYEOP. The costs will be estimated during feasibility based on interviews with community members and relevant government officials. This will be updated after the detailed consultations with VMGs.

The budget for the implementation of the VMGF will mainly include costs for capacity building for PCU and relevant staff to screen for VMGs and prepare VMGFs; consultation/meetings, information dissemination, KYEOP hiring for VMGF implementation & monitoring, GRM etc. The budget will also include travel costs of the relevant PCU staff. Once the Components have been appraised and finalized in the context of the VMGF, the required budget is to be allocated by the implementing agencies. In summary there should be adequate budgetary provisions to implement any VMGF where necessary for the subproject development.

1. INTRODUCTION

1.1. PROJECT DESCRIPTION

The Kenya Youth Employment Opportunities Project (KYEOP) Development Objective is to increase employment and earnings opportunities for targeted youths. The main beneficiaries of the proposed project will be youth between 16-29 years of age who are jobless and have experienced extended spells of unemployment or who are currently working in vulnerable jobs¹. The level of education of targeted beneficiaries will be up to Form 4. The Project aims to reach targeted youth in Kenya's 47 counties in urban and rural areas.

The project consists of four components. Component 1 addresses the skills mismatch of youth by engaging training providers and private sector employers in offering training and work experience to targeted youth. Component 2 responds to the need for job creation with initiatives to help launch new businesses, improve the productivity and job creation potential of existing micro-enterprises and among youth self-employed, and support innovative approaches to improving job and earning opportunities among the hard-to-reach youth. Component 3 plans to improve access to and the quality of labour market information for skills matching. Component 4 provides support for strengthening youth policy development, monitoring and evaluation and management of the Project.

Component 1: Improving Youth Employability

This component responds to Kenyan employers who assert that youth who come out of schools and training centres frequently lack the relevant work experience and competencies needed for employment. The component will scale up the pilot Kenya Youth Empowerment Project providing targeted youth with training and work experience in the private sector. The component will be jointly implemented by the National Industrial Training Authority (NITA) and the MPYG. The component will include two sub-components:

1. This component will contain two subcomponents:
 - (a) *Subcomponent 1.1: Provision of training and work experience in the formal sector.* This subcomponent will provide targeted beneficiaries with three months of training and three months of internship experience with a formal sector employer. The training will cover life skills, core business skills, and technical skills. The MPYGA will enter into a national contract with a number of providers for delivery of life skills and core business skills using a standard curriculum. Following completion of the life skills and core business skills training, NITA will organize further technical training that will include an internship. The technical training will be offered by public and private formal training institutions accredited by NITA, the Technical Vocational Training Authority, or other recognized accreditation agencies under a results-based contract². These training providers will partner with employers and provide skills training demanded by

² The Technical Vocational Training Authority and NITA have accredited about 1500 public and private training institutions (Technical Training Institutes, Institutes of Technology, National Polytechnics and Technical Universities, Youth Polytechnics)

the employer. This and the following subcomponent will include support for NITA capacity building and program management by a Project Implementation Unit (PIU).

- (b) *Subcomponent 1.2: Provision of training and work experience in the informal sector.* This subcomponent will be especially suitable to vulnerable youth with limited education and youth in rural areas. Its duration and training approach will be the same as that in the formal sector with targeted youth receiving the same life and core business skills training organized by the MPSYGA. Technical training, however, will be offered on the job by a master craftsman in a traditional apprenticeship. NITA will contract with master craftsmen to deliver this training and an internship. Master craftsmen will be certified by NITA. To improve the quality of the training offered by master craftsmen and the recognition of this training in the marketplace, the subcomponent will support the (i) upgrading of master craftsmen skills and (ii) development and updating of NITA certification standards for traditional apprenticeship trades. NITA will implement this activity.
- (i) **Improving the quality of training offered by master craftsmen.** This subcomponent will support the training and upskilling of up to 1,000 master craftsmen and their certification to expand the training and employment capacity for youths. On completion of their upgrading, master craftsmen will be eligible to obtain access to Component 2 services which provide access to financing sources and support for BDS that will enhance their employment creation potential.
- (ii) **Promote greater efficiency in the training market for traditional apprenticeships.** This subcomponent will expand the number of traditional apprenticeship trades for which standards and testing and certification instruments have been developed. Up to 20 additional apprenticeship standards and testing instruments will be developed and up to 35 existing apprenticeship standards and their testing instruments will be reviewed and updated as needed

Component 2: Support for Job Creation

This component will address key constraints and market failures that limit the demand for youth employment and their productivity once in employment. This component will be implemented by the Micro and Small Enterprise Authority (MSEA) and MPYG, as described below

2. *Subcomponent 2.1: Support for the self-employed.* This subcomponent supports employment and earnings generation among urban and rural youth by financing (i) business start-up grants and (ii) relevant BDS. The financed activities will target youths who express interest in self-employment and either complete on-the-job training under Component 1 (traditional apprenticeships or internships) or are in the general pool of applicants for the overall project but have not participated in Component 1.

- (i) **Business start-up grants.** This grant will provide up to US\$400 in seed funding for youth-led start-ups to invest in tools and inputs.³ This activity aims to support a total of at least

³ This cap amount was decided upon based on the experience with similar programs in the region, as well as consultations with local academics and Jua Kali associations,

30,000 beneficiaries over the project duration. The operations manual will clarify upfront the selection criteria (including those related to an entrepreneurship aptitude test), and information on selected candidates will be widely disclosed to minimize abuse. Start-up grants will be disbursed in two tranches. MSEA will hold one-day orientation sessions with grantees before it makes disbursements of each tranche. These sessions will be used to develop simple entrepreneurship plans outlining the investments and expenditures to be financed by the grant. Given the spread of mobile money in Kenya, especially among youth, MSEA will use existing mobile payment services for the disbursements of the start-up grants and will cover the corresponding fees. MSEA will monitor and evaluate, through an MIS and beneficiary assessments, progress under this activity and the satisfaction of beneficiaries. The MPYG will follow-up on beneficiaries as well through visits and focus group discussions at the local level. Under Component 4, the MPYG will also manage the rigorous impact evaluation of both grants and BDS.

(ii) **BDS.** This activity will support access to up to US\$400 worth of BDS for the young self-employed and entrepreneurs. MSEA will work with entrepreneurs and service providers in determining services needed, and will write and manage performance-based training contracts with specific providers. These services, which will be designed by a specialized consultant under the supervision of MSEA, will encompass a basic package of business and entrepreneurship training (e.g. Start and Improve Your Business (SIYB) program from the International Labour Organization [ILO] or Business Edge from the International Finance Corporation [IFC]) as well as mentoring, specific consulting, and advisory services for marketing or technical issues. Direct beneficiaries will be at least 8,000 entrepreneurs/self-employed. MSEA will monitor through an MIS, beneficiary assessments and visits to providers, the performance of service providers, progress under this activity and the satisfaction of beneficiaries. The MPYG will follow-up on beneficiaries as well through visits and focus group discussions at the local level.

3. **Intake of youth for subcomponent 2.1.** The MPYG will organize the intake of youth for this component (as part of Component 4). For youth interested in participating in subcomponent 2.1 after completing activities under Component 1, the MPYG—in coordination with NITA— will refer them to MSEA. For youth that are eligible to participate directly in subcomponent 2.1, without having completed activities in Component 1, MPYG will directly refer them to MSEA after the general intake process is completed and overall eligibility is determined. In both cases, after the eligibility of interested youth is determined, and youth are referred to MSEA, MSEA will apply an entrepreneurship aptitude test to identify entrepreneurs with most potential.

4. *Subcomponent 2.2: Catalytic interventions for job creation.* This subcomponent supports innovative interventions to create jobs for targeted youths by financing (i) a business plan competition for high-potential job creators and (ii) an innovation challenge to identify high-impact interventions for creating economic opportunities for the hard-to-serve and fund them to scale.

(i) **Business plan competition.** The business plan competition will elicit business ideas from high-potential young entrepreneurs interested in expanding their companies or starting up new

ventures with the potential to create jobs for the targeted youth. It is important to note that entrepreneurs benefitting from awards under this activity can be aged up to 35 years (compared to the age limit of 29 for the overall project). This is in response to the evidence from Kenya and elsewhere that suggests that having the experience, capital, and the social and professional networks that come with age is very important for the success of entrepreneurs. While the grants could be received by older youths, however, the objective of this activity remains to create jobs and increase earnings among the main beneficiaries (those aged 16-29 years old). MSEA will competitively select and manage the contract for an independent management firm of international reputation to manage the business plan competition, including the selection of awardees. Support for business plan development and AGPO will also be provided during the business competition. Through three competitive rounds of selection by independent expert judges, up to 500 business plans will be selected on the basis of their economic viability and the potential to create jobs for vulnerable youth. Among winners, half will be randomly selected to receive an award of US\$18,000 and the other half, US\$36,000. Prizes will be disbursed in three tranches by the MPYG, after referral from the independent management firm. Before receiving the first award, the managing firm will be responsible of verifying the legal status of the firm to be awarded, its overall financial situation and that it follows appropriate financial processes. The following two tranches will be conditional on appropriate verification by the managing firm that the firm remains in operation, and is advancing in its business plan. This business plan competition will be rigorously evaluated under Component 4.

- (ii) **Innovation challenge for the hard-to-serve.** This activity, to be fully implemented by the MPYG, is exploratory in nature and aims to catalyze interventions to expand economic opportunities to youth between the ages of 16 to 29 years who are hard-to-serve.⁴ This will be done through an innovation challenge open to NGOs, the private sector, community-based organizations, and so on, that serve the targeted youth.⁵ The challenge will be managed by an independent firm that will call for proposals on ideas to create opportunities for the targeted youth, and select the winners based on their track record, and the economic viability, merit, sustainability and potential to improve earnings and employability of targeted youth. Prizes will be disbursed in three tranches, to be further defined during the design of the challenge. Before receiving the first award, the managing firm will be responsible of verifying the legal status of the organization to be awarded, its overall financial situation and that it follows appropriate financial processes. The following two tranches will be conditional on appropriate verification by the managing firm that the organization remains in operation, and is advancing in the implementation of its proposal. The firm will verify, before the first award, the legal status of the firm to be awarded, its overall financial situation and that it follows appropriate financial processes.

⁴ The MPSYGA will define the hard-to-serve groups to focus on as part of the definition of the challenge.

⁵ In the operations manual, the MPSYGA will further specify the eligibility criteria for organizations eligible to submit ideas for the Innovation Challenge.

Component 3: Improving labour market information

The component responds to the problem of obtaining timely information about labour demand and supply, as well as career prospects in Kenya. Labour market information (LMI) helps stakeholders / actors in the labour market make decisions and formulate policies. This component will provide support to strengthen Kenya's Labour Market Information System (LMIS) in the form of providing a one-stop-shop for access to information through the following: (i) Identification of LMIS users and information needs; (ii) Production of LMIS Content; and, (iii) Dissemination of LMI Content and Creation of Awareness

Component 4: Strengthening Youth Policy Development and Project Management

5. Component 4 will support capacity building for the DoYA of MPYG and the management and coordination of the overall project. It includes three subcomponents: (a) building youth employment policy development and coordination capabilities; (b) M&E of youth employment policies and funds; and (c) project management and coordination. The overall implementation, coordination, and progress reporting of the activities under this component will be assigned to a Project Coordination Unit (PCU) to be established within the Directorate of Youth Affairs

(a) *Subcomponent 4.1: Building youth employment policy development capabilities.* Component 4.1 will finance activities aimed at building the Directorate of Youth Affairs' capacity to better review current policies and conceptualize, develop, and coordinate new policies and strategies, including the proposed NYES⁶ and the National Youth Internship Policy. The GoK's efforts to implement youth employment and empowerment strategies can be revealed through the National Youth Policy (2007), the National Youth Council Act (2009), the Sector Plan for Labor, Youth, and Human Resources Development (2008–2012), and the National Action Plan for Youth Employment (2007–2012). Under this component, the project will finance, among others: (i) training for staff and consultants to support the review and development of policies; (ii) legal support for revision and formulation of existing and new policies; (iii) technical assistance to carry out an organizational and functional review of various ministry agencies involved in the youth employment dialogue and to develop a strategy and action plan for improved internal coordination; and (iv) forums and workshops to support validation and consultation activities. Considering the myriad of institutions, agencies, and ministries involved in the youth employment dialogue, there will be a need to train key officers in communications, advocacy, and lobbying, equipping them to manage the consultations and validation processes that are key to building policy ownership.

(b) *Subcomponent 4.2: Building capacity for monitoring and evaluation of youth employment policies and programs.* The continuous M&E of the implementation of policies and key

⁶ The NYES (2013–2017) aims to guide the implementation of youth empowerment activities by building a framework for development and empowerment of the youth at national and devolved levels. The NYES is one of the flag-ship projects for MTP II.

programs will be a critical role of the Directorate of Youth Affairs and therefore there will be a need for strong M&E skills. This subcomponent will finance capacity-building activities for program evaluation in the Directorate of Youth Affairs to improve its ability to plan for, evaluate, and disseminate the impacts and cost-effectiveness of youth employment policies and programs and generate a more solid evidence base for decision making. The planned activities aim to address the current lack of skills and resources necessary to effectively monitor and evaluate youth employment policies and programs, determine what is working and not working, and scale up or revise their design or implementation accordingly. This subcomponent will finance the following:

- (i) **Capacity building for monitoring and evaluation.** For this, youth officers will receive training in M&E and in contract management.
- (ii) **Evaluation of selected youth employment programs,** including programs and activities to be financed under this project. Independent consultancies will be procured to undertake impact evaluations of BDS and the business plan competition activities under Component 2.

(c) *Subcomponent 4.3: Project management and coordination* MPYG will be responsible for the overall project management of the KYEOP. Given the complexity of the project, with different IAs for each component, there is a need to establish a PCU. The unit will be fully integrated into the Directorate of Youth Affairs with its director serving as the national project coordinator (NPC). Day-to-day management and implementation of each activity will remain with the corresponding IA. The PCU will coordinate the activities of these agencies and take responsibility for (i) project management and (ii) managing the process of intake, awareness-raising on government funds and AGPO, and channelling of eligible project beneficiaries to appropriate services. An important function for the PCU will be to design and implement a complaints and grievance system that will allow potential beneficiaries, the wider public, and other stakeholders to raise grievances related to the intake process or the overall administration of the project. The system will enable the PCU to record and address arising complaints and grievances. The complaints system should be linked to the project MIS to ensure proper recording and tracking of complaints received, referred, and resolved.

1.2. COUNTRY AND SECTOR CONTEXT

Although Kenya's economic growth accelerated in the past decade, the goal of a prosperous society for all Kenyans has yet to be realized. Kenya was classified by the World Bank in 2014 as a lower-middle-income country, but it is still among the poorest 25 percent of countries in the world, with 40 percent of its population having incomes below the poverty line. The 15 to 35 age group is becoming an increasingly large part of the adult population, with its share rising from 62.7 percent in 1979 to 66.6 percent in 2009.³

³The constitution defines "Marginalized community" as a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social economic life of Kenya as a whole, or an indigenous community that has retained and

maintained a traditional lifestyle and livelihood based on hunter or gatherer economy; or pastoral persons and communities whether they are nomadic or a settled community that because of its relative geographic isolation has experienced only marginal participation in the integrated social and economic life of Kenya as a whole. http://www.wipo.int/wipolex/en/text.jsp?file_id=207673#LinkTarget_21360.

This rising number of young people in the working population represents an opportunity for faster economic growth if they can be productively employed. This effect is called a youth dividend, but realizing the dividend depends on whether an economy can create sufficient numbers of jobs to absorb the rising number of new entrants and whether these entrants are adequately prepared and qualified to step into these jobs. The World Bank estimates that Kenya is at the start of its demographic transition,⁴ and thus the government's policies regarding the productive employment of its young people will influence the country's future growth rates.

The high numbers of new entrants to the workforce are presently outpacing the capacity of the economy to absorb them in productive employment. Gross Domestic Product (GDP) growth is largely driven by consumption in Kenya with low rates of domestic investment and net export growth.⁵ Economic growth is volatile and slower than in comparable countries. The economy is failing to create the jobs needed to employ the more than half million youths entering the workforce annually. Between 2009 and 2013, 3 million youths came of working age, but the economy was able to add only 2.6 million jobs.⁶ During that time open unemployment among Kenyan youths exceeded that in the neighboring countries of Uganda and Tanzania and also in Ghana.⁷

While there is insufficient aggregate demand and investment leading to job creation at the moment, youth unemployment is also structural and frictional in nature. A structural mismatch exists when jobs are present but job seekers do not possess the skills required to fill them. Employers complain that young Kenyans do not possess the right technical and behavioral skills required for employment. Education and training institutions do not have the right curricula or instructors to meet this demand.⁸ In turn, the lack of market information about what skills are in demand and where jobs can be found combine to perpetuate these mismatches. Where jobs exist and skilled workers are in fact available for these jobs, the absence of market information leads to frictional delays in matching job seekers with employers.⁹

¹³ The Constitution of Kenya (article 260) defines youths as those between 18 and 34 years of age, while the National Youth Council Act (2009) and the Sector Plan for Labour, Youth, and Human Resources Development (2008-2012) define youths as those aged between 15 and 35 years. The National Youth Policy (2007) and the National Action Plan on Youth Employment (2007-2012) define youths as those aged between 15 and 30 years old. The working policy definition for youth empowerment is 15 to 35 years of age (see the National Youth Empowerment Strategy 2015-2017).

¹⁴ The demographic transition refers to when a country transitions from having high birth and death rates to having low birth and death rates.

¹⁵ World Bank (forthcoming). *Kenya Country Economic Memorandum: Kenya: a Sleeping Lion or Speedy Lioness?*

¹⁶ Cirera, Xavier and Mathilde Perinet (2015). "The Demand for Labour." A background paper prepared for the forthcoming Kenya Country Economic Memorandum.

¹⁷ The World Bank's *World Development Indicators*

Employment problems are more severe for some young people than others. Youth unemployment rates measured by the 2009 Kenya Population and Housing Census were highest for younger members of the youth cohort and those in urban areas. The rate of unemployment in 2009 for all Kenyans between 15 and 64 years of age was 8.6 percent. For those aged 15 to 19, it was 15.8 percent and for those aged 20 to 24, it was 13.1 percent, whereas unemployment rates for those over 25 years of age approached those of the adult population. Unemployment rates for urban youths (15 to 24) were approximately twice as high as those of rural youths of the same age. In rural areas, the main problem is more often under-employment than open unemployment. Youths between the ages of 20 and 24 account for the largest number of the unemployed.

Young women face greater employment challenges than young men. Unemployment rates vary by gender, with young women accounting for a larger share of unemployment than young men. According to the 2014 Kenya Skills towards Employment and Productivity (STEP) Skills Survey, among those with a secondary education or less, young women are more likely to experience long spells of unemployment than young men.¹⁰ The difference diminishes for young women and young men with a tertiary education. Household responsibilities are a factor in young women's activity rates as they are more likely than young men to have such family-related duties.

Job growth in the informal sector, also known as the Jua Kali, has exceeded that in the formal wage sector. Many of the new jobs created in Kenya in recent years are in the informal sector, which consists of the self-employed, unpaid family workers, and those working for wages in small household enterprises. The failure of the formal sector to generate sufficient wage employment to accommodate all new entrants to the labour force has led to many youths starting their own businesses. Those employed in the informal sector tend to be younger than those in the formal sector and to have less education and are estimated to account for two-thirds of non-farm employment. For youths to find a job in the formal wage sector the youth typically needs to have at least a secondary education.¹¹

Since far fewer jobs are created than are needed, many youth are disappointed and frustrated. Some Kenyan youth, particularly in North-Eastern Kenya and the Coast region, have become increasingly vulnerable to radical groups, and their recruitment efforts through false and biased appeals. One major root cause for this is a significant lack of labour market prospects for these young people. For the cohesion of the nation, it is of utmost importance to provide perspectives for employment especially for the young people who might be most vulnerable to criminality and radicalization.

⁸ Situational analysis of the 2015 National Youth Empowerment Strategy, Government of Kenya

⁹ Ministry of Labour, Social Security, and Services (2013). "Sessional Paper No. 4 of 2013: on Employment Policy and Strategy for Kenya."

¹⁰ Sanchez Puerto, Maria Laura and Mathilde Parinet (2015). “Promoting Youth Employment and Development in Kenya.”

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Realizing the Kenya youth dividend will be a twofold challenge, requiring policymakers to give their attention to both demand and supply forces in the labour market. Distinct strategies are needed to address the three dimensions of the youth employment problem - insufficient demand, structural mismatches, and frictional search unemployment - but also to increase the productivity of youths who have found employment, beginning with the large numbers who have started their own businesses or are employed in informal sector enterprises. Thus, policies are needed not only to accelerate new job creation but also to reduce structural and frictional unemployment among youths and increase the productivity of youths who have found employment.

1.3. SECTORAL AND INSTITUTIONAL CONTEXT

The Government of Kenya (GoK) is committed to increasing youth employment as demonstrated by its various policies and strategies. Since 2000, the government has shown that it recognizes the risks that youth unemployment represents for social peace and political stability by formulating policies and plans specifically targeted to young people. The core policy documents are the Kenya National Youth Policy of 2006¹² and the National Action Plan on Youth Employment 2008-2012, which emphasize the need for a coordinated and multi-sectoral approach to addressing the problem of youth unemployment. The post-election crisis of 2008 led the GoK to reinforce its commitment to addressing youth issues, in particular to increasing their economic participation.

In March 2008, the government launched what is commonly referred to as the Marshal Plan for Youth Employment and Development, which focused on the creation of immediate and medium-term youth employment opportunities.¹³ The Kazi Kwa Vijana (KKV) program was the main initiative under this plan, and it aimed to create 500,000 jobs per year for youths in rural and urban areas in labour-intensive public works projects implemented by various ministries. In 2014/2015, the National Youth Service (NYS) became the flagship initiative for youth empowerment, with an emphasis on promoting national service, social transformation, training and enterprise development.¹⁴ Its annual budget has increased tenfold in the financial year 2014/2015 compared to previous years, and the number of beneficiaries has reached 22,000 per year. In addition, affirmative action to enable youth-owned enterprises to bid for government procurement contracts was initiated in 2013 through the Access to Government Procurement Opportunities (AGPO) initiative.¹⁵

¹¹ Adams, Arvil V., Sara Johansson de Silva, and Setareh Razmara (2013). “Skills Development in the Informal Sector: Kenya,” Chapter 6 in Improving Skills Development in the Informal Sector: Strategies for Sub-Saharan Africa. World Bank, Directions in Development.

¹¹² Republic of Kenya (2007). Kenya National Youth Policy, Sessional paper No. 3 (July 2007), Nairobi, Ministry of Youth

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The government has developed a National Youth Empowerment Strategy (2013-2017) to reflect the emphasis put on youth empowerment in its second Medium-term Plan (MTP II 2013-2017).¹⁶ The National Youth Empowerment Strategy (NYES) is a guide to the implementation of youth-targeted empowerment interventions. It provides a unified, coherent, and stable framework for the development and empowerment of the youth at both national and local levels. The NYES seeks to achieve transformative youth empowerment in the following areas: (i) the policy and legal framework; (ii) leadership and participation; (iii) employment and skills development; (iv) the identification and development of innovation, creativity, technology, and talent; (v) agriculture, environmental management, and sustainable development; and (vi) health, crime, and drug and substance abuse.

A myriad of public offices and agencies as well as non-government and private agencies are involved in the area of youth employment, but there is excessive fragmentation and poor coordination of interventions among these implementing agencies. After the government reorganization following the 2013 elections, the Ministry of Youth Affairs and Sports (MoYAS), which previously coordinated youth empowerment initiatives, was dissolved and its responsibilities transferred to the then Ministry of Devolution and Planning and the Ministry of Education, Science, and Technology (MoEST). In 2015, there was further re-organisation of Government where a new Ministry of Public Service, Youth and Gender Affairs (MPYG) was created. The MPYG, through its Directorate of Youth Affairs, is now responsible for integrating youth issues into national planning and development and for implementing programs geared towards empowering youth and providing them with skills and financial resources.

Complementary institutions such as the National Youth Service (NYS), the Youth Enterprise Development Fund (YEDF), the National Youth Council (NYC), and the Kenya Association of Youth Centers have been established as semi-autonomous agencies under the Directorate of Youth Affairs within the MPYG. The MoEST, through its Youth Polytechnics (YPs), is responsible for technical vocational educational training (TVET). The National Industrial Training Authority (NITA), a semi-autonomous agency under the Ministry of Labour, Social Security, and Services (MLSSS), is responsible for apprenticeships and industrial attachments. As well as these public interventions, hundreds of projects and initiatives related to youth employment are being offered by Non-Governmental Organizations (NGOs), faith-based organizations, companies, and community organizations, either initiated by development partners or funded by foreign organizations and firms.

The government is implementing a variety of different youth employment programs, but knowledge about their impact is sketchy and largely anecdotal. A recent review of youth employment initiatives has identified critical knowledge gaps, particularly regarding the effectiveness and impact of the various initiatives.¹⁷ The lack of impact assessments of largescale government-run programs like TVET, the National Youth Service (NYS), the Youth Enterprise Development Fund (YEDF), and the Youth Empowerment Centers is a particular

problem because substantial public funding has been allocated to these programs with no rigorous assessment of whether these programs are actually achieving their objectives.

Some progress has been made in improving the knowledge base, particularly related to training and internship programs and entrepreneurship education and training provided through donor funded programs. The World Bank has been instrumental in adding to the evidence base about what works in youth employment promotion through the Busia Vocational Training Voucher Program¹⁸ and the training and private internship pilot under the Kenya Youth Empowerment Project (KYEOP).¹⁹ These programs have been evaluated using random experimental methods and their interventions are shown to have a net positive impact on youth employment and earnings. A recent World Bank study of entrepreneurship education and training programs revealed an abundance of information about their impact, results, and good practices and found that program managers were prepared and willing to modify program designs in accordance with the evaluation's findings.²⁰

The World Bank has added to this knowledge base with its recent study of the Kenya labour market focusing on the key growth sectors of manufacturing and services.²¹ Its analysis using the 2010 Kenya Census of Industrial Production and the 2011 Integrated Survey of Services has identified barriers to entry from the informal sector to the formal sector that constrain employment generation. The analysis has highlighted the importance of service sector employment for women and the added value to employment generation of promoting resource mobility and the movement of labour and capital to more productive uses. On the supply side of the labour market, its analysis of the 2014 STEP skills survey focused on urban youths aged 15 to 24 years and identifies the employment challenges they face as outlined above.

The government has demonstrated its commitment to increasing the coverage and budget allocations for key initiatives and interventions that specifically affect youth employment. However, more effort is needed to improve the implementation of youth employment initiatives and to increase them to a scale sufficient to address the full extent of the need. The initiatives taken thus far fall into three groups: (i) those that affect labour demand; (ii) those that affect labour supply; and (iii) those that aim to improve the match between supply and demand.

¹³ World Bank (2008). Kenya Poverty and Inequality Assessment, p. 147 and UNICEF (no year). Youth: Situation Review and Investment in Kenya.

¹⁴ Through the National Youth Service, about 22,000 servicemen and women will “disciple” 220,000 youth per year who will be engaged for between 4 to 6 months as paid labour under their supervision and organized using principles of social movement (regimentation, bonding, identity)

¹⁵ Access to Government Procurement Opportunities (AGPO) is an initiative through which youths, women, and people with disabilities can access and take advantage of the 30 percent government procurement reservation scheme.

¹⁶ The strategy is awaiting Cabinet approval.

¹⁷ Franz Jutta (2014). “Youth Employment Initiatives in Kenya.” Report of a Review Commissioned by the World Bank, and Vision 2030

¹⁸ Hicks, Joan Hamory, Michael Kremer, Issac Mbiti, and Edward Miguel (2011) “Vocational Education Voucher Delivery and Labour Market Returns: A Randomized Evaluation among Kenyan Youth.” A Report for the Spanish Impact Evaluation Fund, World Bank, Washington. See: http://siteresources.worldbank.org/INTHDOFFICE/Resources/VocEd_SIEF_Report_2011-04-07_final.pdf

1.4. HIGHER LEVEL OBJECTIVES TO WHICH THE PROJECT CONTRIBUTES

The Kenya Country Partnership Strategy (CPS) (2014-2018) and this proposed Project are consistent with the government’s development priorities as defined in its Vision 2030.²² Vision 2030 is a broad blueprint for Kenya’s development that articulates a vision in which, by 2030, the country will be a globally competitive nation characterized by high quality of life for its people. Vision 2030, on which the CPS itself rests, is based on three pillars - economic, social, and political. The proposed project which seeks to increase employment and earning opportunities among targeted young people is very much consistent with the social pillar of Vision 2030, which focuses on investing in people, including in the areas of education, health, and housing, with a focus on women, youth, and vulnerable communities. The proposed Project is also aligned with the World Bank’s Kenya Country Partnership Strategy (CPS) 2014-2018. The CPS identifies three domains in which the World Bank Group (WBG) will support the Government of Kenya. In particular, the second area of engagement, Domain 2: Protection and Potential, aims “to protect the vulnerable and help them [to] develop their potential, which is critical to sharing in prosperity.” Moreover, the CPS acknowledges that “the burgeoning youth population brings opportunities and challenges for the WBG support in education, jobs, and skills” and commits the World Bank to help the Government of Kenya in its efforts to reduce joblessness. The Bank expects to continue its work as needed on youth employment, including exploring other interventions to help to ensure that young people are properly prepared for work. Through the proposed project, the World Bank will support the government’s efforts to equip young people with skills and competencies that are in demand in the changing market and therefore increase their prospects of finding and keeping gainful work and to help youths to launch new business startups and to expand the potential of informal sector enterprises to create jobs.

1.5. THE VULNERABLE AND MARGINALISED GROUPS IN PROJECT AREA

The KYEOP is a country wide project aimed at covering all the 47 counties. It is envisioned to take 5 years to increase employment and earning opportunities to the targeted youth. The project is demand driven, hence after the initial awareness raising and sensitization across the country, interested youth will apply for the various services provided by the project. The Directorate of Youth Affairs that has national network right up to the sub-county level will be instrumental in raising awareness about the project as well as guiding and counseling youth to make choices on the services provided by the project. Since the scope of the KYEOP is expected to be national, it

¹²⁰ Franz Jutta, Kiambuthi Wairimu, Muthuku David (2013). “Entrepreneurship Education and Training in Kenya.”, draft paper

¹²¹ World Bank, Youth Employment and Opportunities Analytical Work, forthcoming

¹²² World Bank (2014) Country Partnership Strategy (2014-2018) for Kenya. (No. 88940, v1-v3)

therefore implies that all the communities described as vulnerable and marginalized as per the Kenyan Constitution are likely to be affected by this project especially in view of the fact that the actual sub project locations remain unknown for the present. The *annex 6* of this report describes all the vulnerable and marginalized communities in Kenya as described by the Constitution of Kenya. However, even though the GOK’s constitution spells out communities categorized as vulnerable and marginalized, OP. 4.10 expressly defines the criteria within which a group is considered or qualifies to be vulnerable and or marginalized. During screening, groups categorized as vulnerable and marginalized by GOK will be subjected to the bBank’s threshold screening of indigenous groups before they are qualified to meet the banks criteria and trigger OP.4.10 (some groups, such as the Ogiek, Sengwer, Maasai, wakifundi, have met the criteria for OP 4.10 in other Bank-financed projects).

1.6. VULNERABLE AND MARGINALIZED PEOPLES IN KENYA

In Kenya, the peoples who identify with the indigenous communities are mainly pastoralists and hunter-gatherers as well as a number of small farming and fishing communities. Pastoralists are estimated to comprise 25% of the national population, while the largest individual community of hunter gatherers numbers approximately 30,000.

Pastoralists mostly occupy the arid and semi-arid lands of northern Kenya and towards the border between Kenya and Tanzania in the south. Hunter-gatherers include the Ogiek, Sengwer, Yaaku, Waata, El Molo, Malakote, Wagoshi and Sanya, while pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. They all face land and resource tenure insecurity, poor service delivery, poor political representation, discrimination and exclusion. Their situation seems to get worse each year, with increasing competition for resources in their areas.

1.7. BRIEF HIGHLIGHT OF VULNERABLE AND MARGINALIZED PEOPLES IN KENYA

The vulnerable and marginalized groups in Kenya as per the CoK are described below in summary with a detailed description of the same contained in *annex 6* of the report.

Sengwer: The Sengwer live in the three administrative Sub-Counties of Marakwet, West Pokot and Trans Nzoia in and along Cherangany Hills. They are estimated to be 50,000 (30,000 of them live in their traditional territories and another 20,000 in the diaspora). They lived by hunting and bee keeping. In his evidence before the 1932 Kenyan Land Commission, Mr. C.H. Kirk, stated how they used to go over Cherangany shooting and the only peoples with whom they

came into contact along Cherengany Hills were the Cherengany Dorobo, a small tribe of Dorobo (Sengwer).

As so many other ethnic minorities, the Sengwer were considered by the British to be served best if they were forced to assimilate with their dominant neighbors. Due to that, their traditional structure was not recognized and integrated as independent ethnic groups in the system of indirect rule, but as sub-structure of their neighbors. As their land in the plains of Trans Nzoia turned out to be the best area for agricultural production in Kenya, they were displaced entirely from there to make way for white farmers. A minority stayed behind as farm workers, but the majority went up into the forests of the Cherangany hills. As the Sengwer were not considered as an independent group, they were also not invited to join the settlement schemes in which the independent Kenya redistributed the white farms to the farm workers and the dominant ethnic groups of the area. While most Sengwer are officially landless, some few Sengwer especially in the northern parts of the Cherangany hills received some land, but even this land is contested.

Livelihood

Before the colonial time, Sengwer used to be hunters and honey-gatherers. Following their contacts with the Arabs and the Maasai some adopted small scale agriculture (shifting cultivation) and/or livestock rearing, but it is said that hunting remained their main source of livelihood until the 1920s. The elders reported collective as well as individual hunting techniques. Gathering of fruits and other non-timber- forest-products is mostly done by women, while honey collection from beehives as well as from natural places such as holes in trees etc. is traditionally a male activity. It has - besides being eaten - a variety of uses: Honey is mixed with water as a daily drink (breakfast), and used to brew beer; Honey plays a major role in marriages and other ceremonies. Before marriage, honey is given to the mother of the bride as part of the dowry. Honey has also medical use. People apply it to their body to drive away mosquitoes and against muscle pains. Another smelly mixture is spread around the compounds to keep wildlife at distance. Millet and Sorghum are the “traditional” crops, which were inherited from the Arab traders and mostly planted in the lowlands.

The current status of Indigenous Sengwer

The Sengwer have increasingly been restricted to areas with home ‘bases’ involving agriculture and livestock rearing and outlying areas where some honey gathering is still practiced. The Sengwer continue to experience expropriation of their land and restrictions on access to natural resources- especially forests and water- which have further increased their sedentarization, marginalization, social discrimination, and impoverishment. Even though they are considered, from the formal legal point of view, as citizens equal to all other Kenyans, they do not have the same access to land and other resources, protection against cattle rustlers, social and political influence, legal status and/or organizational, technical or economic capacities as other Kenyan citizens.

Ogiek: *The Ogiek (Ogiot - sing.) ethnic group consists of 20-30 groups of former hunters and honey-gatherers, mostly living in forested highlands in western Kenya. Local groups have more specific names, e.g., Kaplelach, Kipsang'any, Kapchepkendi etc. Ogiek, a Kalenjin language of the Southern Nilotic group, is the mother tongue of most Ogiek people, but several groups now speak Maasai as their first language. Traditionally the Ogiek had occupied most of the forests in the extreme west and south of Western Kenya, but today their main area of living is in and around the Mau forest, which is not part of the operational areas. Nevertheless, some Ogiek*

groups are found in the Upper Yala catchment near the villages Serengoni, Senghalo (Nandi South), in the Kipkurere forest (Nandi South) and some live scattered in the Uasin Gishu SubCounty.

Livelihood

Traditionally the Ogiek divided land into lineage-owned tracts stretching along the escarpment slope. Tracts transected four or five ecological zones, giving families access to honey and game during each season. Residence groups were small extended families, patrilineal cores that might be joined by affine and matrilineal relatives. Six to ten adjacent lineages constituted a named local group, i.e. a significant unit of cultural identity and history.

Unlike many other hunter-gatherers, beside of honey, Ogiek collect hardly any plants, fruits or non-timber-forest-products from the forest. Honey is eaten, stored for future use, brewed into beer and traded. It is said to have been the main product for the barter with their agricultural and/or pastoralist neighbours.

Starting in the 1920s the Ogiek started to cultivate small millet and maize gardens due to reduced production from the forest. This led to a more sedentary lifestyle in mid altitude forest and - in turn - a further increase of agriculture and/or pastoralism. Today, agriculture is the main source of subsistence and income, which is supported through some livestock rearing, hunting (which is illegal) and bee-keeping. Honey gathering is still a key activity and carried out the traditional way, with few Ogiek using modern bee-hives and/or processing the honey for regional markets. Blackburn concludes: "without honey and condition of getting it, Ogiek life would be entirely different. This explains why the Ogiek live in the forest" (Blackburn 1974:151).

Their access to land varies very much from village to village. Before independence most Ogiek lived on state or trust land (i.e. in the forests) with all usufructuary rights, but no letters of allotment. Following independence, the land reform and the general land demarcation in 1969 usufructuary rights were out-ruled. Legal access to land is now channeled through individual land titles and - in the Maasai-dominated Sub-Counties – group ranches. Group-ranch demarcation began in the 1970s, crossing lineage land boundaries, incorporating non-Ogiek into some groups, and registering significant parts of Ogiek land to non-Ogiek. During the same time, the Ogiek were evicted from the forest reserves. As they were not provided with any land or compensation most had to go back and live illegally in the forests until the next eviction team would show up. The regular evictions, arrests and loss of property, crops and even lives further increased the poverty of the Ogiek, underlined their social discrimination and cemented their marginalization.

Turkana: *The Turkana people are the second largest of the pastoral people of Kenya with a population of 1,034,000 They occupy the far northwest corner of the nation, an area of about 67,000 square kilometers. This nomadic community moved to Kenya from Karamojong in eastern Uganda. The Turkana tribe occupies the semi Desert Turkana Sub-County in the Rift valley province of Kenya. Around 1700, the Turkana emigrated from the Uganda area over a period of years. They took over the area which is the Turkana Sub-County today by simply displacing the existing people of the area. Turkana warriors today still take pride in their reputation as the most fearless fighters in East Africa. Adherence to the traditional religion is weak and seems almost nonchalant among the Turkana.*

Location in the Country - Rift Valley Province, Turkana, Samburu, Trans-Nzoia, Laikipia,

Isiolo Sub- Counties, west and south of Lake Turkana; Turkwel and Kerio rivers

Livelihood

Like the Maasai and tribes, Turkana people keeps herds of **cattle, goats and Camel**. Livestock is a very important part of the Turkana people. Their animals are the main source of income and food. Turkana's have also pursued other non-pastoral income-earning activity in both urban and rural environments. This includes various forms of wholesale and retail trade (e.g. selling livestock, milk, hides and skins, honey, and artisan goods etc.), traditional rental property ownership and sales, waged employment (local and non-local, including working as a hired herder, farm worker, and migrant labourer), farming (subsistence and commercial), and the gathering and selling of wild products (e.g. gum arabic, firewood, or medicinal plants). Fishing in Lake Turkana is another, long standing, form of diversification. Fishermen along Lake Turkana migrate to follow the patterns of fish movement. The pastoralists also supplement their livelihoods by selling the fish. Many of them have also taken up weaving mats and baskets particularly near the lake where weaving material is readily available from the Doum Palm. Other natural resource-based livelihood diversification activities have included the collection and sale of aloe, gum arabic, honey, wild fruits, firewood, and the production and sale of charcoal and alcohol.

Rendille: *The Rendille are a Cushitic tribe that inhabits the climatically harsh region between Marsabit hills and Lake Turkana in Northern Kenya where they neighbor the Borana, Gabbra, and Samburu and Turkana tribes. They (Rendile) consist of nine clans and seven sub clans. They are culturally similar to the Gabbra, having adopted some Borana customs and being related to the Somali people to the east. Rendille are semi-nomadic pastoralists whose most important animal is the camel. The original home of the Rendille people was in Ethiopia. They were forced to migrate southwards into Kenya due to frequent conflicts with the Oromo tribe over pasture and water for their animals. Being pastoralists, the lifestyle of the Rendille revolves around their livestock. In the northerly areas, camels are their main source of livelihood. This is because camels are best adapted to the desert conditions that prevail in the northern Kenya. The camels are an important source of milk and meat for the Rendille people. There are about eight or nine sub clans including the Urowen, Dispahai, Rongumo, Lukumai (Nahgan), Tupsha, Garteilan, Matarbah, Otol, and Saale with an estimated population of 63,000. The Rendille are located in Eastern Province, Marsabit Sub-County, between Lake Turkana and Marsabit Mt. The primary towns include Marsabit, Laisamis, Merille, Logologo, Loyangalani, Korr, Kamboi, Ngurunit, and Kargi.*

Livelihood

The Rendille people are traditionally pastoralists keeping goats, sheep, cattle, donkeys, and camels. Their nomadic lifestyle has become more prominent in the areas exposed to little urbanization and modernization. In the recent past though, their livelihood has experienced constant competing interests from the Samburus and Gabras leading them to constant conflict over land and water resources particularly at the borderline of the boundary Sub-Counties. In the most cases, the raids and conflicts have had the objective to replenish their herds depleted by severe droughts, diseases, raiding or other calamities.

Gabra: *The Gabra are an Oromo people who live as camel-herding nomads, mainly in the Chalbi desert of northern Kenya and the highlands of southern Ethiopia. They are closely associated with other Oromo, especially their non-nomadic neighbors, the Borana. The Gabra speak the Borana dialect of Oromo, which belongs to the Cushitic branch of the Afro-Asiatic*

language family and have a population of about 3,000. They are located in Samburu Sub-County, Lake Baringo south and east shores; and in Rift Valley Province (Chamus), Baringo Sub-County.

Livelihood

Gabra are pastoralists who keep and depend on cattle, sheep, goats, donkey, and camels. They solely rely on access to water and pastures for the survival of their livestock. Typical Gabra household keeps 5-10 cattle; 20-25 goats; 15-20 sheep; and 0-5 camels. Cattle provide the majority of income from livestock production followed by goats, sheep, and camels. Majority of the grain consumed by Gabra household in this zone is purchased. This includes maize, rice, and sugar. Households also rely on the wild food including fruits and berries, honey, roots, and tubers. Climate change has had an impact on new weather patterns and prolonged drought pushing the Gabra community to frequent water shortages. They have a conglomerate of peoples living north of the Tana River in Kenya, the area around Lake Turkana and the highlands of southern Ethiopia.

Ajuran: *The Ajuran are ethnically Somalis. They were a kingdom that ruled Somalia before the advent of Europeans into Africa. When the rest of the Somalis got fed up with their rule they took up arms against them in war popularly known as Ejiyo Ajuran meaning the rest of Somalis vs. the Ajuran. The wars that ensued deposed the kingdom and drove some of the Ajuran as far as where they live today in the North Eastern Kenya and Eastern part of Ethiopia. Some of those who settled in present day Kenya eventually adopted the language and customs of their neighbors and hosts, the Borana. The Ajuran are best known in Somali history for establishing the Gareen dynasty based in Qalaaf (now part of Ethiopia). The Gareen dynasty ruled parts of East Africa from the 16th to the 20th century. Among the Kenyan Ajuran people, the majority speak the Borana language as their first language while others speak the Somali language as their first language especially those from Wajir North Sub-County in the areas of Wakhe and Garren. It is vital to note that since Somali is the language of wider communication in Northeastern Province, even the Ajuran who speak Borana as their first language learn the language. The link between the Garreh and Ajuran is their primary language which is Borana and not Somali. Population: 59,000. Location in the Country: Eastern Province, Marsabit, Isiolo and Moyale Sub-Counties, Wajir North.*

Livelihood

The Ajurans, like the rest other Somali tribes of Northern Kenya have traditionally lived a nomadic life. This way of life is dictated by the climate which is semi-arid with two seasonal rains. They follow water and pasture for the animals they keep such as cattle, camels, goats, sheep, donkeys and mules that provide them their livelihood. Where the land is good for farming there are settled populations growing corn, millet, sorghum and some fruits and vegetables. The Ajuran live in an area with relatively high rainfall and good pasture for their animals. However, this blessing has on many occasions become troublesome to them in terms of marauding neighbors in need of the same resources. The intrusion by others has periodically resulted in clashes. Today, the Ajuran allow others to live and pasture their animals in their communal land.

Some of the main causes of their vulnerability include the following: erosion of assets due to armed conflict during intermittent inter/intra-clan conflict, resulting in poverty; protracted conflict and insecurity; Systematic marginalization and discrimination based on ethnicity and caste; poor access to economic/employment opportunities. Notably, their right and ability of the transhumant pastoralists to eventually return to their homes characterizes this type of seasonal movement and gives rise to certain analyses.

Maasai: *Kenya's most well-known ethnic tribe, the Maasai (or Masai) are semi-nomadic people located primarily in Kenya and northern Tanzania. They are considered to be part of the Nilotic family of African tribal groups, just as the Scilluk from Sudan and the Acholi from Uganda. The Maasai probably migrated from the Nile valley in Ethiopia and Sudan to Maasailand (central and south-western Kenya and northern Tanzania) sometime around 1600 AD, along the route of lakes Chew Bahir and Turkana (ex Rudolph), bringing their domesticated cattle with them. Once considered fierce warriors, feared by all tribes in the zone, the Maasai lost most of their power during the late XIX century, as a consequence of a string of natural and historic calamities. They were hit by drought, smallpox, and cattle pest, and contemporarily had to mourn the departure of Laibon Mbatiani, their respected and much admired leader, direct descendant of the mythical OlMasinta, founder of the tribe. The Maasai speak the Maasai language, an Eastern Nilotic language closely related to Samburu (or Sampur), the language of the Samburu people of central Kenya, and to Camus spoken south and southeast of Lake Baringo. Maasai's population is about 684,000 and is located in the Rift Valley Province, Kajiado and Narok Sub-Counties.*

Livelihood

The Maasai are cattle and goat herders, their economy almost exclusively based on their animal stock, from which they take most of their food: meat, milk, and even blood, as certain sacred rituals involve the drinking of cow blood. Moreover, the huts of the Maasai are built from dried cattle dung.

Ilchamus: *They are originally a pastoralist people who used to live on the mainland but due to clashes they have been forced to migrate to an island in Lake Baringo. It is a very traditional and culturally bound society, hierarchical and male-dominated. They live from fishing in small boats made of balsam tree that dates back maybe a thousand years. They also do some souvenirs and they have some livestock. Many are uneducated and illiterate. They are eager to learn new things, participating and seemingly eager to create a better life. They communicate mainly in their local language. They have a population of 34,000 and are located in Southeast and south shore of Lake Baringo, and southwest shore as far north as Kampi ya Samaki.*

Livelihood

The majority of the Ilchamus practice both livestock rearing and agriculture, but on the islands in Lake Baringo there are about 800 Ilchamus who live nearly entirely from fishing. The mainland Ilchamus are semi-pastoralists with a long history of small scale agriculture. The main types of livestock owned by the Ilchamus are cattle (zebus), sheep (red Maasai and dopper cross) and goats (small east African), but their herds are significantly smaller than those of their neighbours. The key problems here are the insufficient security against aggressions from their neighbours,

access to water and pressure of other people on their land due to the non-existence of land titles. The nearest markets are at Marigat and Kiserian.

Aweer: *The Aweer are a remnant hunter-gatherer group living along the Kenyan coast in Lamu Sub-County on the mainland. In the last 30 years, the Aweer have faced very difficult times. In 1967, their homeland became a battle field in the war between Kenya and Somalia. In Kenya today, they are a vulnerable group, struggling to survive, in search of a new identity. Traditionally they depend on their elders for leadership and do not normally meet for village discussion. There are some men who have more than one wife, and each wife has her own house in which she lives with her children. The husband does not have his own home but lives with each wife periodically. The Aweer have a population of 8,000 and are located in the Coast Province, behind Lamu, and Tana River Sub-Counties in forests; north-Eastern Province, Garissa Sub-County.*

Livelihood

Hunters and Gatherers. They are indigenous hunter/gatherers famous for their longbows and poison arrows. The Aweer are often referred to - and even sometimes refer to themselves - as the "Boni". Considered by some as pejorative, Boni is based on the Swahili word "kubuni" which means 'to move', in reference to their proclivity, historically, to move around in pursuit of their livelihoods, rather than settle in one place. The lives of the Aweer were drastically changed when the Kenyan government curtailed their traditional way of life as a response to the insecurity of the region after the Shifta War (1963–1967), forcing them to settle in villages along the Hindi-Kiunga Road on Government Land between the Boni National Reserve and the Dodori National Reserve while adopting slash and burn agriculture.

Pokot: *They speak Pökoot, language of the Southern Nilotic language family which is close to the Marakwet, Nandi, Tuken and other members of the Kalanjen grouping. Kenya's 2009 census puts the total number of Pokot speakers at about 620,000 in Kenya. They have once considered part of the Kalenjin people who were highland Nilotic people who originated in southern Ethiopia and migrated southward into Kenya as early as 2,000 years ago. Though the Pokot consider themselves to be one people, they are basically divided into two sub-groups based on livelihood. Population: 662,000. The Pokot are located in the Rift Valley Province, Baringo and West Pokot Sub-Counties.*

Livelihood

It is usually claimed that from the earliest time of the original Pokot, they were agriculturalist, they did not have many cattle, and the few they had were taken by wild animals abounding the area. They have been hunters and gatherer living in caves. Currently, Pokot are semi-nomadic, semi-pastoralists who live in the lowlands west and north of Kapenguria and throughout Kacheliba Division and Nginyang Division, Baringo Sub-County. These people herd cattle, sheep, and goats and live off the products of their stock. The other half of the Pökoot are agriculturalists who live anywhere conditions allow farming. Mixed farming is practiced in the areas of Kapenguria, Lelan and parts of Chepararia. These areas have recorded rainfall between 120mm to 160mm while pastoral areas include Kiwawa, Kasei, Alale and parts of Sigor

receiving 80mm and 120mm. The livelihood of Pokot has led to constant conflict between them and other pastoral communities – the Turkana, Matheniko and the Pokot of Uganda. This clash has been sustained by semi-arid savannah and wooded grassland terrain that cuts along the habitation area. Resources such as land, pasture, water points are communally owned and they are no specific individual rights.

***Endorois:** Endorois community is a minority community that was living adjacent to Lake Baringo and has a population of about 20,000. However, the Government of Kenya forcibly removed the Endorois from their ancestral lands around the Lake Bogoria area of the Baringo and Koibatek Administrative Sub-Counties, as well as in the Nakuru and Laikipia Administrative Sub-Counties within the Rift Valley Province in Kenya, without proper prior consultations, adequate and effective compensation. Endorois are a community of approximately 60,000 people who, for centuries, have lived in the Lake Bogoria area. They claim that prior to the dispossession of Endorois land through the creation of the Lake Hannington Game Reserve in 1973, and a subsequent re-gazetting of the Lake Bogoria Game Reserve in 1978 by the Government of Kenya, the Endorois had established, and, for centuries, practiced a sustainable way of life which was inextricably linked to their ancestral land.*

However, since 1978 the Endorois have been denied access to their land, neighbouring tribes as bona fide owners of the land and that they continued to occupy and enjoy undisturbed use of the land under the British colonial administration, although the British claimed title to the land in the name of the British Crown. At independence in 1963, the British Crown's claim to Endorois land was passed on to the respective County Councils. However, under Section 115 of the Kenyan Constitution, the Country Councils held this land in trust, on behalf of the Endorois community, who remained on the land and continued to hold, use and enjoy it. The Endorois' customary rights over the Lake Bogoria region were not challenged until the 1973 gazetting of the land by the Government of Kenya. The act of gazetting and, therefore, dispossession of the land is central to the current predicament.

The area surrounding Lake Bogoria is fertile land, providing green pasture and medicinal salt licks, which help raise healthy cattle. Lake Bogoria is central to the Endorois religious and traditional practices. The community's historical prayer sites, places for circumcision rituals, and other cultural ceremonies are around Lake Bogoria. These sites were used on a weekly or monthly basis for smaller local ceremonies, and on an annual basis for cultural festivities involving Endorois from the whole region. The Complainants claim that the Endorois believe that the spirits of all Endorois, no matter where they are buried, live on in the Lake, with annual festivals taking place at the Lake. They believe that the Mochongoi forest is considered the birthplace of the Endorois and the settlement of the first Endorois community. Despite the lack of understanding of the Endorois community regarding what had been decided by the Kenyan Wildlife Service (hereinafter KWS) informed certain Endorois elders shortly after the creation of the Game Reserve that 400 Endorois families would be compensated with plots of "fertile land." The undertaking also specified, according to the Complainants, that the community would receive 25% of the tourist revenue from the Game Reserve and 85% of the employment generated, and that cattle dips and fresh water dams would be constructed by the State.

To date, the Endorois community has not received adequate compensation for this eviction, nor have they benefited from the proceeds of the reserve. Because they no longer have free access to the lake or land. Their property rights have been violated and their spiritual, cultural and economic ties to the land severed. Once able to migrate with the seasons between Lake Bogoria and the Mochongoi forest, the Endorois are now forced to live on a strip of semi-arid land between their two traditional sites with no access to sustain their former cattle rearing and beekeeping livelihood. The eviction of the Endorois people by the Kenyan government and the 'gazetting' (or public declaration of state ownership) of their land began in 1973 and continued until 1986.

Livelihood

Dependent on land and fishing from Lake Bogoria. Critically, land for the Endorois is held in very high esteem, since it is tribal land. In addition to securing subsistence and livelihood, it is seen as sacred, being inextricably linked to the cultural integrity of the community and its traditional way of life.

Boni: *The Boni people are known for their unique tradition of whistling to birds that guide them to honey. They are found in Northeastern Kenya's Sub-County of Ijara and Lamu Sub-County.*

Their population is about 4,000, compared to 25,000 half a century ago. They are nomadic hunter-gatherer tribe of mainly Cushitic origin with - unique characteristic. The community sources their subsistence from forest products such as honey, wild plants/fruits for consumption and medicinal purposes. The Boni are found in the North- Eastern part of Lamu Sub-County and Ijara Sub-County. They are concentrated mainly in Witu, Hindi and Kiunga divisions. The community is located in villages of Bargoni (Hindi Division), Milimani, Bodhei, Basuba, Mangai, Mararani, Kiangwe and Kiunga (Kiunga division), Pandanguo and Jima (Witu

Division).

The Boni live in forested areas of the Sub-County i.e. within the Witu and Boni forests. They live deep into the forest and only come out to the periphery when there is hardship or hunger. They perceive the forest in their area as communally theirs. However, with the gazettelement of all the forest by the government this has become a source of conflict.

Watha: *The Watha people are mostly found in the rural arid and semi-arid lands of the country. A minority of them live in thick forests scattered all over the country. This people are traditionally hunters and gatherers. In Malindi Sub-County a Watha community is found in four divisions (i.e. Malindi, Langobaya, Marafa and Magarini). In Tana River Sub-County the Watha are found in Sombo and Laza divisions while in Mandera the Watha are found in Central division. The population of Watha community in the Sub-Counties is estimated at approximately 30,000 persons. This is only 2.7% of the entire Malindi, Mandera and Tana River Sub-County population.*

The Watha people are traditionally hunters and gatherers. However since the government abolished unlicensed hunting of game and wild animals, the Watha people now live in permanent settlements, some of them along the river and where there are forests, mainly in the mixed

farming and livestock farming zones. The forests afford them an opportunity to practice bee keeping while those along the river practice crop production.

The land tenure system in the Sub-County is communal ownership. Most of the land in the three Sub- Counties of Malindi, Manderu and Tana River are currently under trust land by the county councils. Few influential people in the Sub-County have however managed to acquire title deeds from the land offices in Nairobi. However, most of this trust lands are controlled by the majority tribes and becomes a point of conflict if the smaller tribes and outsiders get involved. This is what has pushed the small and marginalized tribes like Watha deep into the forests.

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(Source: Organization for the Development of Lamu Communities (ODLC)

1.8. PROJECT IMPLEMENTATION ARRANGEMENT

This project will be coordinated by a National Project Steering Committee (PSC) comprised of directors of the four implementing ministries and semi-autonomous government agencies – the Ministry of Public Service, Youth and Gender Affairs (MPYG), the PS of Labor and East African Community Affairs and the PS of Industrialization and Enterprise Development, the Directors of all departments and partner agencies relevant to the project, the Director of Resource Mobilization Department from Treasury and a youth representative nominated by the National Youth Council. Other members may be co-opted into the Committee as necessary with the written approval of MPYG. The KYEOP Project Coordinator will be the secretary to this Committee. The role of the PSC is to approve annual work plans and budgets, oversee project progress, ensure coordination among the four agencies, oversee project communication and undertake external communication and approve the progress and audited financial reports.

A Project implementation Technical Committee will be chaired by the KYEOP Project Coordinator and will include the heads of PIU's in NITA, MSEA and Ministry of Labour. Other members may be co-opted into the Committee as necessary with the written approval of MPYG. The committee will oversee the implementation of the project, ensuring smooth progress and advising the PCU as needed.

A Project Coordination Unit (PCU) housed in MPYG will coordinate the KYEOP project. The PCU will be headed by a Project Coordinator who will report to the Principal Secretary MPYG. Staffing of the PCU will consist of Government of Kenya staff and externally sourced expert staff as required.

The MPYG and its PCU will be responsible for designing and managing the process for registration, enrolment and referral of all project beneficiaries. The MPYG Youth Officer in each sub-county will provide a single entry point into the program for targeted youths in components 1 and 2. MPYG will make deliberate effort to reach out to VMGs once identified in the various counties. Different actors may be involved in mobilizing youth for participation and generating applications including; CBOs, Faith Based Institutions and relevant institutions that would

mobilize youth for enrolment into the project. MPYG will lead this activity and use all tools and means available to reach eligible youths with information about component 1 and component 2 services. The MPYG Youth Officers will be trained to counsel and advise eligible youths and assist them in connecting with the services offered by components 1 and 2.

Component 1 will be jointly implemented by the National Industrial Training Authority (NITA) and the MPYG. Specifically, the MPYG will manage the intake process as well as coordinate Life and Core Business skills trainings. An Advisory Committee will be formed to provide advice to NITA with representatives of youth, employers, Master Craftsmen, public and private training providers as members. An output-based financing formula will be used for disbursements for training with possible outputs focused on internship completion and certification rates. Implementation will subsequently aim to reach all 47 counties, but during the first year, the program will be phased in to allow time for testing a decentralized management structure and building of the capacity needed for scaling up the program nationally. The initial sub-set of counties selected will be balanced across the country geographically.

The delivery of training services will require further planning. In the absence of larger organizations with adequate capacity for national coverage, multiple providers will likely be required for delivery of life skills and core business training. The direct and indirect cost of residential training will have to be weighed against the challenge of delivery to a large number of settings accessible to beneficiaries. Ensuring quality and uniformity in delivery in a decentralized framework will also require attention.

Component 2 will be jointly implemented by the Micro and Small Enterprise Authority (MSEA) and the MPYG. Specifically, the joint implementation will be in Sub-component 2.2 as described in the “Project Description” section above, while sub-component 2.3 will wholly be implemented by the MPYG. Sub-components 2.1 and the outreach and capacity building to benefit from government programs under sub-component

2.2 will be implemented at the county level, while sub-component 2.3 and the business plan competition under sub-component 2.2 will be implemented at the national level with projects selected serving youth in local areas. MSEA is a relatively new government agency and will require Project support for capacity building. A small number of contract staff will be added to MSEA staff for each sub-component to enhance implementation capacity.

Component 3 will be implemented by the Ministry of Labour and East African Affairs (MLEA) and its Department of National Human Resource Planning and Development (DNHRP&D). The latter Department has been given a clear mandate for LMIS by Executive Order No 2 of 2013. Staff and budget for LMIS are in place within the DNHRP&D, including 18 technical staff and additional staff that can be requested as and when needed. ICT maintenance services will be provided for LMIS by the Ministry’s existing ICT Department, which has already procured the necessary ICT equipment.

Component 4 will be implemented by the MPYG under its Directorate of Youth Affairs. A Project Coordination Unit will be established and based within the Directorate of Youth Affairs. The PCU will be staffed with a Project Coordinator, additional technical staff, as needed, to support the project coordinator, Project Accountant, Procurement Officer and an Internal Auditor. Other staff from the Ministry may be added as need arises. Staff with expertise not resident in the Ministry may be

externally sourced as need arises. Day-to-day management and implementation of the three components will remain with the implementing agencies. The PCU will provide for overall coordination of these components and implementation of component 4.

2. METHODOLOGY AND CONSULTATION

2.1. DETAILED AND IN-DEPTH LITERATURE REVIEW

Literature material was undertaken and helped in gaining a further and deeper understanding of the project. Among the documents that were reviewed in order to familiarize and deeply understand the project included:

- *World Bank Indigenous Peoples Operational Policy OP 4.10*
- *Technical Mission Aide Memoire*
- *Other relevant VMGF documents prepared in Kenya for bank projects*
- *KYEOP Appraisal Document*
- *The Constitution of Kenya, 2010*
- *Relevant legislative documents in Kenya on vulnerable and marginalised groups*

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2.2. STAKEHOLDER CONSULTATIONS

Public consultations with key stakeholders to deliberate on the draft VMGF and the social assessment was carried out between 14th and 22nd December 2015 in sampled four counties with VMG presence including Nakuru, Tranzoia, Isiolo and Kwale. A total of 401 people were consulted. VMGs communities consulted included the sengwer of Tran Nzoia, Ogiek of Mau Nakuru, Wakifundi and Tswkka of kwale, Turkana and Borana of Isiolo County. Public disclosure workshops was held on February 8 2016 and issues raised documented and incorporated in the final VMGF.

The objectives of the consultation were to disclose information on KYEOP and provide an opportunity for VMG youth and other stakeholders to voice their opinions and concerns on different aspects of the project. Their concerns informed the development of VMGF.

Discussions have been held with project staff as well as the World Bank relevant staff as part of the consultation. Direct consultation with the already identified KYEOP Executing Agencies has also been held in regard to vulnerable and marginalized groups. The following key institutions likely to implement the KYEOP have been consulted so far and additional consultation will be undertaken as they continue to prepare and operationalize project implementation documents in order to ensure VMGs issues are mainstreamed across the various project components

The feedback was overall positive and stakeholders were supportive of the objectives of the project to increase access to youth employment. Most stakeholders applauded the project targeting of the vulnerable youth who they reported had “long been forgotten” . “At last the

Government has targeted the real youth in need, who have been a major challenge in our administration” remarked one chief in Kwale. They were also broadly satisfied with the proposed safeguard instruments and the mitigation measures provided for in the instruments. The main concerns raised were around ensuring the project addressed issues of (a) accessibility and inclusion of VMGs most of whom live in remote and inaccessible villages and with hardly any voice to influence intakes (b) ensuring benefits accrue to young married women who most VMG communities consider their being married as form of employment especially in Northern Eastern Kenya; (c) the challenge of addressing gender – based violence in the context of youth employment which remain rampant in these communities and especially in the Northern Counties of Isiolo and Turkana which may deny young women an opportunity to participate in the project ; and (d) initiatives targeting VMG in conflict prone regions such as the North Eastern counties and the coast must embrace conflict sensitive approaches to ensure project initiatives to not escalate existing tensions. The table below summarizes key issues that need to be address, what needs to be done by various stakeholders and key indicators in monitoring VMGF implementation. !

2.3. PREPARATION OF VMGF

This involved;-

- *Collation of baseline data on the Vulnerable and Marginalized youth in Kenya including demographic, education for age bracket 16-29 years, national identification documents, communication channels, institutionalization, economic opportunities and supportive stakeholders to youth affairs;*
- *Identification of positive and negative impacts of the proposed sub components on the VMGs;*
- *Documentation of Proposed Grievances Handling Mechanism in project implementation and management*
- *Formulation of monitoring and evaluation plan.*
- *Provision of indicative budget for the implementation of VMGF*

Vulnerable and Marginalized Groups Framework

Issues	Activity	Responsibility	Indicators
Screening	Carry out an inventory of VMGs in every county	KYEOP / PCU and executing partner executing agencies/ VMGs	Identification guided and verified by constitution of Kenya 2010 on classification of vulnerable and marginalized groups

Vulnerable and Marginalized Groups Orientation and Mobilization	Community meetings/ outreach and sensitization on project components	KYEOP /PCU and partner executing agencies/ VMGO Organizations/ Elders	Population and dynamics of VMGs in screened areas well understood by key players and KYEOP/PCU Teams VMGs in all areas identified give broad support for the project
Consultations with Vulnerable and Marginalized Groups	Participatory Appraisals Rural	KYEOP /PCU and executing agencies	Information from consultations verified by VMGs and VMGOs as correct and a true representation of their needs and priorities
Mapping of community resources critical to VMGs which could benefit from the project e.g. providing internship program, skill training and development through apprenticeship and skill inventory	Baseline Surveys	KYEOP /PCU and executing agencies and VMGOs	Community transect reports ! Information from consultations verified by VMGs and VMGOs as correct and a true representation of natural, cultural and social, technical resources critical to their survival
Development of strategies for participation of VMGs and mitigation measures	Social Screening	KYEOP /PCU and executing agencies VMGOs	Activities implemented respect the conditions and do not leave the VMGs worse off than they were Activities respect the rights, culture and dignity of the VMGs
Capacity Building	Trainings/ Information dissemination on policy requirements for VMGs and VMGOs	KYEOP /PCU and executing agencies VMGOs	VMGs and VMGOs aware of policy and project requirements.

Representation of VMGs in decision making organs	E n s u r e Representation of VMGs in relevant p r o j e c t implementation bodies	K Y E O P / P C U a n d executing agencies VMGOs	Active participation of VMGs in forums ! VMGs and M&E indicate that representation is satisfactory to the VMGs
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Participatory M&E with VMGs	Internal M&E External M&E	K Y E O P / P C U a n d executing agencies VMGOs	M&E reports accessible to VMGs and implementing agencies ! Mechanism for feedback into VMGF in place and implemented
Training and Capacity Building for implementation of VMGF	Training of staff for partner executing agencies and VMGF Organizations	KYROP/PCU and executing agencies	Participants are able to implement VMGF

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3. LEGAL RECOGNITION OF THE VULNERABLE AND MARGINALIZED COMMUNITIES/ GROUPS

There is no specific legislation governing vulnerable and marginalized peoples in Kenya. However, the Constitution of Kenya (CoK) 2010 recognizes the rights of VMGs and requires that they be accorded special focus, attention and support. The CoK goes further and defines who are VMGs in Kenya and describes the VMGs in Kenya.

3.1. 2010 CONSTITUTION OF KENYA

The new constitution of Kenya 2010 specifically includes minorities and marginalized communities as a result of various historical processes, with specific reference to indigenous peoples. The definition of marginalized groups, being broad, encompasses most of the groups that identify as indigenous peoples. Kenya however, abstained from the vote when the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in 2007.

The definition of marginalized groups encompasses most of the groups that identify as indigenous peoples. Kenya defines marginalized and indigenous people *“as group of people, who as a result of laws and practices, were or are disadvantaged by unfair discrimination on one or more prohibited ground or a community which by reason of its relatively small population or otherwise, has been unable to fully develop its internal structures or resources sufficient to participate in the integrated social and economic life of Kenya as whole or a traditional community which, out of the need or the desire to preserve its unique culture and identity from assimilation has remained outside the integrated social and economic life of Kenya as whole or an indigenous community that has retained lifestyle and livelihood based on a hunter or gatherer economy or pastoral persons or communities, whether they are nomadic or a settled*

community which because of its relative ". The recognition of minorities and marginalized people would contribute to the preservation of their identities and enable them to obtain quality with other groups in that state, including in relation to participation in political life as well as development matter.

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Kenya's 2010 Constitution protects the rights of minorities in three ways. First, it makes substantive provision to address specific concerns of these communities. Second, it mainstreams concerns of minorities into institutions of government including political parties. Last, it creates institutions and mechanisms that, if effectively implemented, could empower minorities and marginalized groups. It also provides a rich and complex array of civil and political rights, social-economic rights and group rights

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Kenya Constitution Making Committee, 2004, definition guiding 'Indigenous communities'

⁸ The 2010 Constitution of Kenya, currently in force, replaced the 1969 constitution, that itself had replaced the

1963

Independence constitution. The new Constitution was approved by 67% of Kenyan voters. The constitution was promulgated on 27 August 2010. The Constitution of Kenya was the final document resulting from the revision of the Harmonized draft constitution of Kenya written by the Committee of Experts initially released to the public on 17 November 2009 so that the public could debate the document and then parliament could decide whether to subject it to a referendum in June 2010.

3.2. THE BILL OF RIGHTS

Kenya's bill of rights aims at the preservation of individual and communal dignity, the

⁹ promotion of social justice and the realization of human potential. Through *Article 24*, the 2010 Constitution explains that constitutionally protected human rights can be circumscribed only by a specific law, and that such limitation will be permissible only if it is 'reasonable and justifiable in an open and democratic society based on human dignity'. Courts are therefore required not to take statutes that seek to limit rights as definitive, but to comprehensively scrutinize the extent to which these limitations are permissible against the rigorous test

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established by *Article 24*. Another notable innovation in the bill of rights relates to the fact that it is binding not just upon state organs but also on private persons. This has put increased pressure on non-state actors to take positive action not to violate the constitutionally protected rights of communities and individuals. Article 22, the enforcement of the bill of rights, accords every individual the right to institute court proceedings. Article 22(2)(b) goes further to allow a person to institute proceedings either as a member of or in the interest of a group or class of persons, while Article 22(2)(c) allows for proceedings

by persons acting in the public interest. This is particularly important for the enforcement of indigenous rights, given their collective nature. Collective rights proved arduous to enforce under the previous constitutional order, under which most cases were interpreted as recognizing claims by individuals.

Kenya's Bill of Rights is also touted as the most progressive. It provides for economic and social rights (*Article 43*) and other important measures outlawing all forms of discrimination (*Article 27*). Moreover, it ensures that the principles of the human rights approach to development, including participation, accountability, non-discrimination and transparency are

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part of the national values spelt out in *Article 10* and throughout the Constitution and binds public and State officers in the delivery of public services.

Under provisions relating to implementation of rights and fundamental freedoms, *Article 21* requires State organs to 'observe, respect, protect, promote and fulfill the rights in the Bill of

Rights and requires the State to take progressive legislative, policy and other measures...' to

12 achieve the progressive realization of the rights guaranteed under *Article 43*'. The Constitution also specifies that conventions and treaties ratified by Kenya automatically become part of Kenyan law (*Article 2 (6)*). This provision to a great extent now simplifies poststratification domestication procedures and makes it easier for right holders to seek remedies for rights violations or denials.

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Constitution of Kenya, *Article 24*, "A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors...."

10 *Ibid.*.7

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Constitution of Kenya, *Article 10*, The national values and principles of governance in this

Article bind all State organs, State officers, public officers and all persons whenever any of them—

(a) *applies or interprets this Constitution;*

(b) *enacts, applies or interprets any law; or (c) makes or implements public policy decisions.*

(2) *The national values and principles of governance include—*

(a) *patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*

(b) *human dignity, equity, social justice, inclusiveness, equality, human rights, nondiscrimination and protection of the marginalized;*

(c) *good governance, integrity, transparency and accountability;*

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Constitution of Kenya, Article 43, and Every person has the right—

(a) *to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;*

(b) *to accessible and adequate housing, and to reasonable standards of sanitation;* (c) *to be free from hunger, and to have adequate food of acceptable quality;*

3.3. LEGAL RECOGNITION OF MARGINALIZED/INDIGENOUS GROUP.

Article 44 of the Constitution of Kenya prescribes that every person has the right to use the language, and to participate in the cultural life, of the person's choice. It recognizes that a person belonging to a cultural or linguistic community has the right, with other members of that community to enjoy the person's culture and use the person's language; or to form, join and maintain cultural and linguistic associations and other organs of civil society. The post-colonial Kenyan state has pursued a policy of assimilation and integration of numerically-smaller tribes into some dominant ones.

For example, indigenous peoples such as the Endorois and others like 'the Ogiek, El Molo,

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Watta, Munyayaya, Yakuu ... were not legally recognised as separate tribes'. Despite recognition as some of the 42 tribes of Kenya, other indigenous groups such as the pastoralists were also neglected. Perhaps this may be due to the size of these tribes as compared to those tribes that are dominant. As a result they were excluded from and under-represented in the political structures of the state. Kenya's marginalized peoples have since time immemorial opted to retain and perpetuate their deep-seated cultures and traditions. The indigenous peoples hold onto their distinct economic, social and cultural characteristics, which have also been the

14 basis of discrimination based on the misconception that they hinder development. The lack of legal recognition that existed before enactment of new constitution of some of the indigenous/marginalized peoples and the exclusion of others for their refusal to assimilate, integrate and adopt modern ways of living hampered greatly the realization of these communities'

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fundamental human rights and freedoms.

The Constitution of Kenya, 2010, under *Article 43* guarantees the right of every person to economic, social and cultural rights. The processes of developing specific legislation and policies and implementing programmes to realize these rights are underway through various Ministries. The constitution affirms fundamental national principles and values of unity, participation of the people, equality, equity, inclusiveness, non-discrimination and protection of the marginalized and vulnerable people. It also

protects the cultural foundations and expression of the Kenyan people as an integral part of the right to self-determination. The principle of nondiscrimination runs throughout the Constitution as a further affirmation of the country's commitment to recognize and protect the diversity of the people of Kenya and their right to self-determination as equal members of the Kenyan population. The Government of Kenya promotes respect for all cultures, ethnicities, races, gender, political opinions and religious beliefs.

3.4. NON-DISCRIMINATION

(d)to clean and safe water in adequatequantities; (e)to social security;and (f)to education.

(2)A person shall not be denied emergency medical treatment.

(3)The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

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Report of the UN Special Rapporteur on Indigenous Peoples in Kenya para 21; see also *CEMIRIDE on behalf of Endorois Community v Kenya* (n 13 above) respondents' submissions para 1.1.5.

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Report of the UN Special Rapporteur on Indigenous Peoples in Kenya (n 4 above) para 11.

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As above, para 21.

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Article 27(4) prohibits discrimination on the basis of ethnic or social origin, religion, conscience, belief, culture, dress or language. *Article 27(6)* further calls on the state to undertake, 'legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.' This article prohibits both direct and indirect discrimination. Direct discrimination consists of measures adopted by a state that intentionally disadvantage an individual or group on the basis of a prohibited ground, such as race or nationality. Indirect

discrimination occurs when a seemingly neutral provision or practice disproportionately impacts a particular group, without objective and reasonable justification. This means that, in assessing the existence or otherwise of discriminatory treatment, courts will not only look at conduct or policy that differentiates groups and result in disadvantage. It will also explore conduct and policy which may not appear discriminatory on paper but which, when applied,

16 create disproportionate disadvantage for some groups more than others. *Article 27* also prohibits discrimination perpetrated by individuals and corporations, as well as the government. This is particularly important given that most violations of the rights of minority groups are perpetrated by corporate actors. Even though the 2010 Kenyan Constitution prohibits discrimination, it also recognizes the existence of past discrimination. To address this, the Constitution recognizes the need for affirmative action programmes and policies in order to redress any past disadvantages caused by state policy or practice, an experience which many minorities have gone through.

The Kenya 2030 Vision has also outlined strategies aimed at moving the country towards substantive equality measures to support regions and groups which have been historically disadvantaged on account of region or status. Under the Vision, for example, education centres of excellence are being established in every constituency of the country. Furthermore, the Constitution has introduced the Equalization Fund which uses a formula based on levels of poverty to provide basic services such as water, roads, health facilities and electricity in the most marginalized parts of Kenya (*Article 204*). The constitutionally- established Commission for Revenue Allocation is playing key roles towards this end.

The Constitution makes specific mention of groups which are liable to be discriminated on account of their vulnerability, including children, women, persons with disabilities and minorities and marginalized

Constitution of Kenya, Article 27. (1) Every person is equal before the law and has the right to: (1) equal protection and equal benefit of the law; (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms; (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres; (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth; (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4); (6) To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination; (7) Any measure taken under clause (6) shall adequately

Constitution of Kenya, Article 204. (1) There is established an Equalization Fund into which shall be paid one half

per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

(2)The national government shall use the Equalization Fund only to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

(3)The national government may use the Equalization Fund—

(a)only to the extent that the expenditure of those funds has been approved in an

Appropriation Bill enacted by Parliament; and

(b)either directly, or indirectly through conditional grants to counties in which marginalized communities exist.

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groups. Regarding this last group, the African Commission on Human and Peoples' Rights made a ruling against the State in 2010 (Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya). The Endorois community successfully argued before the African Commission that the State had violated its rights in the way land traditionally owned by it had been appropriated and used. The African Commission recommended that: Kenya recognizes the rights of ownership and ensure restitution of ancestral land to the Endorois community. Further, the Government was asked to ensure unrestricted access for the community to Lake Bogoria for religious, cultural and grazing purposes, and pay adequate compensation and royalties. The National Land Commission was tasked to ensure that this implemented.

3.5. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Constitution of Kenya, 2010, under *Article 43* guarantees the right of every person to economic, social and cultural rights, including the right to the highest attainable standard of health, accessible and adequate housing, reasonable standards of sanitation, adequate food of acceptable quality, clean and safe drinking water in adequate quantities, social security and education. The processes of developing specific legislation and policies and implementing programmes to realize these rights are underway through various Ministries.

The majority of vulnerable and marginalized communities lack access to basic amenities such as water, food and shelter. Areas occupied by marginalized groups such as Ogiek, Endorois, Duruma, Pokot or Turkana among others, who suffer from perpetual famine and poverty, received constitutional concern through *Article 43*, which catalogues the economic and social rights guaranteed under the Constitution to include the right to health, adequate housing, clean and safe water, social security and education. While the social and economic rights provided in *Article 43* are to be realized progressively, the state is precluded from merely relying on the commonly used justification that it has insufficient resources to meet the specific obligation. The new Constitution shifts the burden of proof onto the state to provide evidence of inadequate resources. Courts are empowered to scrutinize state priorities in resource allocation to ensure that the state is not merely evading its obligation to satisfy social and economic rights protected under the Constitution. In particular, the Constitution requires courts to scrutinize the government's resource allocation priorities to ensure their responsiveness to 'the vulnerability of particular groups and individuals.'

The constitution has also expresses provision for cultural rights which provides for the freedom of conscience. The freedom of conscience includes freedom of thought and of religion, freedom to change his religion or belief, and freedom either alone, or in community with other, and both

18 in public. Indigenous people's cultures are also linked to spiritual freedom. Culture 'may include ancestor worship, religious or spiritual ceremonies, oral tradition and rituals. To law guarantees this, by implication including indigenous peoples' spiritual ceremonies, oral tradition and rituals. The constitution recognizes culture as the foundation of the nation, the cumulative civilization of the Kenyan people and communities and the bedrock on which all

spheres of individuals and collectives are based . It provides that a '*person belonging to a cultural or linguistic community shall not be denied the right, with other*

Second Periodic Report to the UN Human Right Committee, CCPR/C/KEN/2004/2 th

27 September 2004 para 29.

The Constitution of Kenya, 2010, Article 44

members of that community to enjoy that person's culture and use that person's language; or form, join and maintain cultural and linguistic association and other

organs of civil society ' .

3.6. NATIONAL GENDER AND EQUALITY COMMISSION AND AFFIRMATIVE ACTION FOR MARGINALIZED COMMUNITIES

The Constitution also elaborates certain rights to be applied to certain vulnerable groups, including youth, persons with disability and the aged. In this respect, *Article 56* of the Constitution calls for the application of affirmative action programmes in favour of minorities and marginalized groups. Such programmes should be designed to ensure: their participation in governance; access to educational and economic activities; access to employment; development of their cultural values, languages and practices; and access to water, health services and infrastructure. Affirmative action is defined in *Article 260* of the Constitution as: '*any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom*'. 'While the aim of affirmative action is to enhance the participation of marginalized groups in decision-making, the gap between policy and practice is still wide, given the present reality of life for many minority groups in the country.

Article 21(3) marginalized groups, minorities and indigenous peoples have been recognized as having unique needs that must be addressed by the state. The Constitution also established the

National Gender and Equality Commission and in 2011 parliament passed legislation to

operationalize its work . The Commission is responsible for promoting, monitoring, and investigating issues related to gender and equality. Its work also includes auditing the status of

22 special interest groups including ‘minorities, marginalized persons and women . Importantly, the Commission’s mission is to ‘coordinate, implement and facilitate gender mainstreaming in national development.’ The Commission will advise on the development of the affirmative action provisions of the Constitution, which could have a substantial impact on minority and indigenous women. The model is good because experience elsewhere demonstrates that commissions of this type, with a combined mandate on gender and other minorities, are more likely to address the intersection of multiple forms of discrimination. This will enable the Commission to reach out and work with all those willing to make a contribution to gender and equality in the country and to ensure fairness for all people in Kenya through engagement with the government and private sector and monitoring compliance with the equality and freedom from discrimination principles as provided in the Constitution. Most Vulnerable and Marginalized Groups are trapped in a cycle of poverty that they attribute directly to decades of marginalization; they fear that they and their children will not be able to take advantage of gains in the new Constitution.

3.7. PARTICIPATION AND CONSULTATIONS

Participation and consultation entail, among other things, political participation, consultation in decision making and in the design and implementation of project affecting indigenous peoples. The Constitution also introduces devolved governance and decision-making that came into operation after the March 2013 elections. This gives Kenyans and marginalized communities greater say in determining

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Ibidarticle 44

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National Gender and Equality Commission Act (2011)

22

National Gender and Equality Commission Act (2011), art. 8.

The development initiatives in their local areas. This is an important development that is strengthened further by the constitutional requirement of public participation in governance, legislation, policy-making, financial management and other functions. Kenya embraces the right to self-determination that eliminates discrimination in political, legal and administrative institutions while recognizing and protecting special group rights.

Participation is a major theme of the Constitution of Kenya, appearing as a national value in

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Article 10 , as well as in a number of specific provisions, in relation to either certain public institutions or processes, or to certain sections of society. Kenya is also a party to a number of treaties that give rise to obligations to facilitate participation, which by virtue of *Article 2(6)* are to be regarded as part of Kenyan law

—under the Constitution. Other aspects of the Constitution are very relevant to participation, especially the civil and political rights of freedom of association, assembly and speech, and the right to information. The idea that democracy involves simply voting once every four or five years and then leaving everything to those elected is viewed as inadequate. In fact it can also be related to a decline in faith in that type of democracy, a decline in faith in politicians. In Kenya

the various stages of constitution making did indeed reveal both a lack of faith in political institutions and politics, but also a sense of marginalization on the part of many groups in society. Participation is seen as a way to involve people, to make them feel less marginalized, and also to make the public institutions and the politicians themselves more responsive, effective and accountable.

Devolution is also anticipated to enhance participation, perhaps in this sense, though it might be

24 in the second and third senses also. The objects of devolution include (Art. 174)(c) to give powers of self- governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them; (d) to recognize the right of communities to manage their own affairs and to further their development; (e) to protect and promote the interests and rights of minorities and marginalized communities; The second use of —participation refers to involvement in life generally, and the community. On the one hand the Constitution identifies as —marginalized communities those that have been, for various reasons, —unable to fully participate in the integrated social and economic life of Kenya as a whole, —remained outside the integrated social and economic life of Kenya as a whole or —experienced only marginal participation in the integrated social and economic life of Kenya as a whole (Art. 261). More positively, there are special provisions for these groups, including affirmative action, not only in terms of political representation. The rights specifically expressed in relation to various groups to participate in all aspects of life – such as youth (Art. 55), minorities and marginalized groups (Art. 56), and the elderly (Art. 57); in the case of persons with

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Constitution of Kenya, Article 10.

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Constitution of Kenya, Article 174. The objects of the devolution of government are—

- (a) to promote democratic and accountable exercise of power;
- (b) to foster national unity by recognizing diversity;
- (c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- (d) to recognize the right of communities to manage their own affairs and to further their development;
- (e) to protect and promote the interests and rights of minorities and marginalized communities;
- (f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;

(g) to ensure equitable sharing of national and local resources throughout Kenya;

(h) to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and ! (i) to enhance checks and balances and the separation of powers.

disability, there is no explicit recognition of general participation rights. Voting falls into this type of participation. Other relevant aspects are:

- *the State must promote and protect the diversity of language of the people of Kenya*
- *the State must promote the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.*
 - *that every person has the right to use the language of their choice.*
- *that members of a community have the right, with other members of that community to use the person's language*
- *Persons with disability have the right to use Sign language, Braille or other appropriate means of communication*
- *the rights given to everyone to participate in political life, through voting and political parties, association and organization*
 - *the rights given to everyone to express themselves, and to practice their religion and culture*

3.8. RIGHT TO EDUCATION

The Constitution of Kenya does realize that education is the key to empowering the most marginalized and vulnerable individuals in society. Marginalized individuals like the girl-child, pastoralists and persons with disabilities also tend to have the least possibility of acquiring an education; and the State continues to make conscious and concerted efforts on an affirmative basis to enable these individuals to best exploit their life-chances alongside their other Kenyan peers through primary, secondary and tertiary education. Investment in FPE and Free Day Secondary Education (FDSE) has remained a key flagship programme, coming among the top five recipients of public expenditure in the last five years. Since the introduction of FPE enrolment has improved dramatically and a combination of other measures have been undertaken to enhance progressive realization of this right.

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The Constitution in Article 43 (1) (f) provides that every person has the right to education. This right is reiterated in Article 53 (1) (b) which provides that children have the right to basic and compulsory education; Article 54 (1) (b) provides that persons with disabilities have the right to access educational institutions; Article 55 (a) provides that the State shall ensure that youth have access to relevant education and training; and Article 56 (b) provides that the State shall provide minorities and marginalized groups with special opportunities in education.

3.9. LAND, NATURAL RESOURCE AND ENVIRONMENT AND **MARGINALIZED PEOPLE**

The land policy and legislative framework has in the past been managed within multiple laws and regulations. Policy and legal arrangements on land again have shifted dramatically since 2010. The Constitution of Kenya has redefined land ownership under three categories: *public land, private land and community land* (Chapter Five of the Constitution). Kenya has a new land policy, which together with the Constitution forms the bedrock of new land laws that have been passed since 2010. These new laws include: the Land Act (No. 12 of 2012) and the Land Registration Act (No. 3 of 2012). In February 2013, the Land Commission was made operational with key functions such as managing public land, advising on registration of land, investigating present or historical land injustices, and undertaking land tax assessments. A key aspect of judicial reform involved establishing the Land and Environment Court to focus specifically on land and environmental issues – Environment Land and Court Act (No. 19 of 2011). These initiatives will set the pace for long-term reforms aimed at ensuring equitable access to land for all Kenyans including the vulnerable and marginalized communities.

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The Constitution of Kenya has acknowledged that issues of minorities are closely linked to land rights and has been well reviewed to address the issues. In this regard, the constitution of Kenya deals with land as property and provides that no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under stipulated grounds which include public interest. It provides for the payment of full and prompt compensation in the event of such acquisition.

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Chapter five of the Kenya constitution classifies land as public, community and private. Under Article 63, community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. Community lands include those lawfully held in the name of group representatives, lands lawfully transferred to a specific community and any other land declared to be community land by any Act of parliament. It will also include lands lawfully held, managed or used by specific communities as community forests, grazing areas or shrines and ancestral lands and lands traditionally occupied by hunter gatherer

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communities . However, there are several caveats. Community land shall not be disposed or used except terms of legislation specifying the nature and extent of members of each community individual and collectively. This Article will not also be operationalized until

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parliament passes legislation within the next five years to give it effect. Further, under Article 66, the state may still regulate the use of any land in the interest of defence, public safety, public order, public morality, public health or land use planning. The administration of community land rests with Community. Collective rights of the community are recognized under Community

Land Act, a main concern of many indigenous people. This is because there is strong move to individualize land titles.

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The new constitution also obliges the state to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure equitable sharing of natural resources. The state shall also protect and enhance intellectual property rights and indigenous knowledge of biodiversity and genetic resources of the communities; encourage public participation in the management, protection and conservation of the environment. This is aimed at enabling the participation of the indigenous communities in the management of the forest and wildlife resources.

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Constitution of Kenya, Article 63, (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

(2)Community land consists of--

- (a)land lawfully registered in the name of group representatives under the provisions of any law;
- (b)land lawfully transferred to a specific community by any process of law;
- (c)any other land declared to be community land by an Act of Parliament; and
- (d)land that is--
 - (i)lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
 - (ii)ancestral lands and lands traditionally occupied by hunter-gatherer communities; or
 - (iii)lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62 (2).

(3)Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.

(4)Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each

community individually and collectively. (5)Parliament shall enact legislation to give effect to this Article.

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3.10. STATUS OF INTERNATIONAL LAW AND RATIFICATIONS

Prior to the promulgation of the 2010 Kenyan Constitution, the use of international law in the Kenyan domestic legal jurisdiction was limited as Kenya followed the dualist system of transformation of treaties into the domestic legal system through the enactment of domesticating legislation. However, with the promulgation of the Constitution, the system of transformation has been replaced by a system of direct incorporation, where international human rights law norms in ratified treaties are expected to form an integral part of sources of law in Kenya as per article 2(6) of the Constitution. This article has proposed that, in order to give international human rights law a prominent place in the Kenyan legal system and to ensure domestic accountability for the realization of Kenya’s international human rights obligations, article 2(6) of the Constitution must be interpreted in a progressive manner to give international human rights law a higher status hierarchically as compared to domestic legislative Acts. To achieve this, it has been proposed that Kenya adopts an interpretation that accords international human rights law norms and infra-constitutional but supra-legal hierarchical status in the Kenyan domestic system. Article 2(5) of the Constitution allows that “the general rules of international law shall form part of the law of Kenya.” The implication is that it is now possible for a Court to recognize so-called “general rules” without having to resort to some written law. Article 2(6) in turn provides that “Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.” Hence once Kenya formally agrees to be bound by the terms of a treaty qua state, that acceptance simultaneously produces consequences at the domestic level. The main question then is how a treaty becomes ratified under Kenyan law. With the Constitution and the statute, Kenya has fully embraced monism insofar as domestic effect of international law is concerned

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The following are some of the key human rights treaties to which Kenya is party.

Instrument	Date of deposit of ratification/accession
<u>International Covenant on Civil and Political Rights (ICCPR)</u>	1 May 1972
<u>International Covenant on Economic, Social and Cultural Rights (ICESCR)</u>	1 May 1972
Optional Protocol to ICCPR	-

<u>International Convention on the Elimination of All Forms of Racial Discrimination (CERD)</u>	13 September 2001
Art 14 of CERD	-
<u>Convention on the Elimination of All</u>	9 March 1984

! Forms

<u>of Discrimination against Women</u>	
(CEDAW) Optional Protocol to CEDAW	-
<u>Convention on the Rights of the Child</u>	30 July 1990
(CRC) Optional Protocol to CRC- Armed Conflict	28 January 2002
Protocol to CRC - Sexual Exploitation	
Convention on the Prevention and Punishment of the Crime of Genocide	-
Slavery Convention 1927	-
Supplementary Slavery Convention 1956	
Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or punishment(CAT)	21 February 1997
Art 22 of CAT	-
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families !	-
(CMW) Art 77 of CMW	
Convention on Biological Diversity	26 July 1994

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Relevant ILO Conventions

Convention	Date of ratification
ILO 29 (Forced Labour)	13 January 1964
ILO 105 (Abolition of Forced Labour)	13 January 1964
ILO 100 (Equal remuneration)	07 May 2001
ILO 111 (Discrimination in Employment and Occupation)	07 May 2001

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ILO 107 (Indigenous and Tribal Populations)	-
ILO 169 (Indigenous Peoples)	-
ILO 138 (Minimum Age)	09 April 1979
ILO 182 (Worst Forms of Child Labour)	07 May 2001

AU instruments

African Charter on Human and Peoples' Rights	23 January 1992
Convention Governing the Specific Aspects of Refugee Problems in <u>Africa</u>	! 23 June 1992
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	! -
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	! 4 February 2004
African Charter on the Rights and Welfare of the Child	! 25 July 2000
Cultural Charter for Africa	28 October 1981
Convention on Nature and Natural Resources, 1968	! 12 May 1969

Revised Version of Convention on Nature and Natural Resources, 2003	! -
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4.4.1 ILO Convention No. 169

The newer ILO Convention No. 169 and the 2007 UN Declaration on the Rights of Indigenous Peoples explicitly move away from top-down approach and emphasize the unique land and resource rights of indigenous peoples together with their right to autonomy and preservation of their culture. The preamble to ILO Convention No. 169 states its intention to remove “the assimilationist orientation of the earlier standards”. Article 1 defines tribal and indigenous peoples as peoples residing in independent countries, and whose social, cultural and economic conditions and customs distinguish them from other national groups. Article 1(2) includes self-identification as a criterion, which shows sensitivity to the diversity of indigenous peoples.

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Article 7, in particular, embodies the move to recognizing autonomy:

“The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual wellbeing and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”

A past focus on mere collaboration has changed to direct participation in national development. However, in some ways, it is still lacking. Article 13 affirms respect for “the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands”. These clauses and reformulations represent a positive step forward. However, with more than 100 amendments to the original draft it ultimately reflects a compromise between diverging interests.

3.11. UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on Thursday, 13 September 2007, by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, **Kenya**, Nigeria, Russian Federation, Samoa and Ukraine). The Declaration sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. It also "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their

own needs and aspirations. " It "prohibits discrimination against indigenous peoples", and it "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development." The goal of the Declaration is to encourage countries to work alongside indigenous peoples to solve

27 global issues, like development, multicultural democracy and decentralization . According to Article 31, there is a major emphasis that the indigenous peoples will be able to protect their cultural heritage and other aspects of their culture and tradition, which is extremely important in preserving their heritage. The elaboration of this Declaration had already been recommended

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by the Vienna Declaration and Programme of Action.

The text recognizes the wide range of basic human rights and fundamental freedoms of indigenous peoples. Among these are the right to unrestricted self-determination, an inalienable collective right to the ownership, use and control of lands, territories and other natural resources, their rights in terms of maintaining and developing their own political, religious, cultural and educational institutions along with the protection of their cultural and intellectual property. The Declaration highlights the requirement for prior and informed consultation, participation and consents in activities of any kind that impact on indigenous peoples, their property or territories. It also establishes the requirement for fair and adequate compensation for violation of the rights recognised in the Declaration and establishes guarantees against ethnocide and genocide. The Declaration also provides for fair and mutually acceptable procedures to resolve conflicts between indigenous peoples and States, including procedures such as negotiations, mediation, arbitration, national courts and international and regional mechanisms for denouncing and examining human rights violations.

African Case On Indigenous

In February 2010, the African Commission on Human and Peoples Rights decided a complaint concerning the ancestral land rights of the Endorois indigenous community of Kenya. The complaint alleged that the evictions severed the Endorois' spiritual, cultural and economic ties to their lands in violation of national law, Kenyan Constitutional provisions, and rights guaranteed in the African Charter, including the right to property, the right to free disposition of natural resources, the right to religion, the right to cultural life and the right to development. The applicants, the Center for Minority Rights Development and Minority Rights Group International (CEMIRIDE) on behalf of the Endorois Welfare Council, invoked numerous rights in the 1981 African Charter on Human and Peoples' Rights. In assessing the claims presented, the African Commission interpreted the Charter in the light of general human rights law, relying in part on the 1997 United Nations Declaration on the Rights of Indigenous Peoples and other relevant UN texts, but also utilizing the innovative jurisprudence on indigenous rights of the Inter-American human rights system.

The African Commission on Human and Peoples' Rights insisted that priority be afforded to the rights of the indigenous Endorois over the Kenyan government's ecological needs. The complaint alleged that the Government of Kenya forcibly removed the Endorois from their ancestral lands without proper prior consultations or adequate and effective compensation when the government created game reserves in 1973 and 1978.

Parts of the Endorois' ancestral land was allegedly demarcated and sold by the state to third parties and concessions for ruby mining were granted to a private company. After first unsuccessfully contesting admissibility of the complaint and the characterization of the Endorois as an indigenous group, the government asserted that its creation of the game reserves was for purposes of conserving the environment and wildlife and was necessary to conserve some of the areas which had been threatened by encroachment due to modernisation. The government did not deny that the Endorois' had been removed for this purpose. The case shows how many claims result in an adjudicating body balancing two rights. Turning first to the claim of religious liberty, the African Commission agreed that in some situations it may be necessary to place limited restrictions on a right protected by the African Charter, but the *raison d'être* for a particularly harsh limitation on the right to practice religion, such as that experienced by the Endorois, must be based on exceptionally good reasons. It is for the respondent state to prove that such interference is not only proportionate to the specific need on which it is predicated, but is also reasonable. The African Commission was "not convinced that removing the Endorois from their ancestral land was a lawful action in pursuit of economic development or ecological protection". Instead, it found that allowing the Endorois to use the land to practice their religion would not detract from the goal of conservation or developing the area for economic reasons.

Permanent Forum on Indigenous Issues http://en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples#cite_ref-FAQ_1-0

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United Nations adopts Declaration on Rights of Indigenous Peoples United Nations News Centre, 13 September 2007.

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Vienna Declaration and Programme of Action, Part II, paragraph 29

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The government also argued that the game reserve under the wildlife laws of Kenya has the objective of ensuring that wildlife is managed and conserved to yield – to the nation in general and to individual areas in particular – optimum returns in terms of cultural, aesthetic and scientific gains, as well as economic gains incidental to proper wildlife management and conservation. The African Commission rejected these justifications, concluding that the Endorois property rights were encroached upon by the expropriation and the effective denial of ownership of their land. The Commission pointed out that encroachment on property rights in it is not a violation of Article 14 of the Charter, as long as it is “in the interest of public need or in the general interest of the community” and “in accordance with appropriate laws”.

According to the Commission, the legitimate aim could have been accomplished by alternative means proportionate to the need. The evidence demonstrated that the community was willing to work with the Government in a way that respected their property rights in creating the game reserve. To instead deny the Endorois all legal rights in their ancestral land and to evict them violated “the very essence” of the right to property and could not be justified with reference to “the general interest of the community” or a “public need”. In fact, carrying out forced evictions was found to constitute a violation of Article 14’s requirement that limiting these rights should be done “in accordance with the law”. This provision must mean, at the minimum, that both Kenyan law and the relevant provisions of international law are respected. Two further tests had to be met in order for a limitation on the right to property to be “in accordance with the law”: consultation and compensation. Since no effective participation was allowed for the Endorois, no reasonable benefit was enjoyed by the community and no prior environmental and social impact assessment was carried out, the absence of the three elements was held “tantamount to a violation of Article 14” under the Charter. It also amounted to a violation of the right to development. The Commission thus found that the cultural activities of the Endorois community pose no harm to the ecosystem of the game reserve and the restriction of cultural rights could not be justified, especially as no suitable alternative was given to the community.

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The international cases that have held in favour of human rights and against a state’s environmental measures have generally accepted that environmental protection is a legitimate

aim in the public interest. The rejected measures have been found to overreach in achieving this aim, however, in most instances because the tribunal appears convinced that the individuals or groups involved will themselves be adequate stewards of the natural resource in question. This is especially the case when indigenous peoples are involved.

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3.12. CHALLENGES IN CONSTITUTIONAL IMPLEMENTATION

Kenya's 2010 Constitution provides a rich and complex array of civil and political rights, socioeconomic rights and collective rights that are of relevance to indigenous communities. While important, constitutional provisions alone are not enough. They require a body of enabling laws, regulations and policies to guide and facilitate their effective implementation. The Kenyan Parliament has enacted various laws and regulation touching on indigenous people. In the main, these laws are of general application and will have a bearing on the way in which the state exercises power in various sectors, some of them of fundamental importance to indigenous communities.

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Laws relating to reform of the judiciary, such as the Supreme Courts Act as well as the Vetting of Judges and Magistrates' Act, are already transforming the way in which the judiciary is dealing with claims presented to it by local communities. The revamped judiciary is already opening its doors to the poorest and hitherto excluded sectors of Kenyan society. Indicative of this changed attitude on the part of the judiciary - at least at the highest level – is the fact that the deputy president of the Supreme Court met with elders from the Endorois indigenous people in July 2011 and assured them of the possibility of supporting the implementation of the African Commission's decision in favor of the community. More substantively, indigenous groups are already using the revamped judiciary to ventilate their rights. For example, in *Ibrahim Sangor Osman et al. and the Hon. Minister of State for Provincial Administration & Internal Security*, the High Court in Embu awarded a global sum of Kshs. 224,600,000 (US\$ 2,670,750), equating to US\$ 2,378, to each of the 1,123 evictees from Medina within Garissa town of Northern Kenya as damages following their forced eviction from their ancestral land within the jurisdiction of the Municipal Council of Garissa. All the petitioners were Kenyan Somalis. The court also declared that the petitioners' fundamental right to life (Article 26), right to inherent human dignity and security of the person (Articles 28 & 29), right to access information (Article 35), economic, social and specific rights (Articles 43 & 53 (1) (b) (c) (d) and the right to fair administrative action (Article 47) had been violated by virtue of the eviction from the alleged public land and the consequent demolition of property by the Kenya police.

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Additionally, the adoption of a law establishing the Environment and Land Court is important for indigenous communities given that the Court will “hear and determine disputes relating to environment and land, including disputes: (a) relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) relating to compulsory acquisition of land; (c) relating to land administration and management; (d) relating to public, private and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land.” While most indigenous communities are yet to become aware of the existence of this court, it will be an important arena for determining the land rights challenges of indigenous communities such as the Ogiek, which have remained unaddressed for decades.

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In the main, though, constitutional implementation has so far not been very successful to take cognizance of indigenous peoples' core concerns. The Election Act, as well as the Political Parties Act, has failed to clearly articulate mechanisms for the political participation of indigenous peoples in terms of Article 100 of the Constitution. The constituency boundary reviews that started in 2011 indicate a limited commitment on the part of the State to implement important court decisions that have a bearing on indigenous peoples' representation, such as that of Il-Chamus and Ogiek. Conversely, attempts to implement such decisions following limited consultation of indigenous communities have tended to exacerbate conflicts between different indigenous groups.

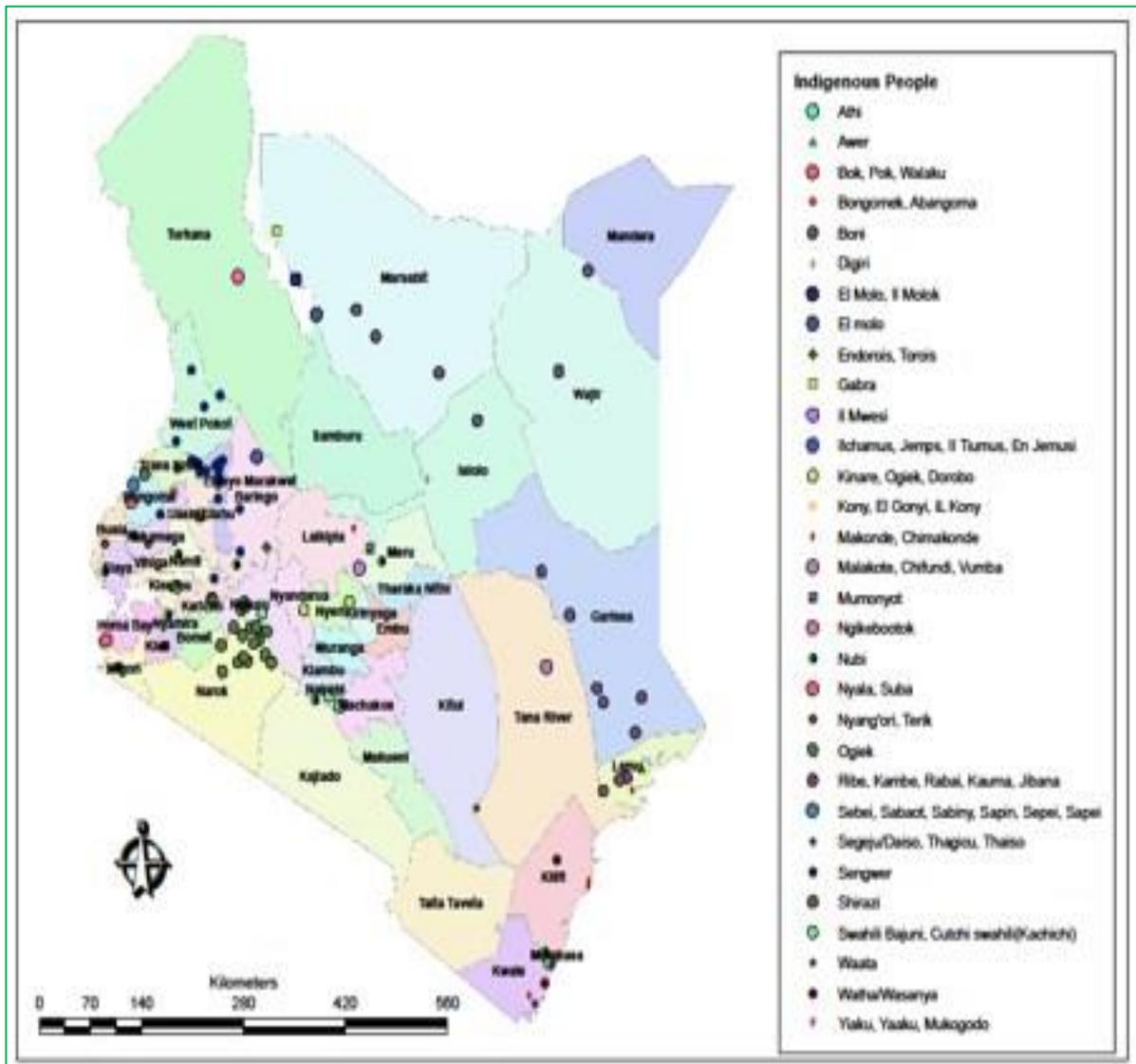
The new Revenue Allocation Commission, mandated by Article 204 of the Constitution to earmark 0.5% of annual state revenue to the development of marginalized areas, in addition to 15% of national revenue for direct transfer to county governments, has yet to take a specific interest in the concerns of indigenous communities. In implementing Article 59 of the Constitution, the government has split the Equality and Human Rights Commission into three: the Human Rights Commission, the Commission on Administrative Justice and the Gender Commission. These bifurcated human rights institutions may serve to either provide increased opportunities for indigenous peoples' rights activism or to weaken the collaboration hitherto established with the previous Kenya National Commission on Human Rights (KNCHR).

Table 1. List of Vulnerable and Marginalized Groups as per the New Kenyan Constitution;

Source: ERMIS Africa Ethnographic Survey of Marginalized Groups, 2005-2012

Name	Other Names Usually	Estimated Population	30 Livelihood	Administrative Location Counties
1. Sengwer	!	50,000	HG/Farmers	Trans-Nzoia; Uasin-Gishu; West Pokot; Keiyo-Marakwet
2. Ogiek	Dorobo	40,000	HG/Farmers	Nakuru; Baringo; Uasin Gishu; Bomet; Kericho; Narok; Nandi
3. Waatha	Wasanye	13,000	HG/Farmers	Kwale; Tana River; Marsabit, Kilifi
4. Aweer	Boni	7,000	HG	Lamu, Tana River
5. Yiaaku	Dorobo	4,000	HG/Farmers	Laikipia
6. El Molo		2,900	Fishing	Marsabit, Samburu
7. Ilchamus		33,000	Fishing/Farmers/ Livestock Keeper	Baringo
8. Endorois				
9. Borana	Dorobo	60,000	Fishing/Farmers/ Livestock Keeper	Baringo, Laikipia
10. Gabra				
11. Rendille		136,936	Pastoralists	Marsabit, Wajir
12. Turkana		31,000	Pastoralists	Marsabit, Samburu
13. Pokot		62,000	Pastoralists	Marsabit, Samburu
14. Maasai		1,008,463	Pastoralists	Turkana, Baringo,

	62,000	Pastoralists	Laikipia
	666,000	Pastoralists	West Pokot /Baringo Narok, Kajiado



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4. POTENTIAL POSITIVE AND NEGATIVE IMPACTS OF KYEOP ON VULNERABLE & MARGINALISED YOUTH

4.1. POTENTIAL BENEFICIAL IMPACTS

Critical to the determination of potential adverse impacts is an analysis of the relative vulnerability of, and risks to, the affected vulnerable and marginalized communities given their distinct circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to other social groups in the communities, regions, or national societies in which they live. The potential beneficial impacts of the KYEOP proposed sub project investments to the vulnerable and marginalized communities include among others:

- Enhanced knowledge and skills (technical capacity) to engage in productive sectors of the economy

- Provision of employment resulting into increased incomes
- Enhanced civil awareness /empowerment among VMGs enabling them to know their rights and claim their entitlements
- Reduced retrogressive cultural practices such as FGM and enhanced cultural values that preserve the unique communities
- Increased social- economic participation of VMGs at county and national level
- Improved leadership and organizational capacity for youth among VMGs

4.2. ADVERSE IMPACTS AND MITIGATION MEASURES

The project has hardly any adverse impacts to the beneficiaries. Some of the negative effects to VMGs include:

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- High chances of family breakdown due to limited attention owing to busy employment schedules that require one to be away from the family. There will be need for a sensitization on a balanced attention between work and family.
- Increased exposure to alcohol, gambling and other “social vices”. There will be need to sensitize beneficiaries on the negative effects of drugs and substance abuse.
- High chances of beneficiary communities being rendered extinct due to intermarriages and assimilation to other dominant communities. There will be need to sensitize the beneficiaries on the need to adhere to their cultural heritage.
- Likelihood of loss of livelihood since they rely on traditional ways of for nourishment and survival. The beneficiaries will be introduced to decent and sustainable means of livelihood.
- Social disruption of the beneficiaries from their traditional way of life. They will be oriented on the modern way of life.
- In some areas there is existing tensions between VMGs and dominant communities like Turkana and Borana, Wakifundi and Wadigo and Ogiek of Mau and Kipsings and the project may provide and opportunity for such tensions to flare up into open conflicts

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Potential Adverse Project Impacts and Mitigation Measures

Impact	Possible Actions	Responsibilities and Issues
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High chances of family breakdown due to limited attention owing to busy employment schedules that require one to be away from the family	Sensitization on a balanced attention between work and family and life skills training	Project Executing Agencies (PEA)
High chances of beneficiary communities being rendered extinct due to intermarriages and assimilation to other dominant communities.	Sensitize beneficiaries on the need to adhere to their cultural heritage and national integration	Project Executing Agencies (PEA)
Likelihood of loss of livelihood since they rely on traditional ways of for nourishment and survival.	Beneficiaries will be introduced to decent and sustainable means of livelihood.	Project Executing Agencies (PEA)
Social disruption of the beneficiaries from their traditional way of life.	Beneficiaries will be oriented on the modern way of life.	Project Executing Agencies (PEA)
Tension between VMGs and dominant communities may flare up into conflicts	Implementing Agencies will be sensitized on conflict sensitive project implementation	Project Executing Agencies (PEA)

5. FRAMEWORK FOR ENSURING FREE, PRIOR, AND INFORMED CONSULTATION

OP 4.10 requires that a process of free, prior, and informed consultation, with the affected vulnerable and marginalized youth, of the potential positive and adverse effects of the project being undertaken. It is unlikely that proposed investments will result in significant adverse impacts for vulnerable and marginalized communities. However, the O.P 4.10 and good practice requires that the VMGs/PAPs be informed of the project and consulted prior to project implementation.

Free, prior and informed consultation (FPIC) refers to a process whereby affected vulnerable and marginalized communities, freely have the choice, based on sufficient information concerning the benefits and disadvantages of the project and how these activities occur.

This VMGF establishes an appropriate gender and inter-generationally inclusive framework that provides opportunities for consultation each stage of project preparation and implementation with the affected VMGs.

Box 1. The Elements of Free, Prior and Informed Consultation

- Free – people are able to freely make decisions without coercion, intimidation or manipulation
- Prior – sufficient time is allocated for people to be involved in the decision-making process before key project decisions are made and impacts occur
- Informed – people are fully informed about the project and its potential impacts and benefits, and the various perspectives regarding the project (both positive and negative)
- Consultation – there are effective uses of consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples' communities and their local conditions and, in designing these methods, gives special attention to the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits.

Adapted from UN Permanent Forum

Free and prior informed consultation of the vulnerable and marginalized communities will be conducted at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project.

5.1. COMPONENT INVESTMENT SCREENING

Screening of all the KYEOP project investments will be a mandatory requirement prior to implementation to determine if vulnerable and marginalized people are included.

Early in sub project preparation, screenings to determine whether VMGs are present in every county, or have collective attachment to, the project area. In conducting this screening, the technical judgment of qualified social scientists with expertise on the social and cultural groups in the project area will be sought. Consultations with the VMGs concerned and the executing agency will be undertaken.

However, the subprojects that are selected may not impact the entire group or it may impact non-vulnerable group living in their midst (several VM groups appear to be dispersed among other ethnic groups). In view of which it is necessary to carefully identify who will be adversely affected by subprojects which may well turn out to be part of a VM group or parts of several different groups only some of which are vulnerable and marginalized. This will be done during the screening phase of the sub project implementation.

5.2. PREPARATION OF SOCIAL SCREENING FORM

The KYEOP/PCU Social assessment specialists will prepare the screening forms in collaboration with the executing agency for the specific component considered for implementation. A sample screening form is shown in *annex 1*. The OP 4.10 of the World Bank suggests “using the term ‘indigenous peoples’ in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following

characteristics in varying degrees:!

- *Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;*
- *Collective attachment to geographically distinct habitats or ancestral territories in the operational area and to the natural resources in these habitats and territories;*
- *Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and*
- *An indigenous language, often different from the official language of the country or region.”*

Therefore, during the screening exercise, while referencing the GOK recognition of VMGs, the above stated definition and characteristics of VMGs according to the Bank will be used to screen and determine if the VMGs meet the threshold for O.P 4.10. If the results show that there are VMGs in the zone of influence of the proposed component, a Social Assessment (SA)/analysis will be planned for those areas.!

Screening Criteria: The KYEOP/PCU and Consultants responsible for component preparation and implementation will visit all VMGs settlements near the selected subproject areas, which may be affected and influenced by the components. Public meetings will be arranged in selected communities by the KYEOP /PCU with the VMGs and their leaders to provide them information about the component and take their views on the component. The consultant will be a social scientist with knowledge of various VMG in the project areas.

During this visit, the screening team mentioned above will undertake screening of the VMGs with the help of the youth leaders, community leaders, FBOs, CBOs and sub-county youth development officers. The screening will cover the following aspects:

- 1) Name(s) of VMGs in the area;
- 2) Total number of VMGs in the area;
- 3) Percentage of VMGs to that of total area/locality population
- 4) Number and percentage of VM youth in the project area.

Social Assessment Process

If, based on the screening, the KYEOP/PCU concludes that VMGs are present in, or have collective attachment to, the project area; the executing agency of that component will undertake a simple social assessment to evaluate the project's potential positive and adverse effects on the VMGs, and to examine project alternatives where adverse effects may be significant. The breadth, depth, and type of analysis required for the social assessment will be proportional to the nature and scale of the proposed project's potential and effects on the Vulnerable and Marginalized youth present. The KYEOP /PCU will prepare detailed Terms of Reference (Tore) for the social assessment study once it is determined that VMGs are present in the project area. ***Annex 4 contains draft sample ToRs for the development of a VMGFs.!***

The social assessment will ensure free, prior and informed consultation with the VMGs during project planning and implementation. It will ensure that mitigation of potential adverse impacts, deriving from project activities, will be based on a participatory and consultative process acceptable to the World Bank and the VMGs themselves.

Project investments will comply with the following other than social screening namely;- • *Mitigate any possible adverse impacts*

- *Be socially and culturally acceptable to the VMGs and economically feasible Be institutionally feasible: Local institutionally capacity should be adequate to take up activities*
- *Be supported by the VMGs and other communities through participatory consultation*

- *Be supported by training and capacity building if necessary to enhance VMGs and community development*

5.3. METHODOLOGY OF SOCIAL ASSESSMENT

Combined qualitative and quantitative analysis method

Usually social Assessment (SA) is comprehensive and involves complex social issues quantitative analysis is preferred, such as for population structure, educational level and socioeconomic indicators. These indicators are analyzed arithmetically and evaluated objectively. Qualitative indicators that cannot be quantified should be analyzed and evaluated through a combination of qualitative and quantitative analysis, but primarily qualitative analysis. However, in this case the impacts are expected to be minimal and the social assessment/analysis will be in line with the scope of impacts identified and indeed will focus more on how to enhance coverage to more VMGs. !

Comparative analysis method

The comparative analysis method is designed to find out the social profile of a project area in the absence of the project, and the impacts of the project on the area after its completion, thereby identifying the natures and degrees of different benefits and impacts.

Stakeholder analysis method

Stakeholders refer to all parties directly or indirectly interested in the Project, and affecting the success of the Project directly or indirectly. The stakeholder analysis method identifies different stakeholders involved in the Project and prepares a stakeholder table, detailing expectations for the Project roles and responsibilities for successful project implementation.

Participatory assessment

Participatory assessment is a method that involves all stakeholders in SA. The key points include listening to all stakeholders' opinions respecting all participants, showing interests in their knowledge, speeches and behaviors, and encouraging them to share their knowledge and ideas. Through a semi-structured survey and whole-process participation, this method will make employment and opportunities programs, measures for mitigating social risks, and other programs concerning the affected persons' immediate interests more operable and acceptable.

Other methods

A number of data analysis tools and methods may be used in undertaking SA, including: a) socioeconomic survey; b) institutional analysis; c) social gender analysis; d) social impact analysis; e) poverty analysis; and f) social risk assessment.

5.4. SURVEY/DATA GATHERING METHODS

The process of gathering baseline information on training/technical skills and employment demographic social, cultural, and political characteristics of the affected VMGs, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend will be through a *participatory rural appraisal mapping exercise* involving the VMGs in the proposed project investment area.

Mapping the community resources where the project investments are targeted will determine the sphere of influence, how the vulnerable and marginalized communities utilize the said resources so as to identify how the project can enhance utilization of these resources.

Regarding customary rights of VMGs to use of common resources, the mapping will provide information on (i) location and size of the area and condition of resource, (ii) primary users, including those that belong to VMGs that currently use or depend on these common resources, (iii) secondary users and the types of uses they make, (iv) the effects of these uses on the VMGs, and (v) mitigation measures of adverse impacts if any.

The following survey methods should be used mainly in SA of the VMGs:

Literature review: is intended to learn the history and background of the project, and the social and economic development of each project area, which is an important basis for in-depth field survey. The SA team should collect feasibility study reports, plans and other documents related to the Project according to the Bank policies of Indigenous People.

1. **Statistics:** social and economic development statistics of the sub project area; census and

sampling population survey data; statistics on social relief.

2. **Review of Legal Framework:** A review, on a scale appropriate to the project, of the legal and institutional framework applicable to VMGs.

3. **Focus Group Discussions (FGD):** Should be held with officials and technicians of competent authorities aimed to learn their attitude to, ideas and suggestions for the project.

5.5. STAKEHOLDER IDENTIFICATION

All the interested and affected stakeholders will be identified with specific focus of the vulnerable and marginalized groups and will include an elaboration of a culturally appropriate process for consulting with the VMGs at each stage of project preparation and implementation. A stakeholder mapping exercise will be conducted for each of the proposed investment where there is a likelihood of VMGs being affected and the stakeholder mapping process will ensure that all the interested and affected stakeholders are identified and included in the social assessment process including impact identification and mitigation.

5.6. STAKEHOLDER CONSULTATION

Once screening has been conducted and it's established that the vulnerable and marginalized youth are present, the relevant stakeholders will be used to inform the vulnerable and marginalized youth about the proposed project. The stakeholders in collaboration with the agencies within KYEOP implementing the project will facilitate and arrange for consultative meetings with vulnerable and marginalized youth. In these meetings there will be free and prior information about the proposed project, and potential adverse impacts of the project on the marginalized and vulnerable youth.

Such consultation will include use of indigenous languages, allowing time for consensus building, and selecting appropriate venues to facilitate the articulation by VMGs of their views and preferences. Representatives of the vulnerable and marginalized groups in collaboration with the local

administration in the sub project area will select a venue that is considered by way of mutual consensus as appropriate.

Engagement will be based on honest and open provision of information, and in a form that is accessible to VMGs. Engagement will begin at the earliest possible stage, prior to substantive on-the-ground activity implementation.

Good practice community engagement, in the context of Vulnerable and Marginalized Groups and projects, will aim to ensure that:

- *Vulnerable and Marginalized Groups have an understanding of their rights*
- *Vulnerable and Marginalized Groups are informed about, and comprehend the full range (short, medium and long-term) of social impacts – positive and negative – that can result from the proposed investment*
- *Any concerns that Vulnerable and Marginalized Groups have about potentially negative impacts are understood and addressed by the executing agency for KYEOP*
- *Traditional knowledge informs the design and implementation of mitigation strategies and is treated respectfully*
- *There is mutual understanding and respect between the KYEOP/PCU and the Vulnerable and Marginalized Groups as well as other stakeholders*
- *Vulnerable and Marginalized People aspirations are taken into account in project planning so that people have ownership of, and participate fully in decisions about, community development programs and initiatives*
- *The project has the broad, on-going support of the Vulnerable and Marginalized Groups*
- *The voices of all in the Vulnerable and Marginalized Groups are heard; that is, engagement processes are inclusive.*

Impact Identification Including Long Term

The assessment of project beneficial and adverse impacts will be conducted based on free, prior, and informed consultation, with the affected Vulnerable and Marginalized Groups (VMGs), on the potential adverse and positive effects of the investment. In a participatory process the determination of potential adverse impacts will entail an analysis of the relative vulnerability of, and risks to, the affected VMGs given their distinct circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to other social groups in the communities, counties, or national societies in which they live.

Determination of Mitigation Measures

The identification and evaluation, based on free, prior, and informed consultation with the affected VMGs, of measures necessary to avoid adverse effects, or if such measures are not feasible, the identification of measures to minimize, mitigate, or compensate for such effects, and to ensure that the VMGs receive culturally appropriate benefits under the project will be conducted in a participatory manner. The use of the above mentioned methods in the SA process will be used in determining mitigation measures. Mitigation measures may involve compensation as well and typical mitigation actions or compensations

Development of strategies for participation of Vulnerable and Marginalized Groups

Participation will be through meetings with the different groups of the vulnerable and marginalized community's youth primarily to ensure that;

- a) The VMGs youth are aware of the project and its impacts
- b) Aware of negative impacts if any
- d) Provide support to VMG participation arrangements in the project
- e) Are aware of the GRM and
- f) Provide broad community support

Strategies for gender and People with Disability (PWD) inclusivity

While it is important to acknowledge that there are major achievements made in two-third gender and PWDs inclusivity, it should not automatically be assumed that public projects will achieve the two thirds rule Therefore deliberate efforts need to be put in place to ensure participation of all. In particular, the KYEOP/PCU and its executing partners need to be sensitive to the above inclusivity in the decision-making process, such as women and young people.

During the Social Assessment, where it is determined that decision-making structures exclude gender and PWDs inclusivity, it may be necessary to obtain input from these groups by less direct means (for example, and where possible, via community needs surveys and baseline Studies, or through informal discussions with small groups).

Overall KYEOP and executing agencies will have to consider and apply the following strategies in order to avoid many of these problems associated with VMGs and specifically the KYEOP should;-:

- *Confer with the VMGs at the outset on how they wish to be engaged*
- *Understand and respect local entry protocols as they relate to permission to enter a community and access traditional lands*
- *Commit to open and transparent communication and engagement from the beginning and have a considered approach in place*

- *Ensure that all representatives of the KYEOP and executing partner agencies (including third party contracted parties) are well briefed on local customs, history and legal status, and understand the need for cultural sensitivity*
- *Regularly monitor performance in engagement*• *Enlist the services of reputable advisers with good local knowledge.*

KYEOP executing partner agencies will be present at initial meetings wherever possible to meet with the stakeholders to demonstrate respect and to build long-term trust and relationships with communities. These meetings will review;

1. Time frames to make decisions throughout the lifetime of the project, taking into consideration logistics, local customs, commercial requirements and time needed to build trusting relationships should be pursued. Ensure that it is clear how the timetable for involvement links into when project decisions are made. Ideally VMGs initial involvement should be sought well in advance of commencement or authorization of activities, taking into account VMGs own decision-making processes and structures.
2. Mechanism to resolve disputes or grievances in order to proactively address the likelihood that differences of opinion will arise.
3. Terms and conditions for the provision of any ongoing youth support with affected vulnerable and marginalized stakeholders and any associated reciprocal obligations.
4. Record the process and decisions reached where VMGs are involved, including the results of any monitoring or reviews, to provide a record for on who may be affected by the decisions, and to ensure transparency in the decision-making process. Support the communities' capacity to engage indecision-making: for example, by providing access to independent expert advice, capacity building, facilitation and mediation, or involving external observers.

Capacity Building

During the vulnerable and marginalized peoples 'orientation and mobilization process, the interest, capacity and skills of the VMGs and their institutions, CBOs and NGOs for youth employment and opportunities, including social screening, will be assessed. If required the VMGF proposes the provision of training for the VMGs in among others resource mapping, record keeping, basic account keeping and monitoring and evaluation.

The staff within the KYEOP/PCU will provide training for the partner implementing agencies in social assessment, implementation of the VMGF with special attention to developing their knowledge on VMGF background, history and areas of concern as well as their skills for community orientation, free, prior and informed consultative planning, PRA tools and techniques.

Bank Decision on Sub Project Investments

In deciding whether to proceed with the project, the KYEOP will then ascertain, on the basis of the social assessment and the free, prior, and informed consultation, whether the affected VMGs' provide their broad support to the project. Where there is such support, the KYEOP/PCU will prepare and submit to the Bank a detailed report (Vulnerable and Marginalized Groups Framework) that documents:

- 1) The findings of the social assessment/analysis
- 2) The process of free, prior, and informed consultation with the affected VMGs;
- 3) Measures, including project design modification, that may be required to expand access to or address adverse effects on the VMGs' and to provide them with culturally appropriate project benefits;
- 4) Recommendations for free, prior, and informed consultation with and participation by VMGs during project implementation, monitoring, and evaluation; and 5) Any formal agreements reached with VMGs' youth.

The Bank reviews the process and the outcome of the consultation carried out by the KYEOP to satisfy itself that the affected VMGs have provided their broad support to the project. The Bank will pay particular attention to the social assessment and to the record and outcome of the free, prior, and informed consultation with the affected VMGs' as a basis for ascertaining whether there is such support.

Who Conducts the SA

The social assessment (SA) will be undertaken by the social experts from KYEOP /PCU. The TOR for the work will be shared with World Bank for clearance. The SA consultants will gather relevant information from separate group meetings: Discussions will focus on sub-Project impacts, positive and negative; and recommendations for design of sub-Project. The social consultants will be responsible for analyzing the SA, and providing the necessary recommendation on involvement of VMGs and ways to ensure they benefit from the project.

Vulnerable and Marginalized Groups Plan

The action plan will consist of a number of activities and will include mitigation measures of potentially negative impacts, modification of sub-project design, and development assistance. Where there is land acquisition in VMGs, the Project will ensure that their rights will not be violated and that they be compensated for the use of any part of their land in a manner that is culturally acceptable to them. The compensation will follow the Resettlement Policy Framework of the project.

6. STRATEGY FOR PARTICIPATION AND CONSULTATION WITH VULNERABLE & MARGINALISED GROUPS YOUTH

Participation of VMGs in selection, design and implementation of the project components will largely determine the extent to which the VMGF objectives would be achieved. To ensure benefits have as wide a reach as possible and where adverse impacts are likely, the KYEOP/PCU will undertake prior and informed consultations with the likely affected indigenous youth and those who work with and/or are knowledgeable of indigenous people's development issues and concerns. To facilitate effective participation, the VMGF will follow a timetable to consult indigenous people communities at different stages of the Project program cycle, especially during preparation and implementation of the VMGFs. The primary objectives would be to examine the following:

- To seek their inputs/feedback on how to maximize benefits, accessibility and how to avoid or minimize the potential adverse impacts associated with the project;
- Identify culturally appropriate impact mitigation measures; and
- Assess and adopt economic opportunities, which the SA could promote to complement the measures required to mitigate the adverse impacts.

Consultations will be carried out broadly in two stages. First, prior to final selection of any project component located in an area inhabited by VMGs, the KYEOP/PCU will consult the VMGs about the need for, and the probable positive and negative impacts associated with the project execution. Second, prior to detailed impact assessment, ascertain how the VMGs in general perceive the need for increasing employment and opportunities for targeted youth project and gather any inputs/feedback they might offer for better outcomes, which would eventually be addressed in VMGF s and design of the project.

The VMGFs communication strategy will;

- Facilitate participation of VMGs with adequate gender and generational representation; Youth leaders, customary/traditional VMG organizations; community elders/leaders; and civil society organizations, CBOs and FBOs on VMGs development issues and concerns.
- Provide them with relevant information about the project components, including that on potential adverse impacts, organize and conduct the consultations in manners to ensure free expression of their views and preferences.
- Document details of all consultation meetings, with VMGs perceptions of the proposed project and the associated impacts, especially the adverse ones and any inputs/feedbacks offered by VMGs; and an account of the broad community support by VMGs.

The SA will examine the detailed impacts at an individual youth and community levels, with a particular focus on the adverse impacts perceived by VMGs and the probable (and feasible) mitigation measures. To ensure continuing informed participation and more focused discussions, the communication strategy will provide affected VMGs with the impact details of the proposed project. Consultations will cover topics/areas concerning cultural and socioeconomic characteristics, as well as those VMGs consider important. Consultations will continue throughout the preparation and implementation period, with focus on the youth directly affected. Consultation stages, probable participants, methods, and expected outcomes are suggested in the VMGs consultation matrix below.

Indicative VMGs Consultation Matrix

Consultation Stages	Consultation Participants		Consultation	Expected
	Project Authority	VMGs Community	Method	Outcome
Reconnaissance & ground verification of existing and location/sites for projects	K Y E O P / P C U project consultants (Social Scientist) and other stakeholders	VMGs, including Youth leaders ,CBOs, FBOs VMGOs and community leaders/ elders	Open meetings & discussions, visit of proposed subproject sites, IP settlements & surroundings	First-hand assessment of VMGs' perception of potential social benefits and risks, and prospect of achieving broad base support for the civil works
Screening of the proposed project components	KYEOP/PCU, Consultants(Social Scientists) & Other stakeholders	VMGs, including likely affected VMGS, VMGOs community leaders/ elders, youth and opinion leaders	Open meetings, focus group discussions, spot interviews, etc.	Identification of major impact issues, feedback from VMG youth and would-be affected persons by the project
In-depth study of risks and benefits taking into consideration, inter alia the conditions that led to community consensus	K Y E O P / P C U , project consultants (Social Scientist), NGOs / CBOs, Other knowledgeable persons	Would-be affected VMGs, VMGOs, organizations, Community leaders/ elders , key informants	Formal/informal interviews; focus group discussions; hotspot discussion on specific impacts, alternatives, and mitigation; etc.	More concrete view of impact issues & risks, and feedback on possible alternatives and mitigation and development measures
Social Assessment/ analysis	K Y E O P / P C U , project Consultants(Social Scientist)	Adversely affected Individual VMGs,/ households	Structure Survey questionnaires couverions quantitative & qualitative information	Inputs for VMGF , and identification of issues that could be incorporated into the project design

Preparation of project components and VMGF	K Y E O P / P C U , project consultants (Social Scientist) and Other stakeholders	VMGs, VMGOs, Community leaders/ elders, adversely affected VMGs	Group consultations, hotspot discussions, etc.	Preparation of VMGF , and incorporation of SA inputs into project design to avoid or minimize adverse impacts on VMGs
Implementation	KYEOP/PCU, Consultants(Social Scientists) & Other stakeholders	Y o u t h leaders ,Individual VMGs, VMGOs, community l e a d e r s / e l d e r s & other stakeholders	implementation M o n i t o r i n g committees(formal or informal)	Quick resolution of issues, e f f e c t i v e implementation of VMGF
Monitoring & Evaluation	K Y E O P / P C U , consultants (Social Scientists), NGOs & CBOs	VMGs ,VMGOs/ Youth leaders and CBOs and elders	Formal participation i n r e v i e w a n d monitoring	Identification & r e s o l u t i o n o f i m p l e m e n t a t i o n issues, effectiveness of VMGF

The following strategies should also be included in the project to support the participation of the VMGs:

1. The project should explore how to accommodate the most vulnerable and destitute youth of VMGs.
2. Encourage VMG youth to get involved in various project designing ,planning, implementation activities in the project through arranging related training.
3. Assist VMG youth to develop their capacity and capability to enable them to participate in proposed project components;
4. Explore avenues for creating employment opportunities for VMG youth;
5. Ensure adequate resources and technical support for the implementation of the action plan for VMG youth.
6. At all stages culturally appropriate communication methods (verbal and nonverbal, in local language) should be used to ensure meaningful consultation.

Provision to ensure involvement of VMG youth in various training activities as part of the project to enhance employability.

Once the VMG youth are identified in the project area, the VMGFs will ensure mitigation of any adverse impact of the project. The project components should ensure benefits to the VMG youth by

providing (in consultation with the VMGs youth themselves) opportunity to get them involved in various income earning opportunities and activities;

The following issues need to be addressed during the implementation stage of the project;

- Provision of an effective mechanism for monitoring implementation of the VMGF;
- Development of accountability mechanism to ensure the planned benefits of the project are received by VMG youth;
- Ensuring appropriate budgetary allocation of resources for the VMG youth development .
- Provision of technical assistance for sustaining the VMGF;
- Ensure that VMGs traditional social organizations, cultural heritage, traditional political and community organizations are protected;

7. GRIEVANCES REDRESS MECHANISM

Even with the best-designed social impact assessments, agreements, engagement programs and risk mitigation strategies, conflicts and disagreements can still occur, in some cases with the potential for rapid escalation. Grievance handling procedures are required to ensure that VMGs are able to register complaints or concerns, without cost, and with the assurance of a timely and satisfactory resolution of the issue. Stakeholders will be informed of the intention to implement the grievance mechanism, and the procedure will be communicated at the time that the VMGF s are finalized.

Vulnerable and marginalized local youth and stakeholders may raise a grievance at all times to the KYEOP/PCU and the implementing agencies about any issues covered in this framework and the application of the framework. The VMG Youth should be informed about this possibility and contact information of the respective organizations at relevant levels should be made available. These arrangements should be described in the VMGF along with the more project-specific grievance and conflict resolution mechanism. Many of the factors that may give rise to conflict between VMGs and proposed project can be a source of conflict with non-VMGs as well. These include, for example:

- *Establishing a project in the absence of broad community support*
- *Inadequate engagement or decision-making processes*
- *Inequitable distribution of benefits*
- *Broken promises and unmet expectations of benefits*
- *Failing to generate opportunities for employment, training, supply or community development*
- *Disruption to lifestyle*
- *Loss of livelihood• Social dislocation*

. In addition, there are some contextual factors that have particular salient for vulnerable and marginalized people and their relations with project. For example; a lack of respect (perceived or actual) for indigenous customary rights or culture, history and spirituality, is likely to trigger a strong reaction. Similarly, issues around access to and control of resource such as productive factors e.g.

credit, training opportunities and the recognition of sovereignty are very important for many VMGs and can lead to disenchantment if they are not handled sensitively and with due respect for the rights of affected groups.

7.1. OVERVIEW

A key element during the development of the project VMGF will be the development and implementation of a grievance mechanism. Grievances will be actively managed and tracked to ensure that appropriate resolution and actions are taken. A clear time schedule will be defined for resolving grievances, ensuring that they are addressed in an appropriate and timely manner, with corrective actions being implemented if appropriate and the complainant being informed of the outcome. The grievance procedure will be simple and will be administered as far as possible, at the subproject level by the relevant institutions and partners.

The grievance procedure does not replace existing legal processes. Based on consensus, the procedures will seek to resolve issues quickly in order to expedite the project activities, without resorting to expensive and time-consuming legal actions. If the grievance procedure fails to provide a result, complainants can still seek legal redress.

7.2. GRIEVANCE REDRESS PROCESS

All sections of the VMGs where project components are identified, including those with low levels of literacy, should be able to access the grievances mechanism easily. The KYEOP/PCU and executing partner agencies should facilitate access by maintaining and publicizing multiple access points to complaint mechanisms, such as at the project site and in key locations within communities, including remote communities.

The procedure of grievance redress will be incorporated in the project information pamphlet to be distributed prior to implementation. Participatory consultation with affected households will be undertaken during project planning and implementation stages.

The VMGF will establish a mechanism to receive and facilitate resolution of affected VMGs concerns, complaints, and grievances about the project's safeguards performance at each subproject having VMGs impacts, with assistance from the PCU and or relevant NGO.

Establishment of Grievance Redress Committee

A Grievance Redress Committee will be established at the project area once it has been determined that VMGs are present in an area and that a VMGF is needed. Under the Grievance Redress Mechanism (GRM), a Grievance Redress Committee (GRC) will be formed for project with involvement of VMGs representative & local stakeholders. The GRC will comprise of the following representatives from the area namely;-

1. County director of youth Development
2. Representative of CBOs/FBOs active in the area
3. Representative of the VMG leadership in the area
4. Youth representative from the VMG (male and female from youth leadership in the area)

5. Representative from the Executing Agencies; Ministry of Labour & Social Services, Ministry of Youth, Gender and Public Service, Ministry of Industrialization and Enterprise Development
6. Consultants (social specialists)

The GRCs are to be formed and activated during the VMGF implementation process to allow VMGs sufficient time to register complaints and safeguard their recognized interests. Assistance to VMGs will be given to document and record the complaint, and if necessary, provide advocate services to address the grievances. The grievance redress mechanism is designed with the objective of solving disputes at the earliest possible time which will be in the interest of all parties concerned for resolution.

As is normal practice under customary law, attempts will be made to ensure that the traditional leaders via the GRC solve all disputes in communities after a thorough investigation of the facts. The traditional dispute resolution structures existing for each of the VMGs will be used as the first step in resolving grievances.

Marginalized and vulnerable communities will be provided with a variety of options for communicating issues and concerns, including in writing, orally, by telephone, over the internet or through more informal methods as part of the grievance redress mechanism. In the case of marginalized groups (such as women and young people), a more proactive approach may be needed to ensure that their concerns have been identified and articulated. This will be done, for example, by providing for an independent person to meet periodically with such groups and to act as an intermediary. Where a third party mechanism is part of the procedural approach to handling complaints, one option will be to include youth as representatives on the body that deals with grievances. It should be made clear that access to the mechanism is without prejudice to the complainant's right to legal recourse. Prior to the approval of individual VMGF, all the affected VMGs will have been informed of the process for expressing dissatisfaction and seeking redress.

The grievance procedure will be simple and administered as far as possible at the local levels to facilitate access, flexibility and ensure transparency.

How conflicts and disagreements are interpreted and handled is shaped by culture, both indigenous and corporate. For this reason, it is very important that sub project executing partner agencies in the KYEOP understand the cultural preferences that VMGs have for dealing with disputes.

Use of Alternative Dispute Resettlement Mechanisms

The traditional dispute resolution structures existing for each of the VMGs will be used as the first step in resolving grievances. Those seeking redress and wishing to state grievances would do so by notifying their traditional leader of the VMGs or the appropriate district authority, who will in turn inform and consult with KYEOP/PCU.

Further Redress-Kenya Courts of Law

All the grievances that will not be resolved by the GRC or which the VMGs are dissatisfied with in terms of resolution will be channeled to the existing structures in Kenya for handling grievances which is the Kenyan Courts of Law as the last resort.

Complaints Pattern

If a complaint pattern emerges, KYEOP, Sub County and County administrations, Youth leader with the traditional leaders will lodge complains through suggestion boxes then discuss them for possible remediation. The local leaders will be required to give advice concerning the need for revisions to procedures. Once they agree on necessary and appropriate changes, then a written description of the changed process will be made. KYEOP, regional and local administrations and the youth officers, traditional leaders and representatives will be responsible for communicating any changes to future potential, when the consultation process with them begins.

In selecting a grievance structure, the VMGF s should take into account their customary dispute settlement mechanisms, the availability of judicial recourse and the fact that it should be a structure considered by all stakeholders as an independent and qualified actor.

The aim will be to integrate both indigenous and corporate ways of resolving problems into the complaints mechanism. Systems and procedures must adequately reflect VMGs preferences for direct or indirect interaction, negotiation, debate, dialogue, and application of indigenous traditional management and/or ceremony, with external agents to ensure mutually acceptable processes and outcomes.

Where a sub project is dealing with more than one VMG, there may well be multiple culturally appropriate methods for dealing with problems by different interests. Given the often-marked differences between project and indigenous cultures, it is highly desirable to utilize processes that focus on dialogue, building cross-cultural understanding and through this, finding mutually agreeable solutions. Such approaches are more equitable and, on a practical level, are more likely to facilitate viable, long-term resolution of community issues and concerns.

Grievance Log Documentation and Recording

Documentation of complaints and grievances is important, including those that are communicated informally and orally. These should be logged, assessed, assigned to an individual for management, tracked and closed out or “signed off” when resolved, ideally with the complainant(s) being consulted, where appropriate, and informed of the resolution. Records provide a way of understanding patterns and trends in complaints, disputes and grievances over time. While transparency should be maintained – for example, through regular reports on issues raised and rates of resolution – provision should also be made for confidentiality of information or anonymity of the complainant(s) whenever necessary.

A grievance log will be established by the KYEOP/PCU and executing partner agencies and copies of the records kept with all the relevant authorities at the County, Sub County and Village level and will be used in monitoring of complaints and grievances.

In each sub project investment, the executing partner agency will appoint a VMGs/Project Liaison Officer (PLO) who will ensure that each complaint has an individual reference number, and is appropriately tracked and recorded actions are completed. The log also contains a record of the person responsible for an individual complaint, and records dates for the following events:

- *Date the complaint was reported;*
- *Date the grievance log was uploaded onto the project database;*

▪ *Date information on proposed corrective action sent to complainant (if appropriate);* ▪ *The date the complaint was closed out;* and ▪ *Date response was sent to complainant.*

Responding to complaints

Once parties agree on a path forward – such as an apology, compensation or an adjustment to operations – an action plan should be formalized and implemented. Depending on the issue, responses may vary from a single task to a program of work that involves different parts of the operation. Effective responses will also include engagement with parties involved to ensure that the response continues to be appropriate and understood. Communities should also be advised of the closeout of the issue and what has been done to achieve it. This feedback provides an opportunity for the PCU to demonstrate that it has addressed the issue as well as confirming that the community considers the response satisfactory and the matter closed.

Understanding root causes

As outlined above, there are many factors that can potentially lead to conflict or disagreement between sub projects and communities, both vulnerable and marginalized or otherwise. Although it is not always possible to identify root causes, some issues will warrant deeper analysis in order to better understand the issue and avoid its further escalation. In the absence of a tailored methodology for analyzing community-related disputes and grievances, these methods may be adapted to guide this analysis.

Monitoring Complaints

It is important to collect data on community interactions – from low-level concerns and complaints to ongoing disputes and higher-order grievances – so that patterns can be identified and project management alerted to high-risk issues. Effective monitoring may also help to prevent the escalation of lower-level disputes into more serious conflicts.

Information related to monitoring of the VMGF will be gathered through various channels, such as formal review, evaluation and analysis or through day-to-day interaction with VMGs. Monitoring will help determine the effectiveness of processes for responding to community concerns; for example, by tracking complaint resolution rates over time. This information can then be used to refine the system and improve the outcomes being achieved. The outcomes of monitoring should be reported formally to the community on a regular basis, in addition to being used for internal management purposes. The VMGs/Project Liaison Officer at county level will be responsible for:

- *Providing the project investment reports detailing the number and status of complaints;*
- *Any outstanding issues to be addressed; and*
- *Monthly reports, including analysis of the type of complaints, levels of complaints, and*

actions to reduce complaints.

8. MONITORING AND REPORTING ARRANGEMENTS

8.1. MONITORING AND EVALUATION MECHANISMS

Monitoring and Evaluation (M&E) are fundamental components of projects involving affected communities. Monitoring should be participatory and include the monitoring of beneficial and adverse impacts on VMGs within project impact areas. M&E should be based on free, prior and informed consultation with the VMGs who should play an integral role in its implementation.

All monitoring activities will principally remain the responsibility of the KYEOP/PCU. Each executing partner agency of the KYEOP will be responsible for compiling the data and auditing for completeness of the records, and they will be responsible for providing compiled M&E information to the KYEOP/PCU. !

The overall goal of the M&E process for the Vulnerable and Marginalized Groups will be to ensure that:

- *Effective communication and consultation takes place;*
- *Reporting of any grievances that require resolution;*
- *Document the performance of the KYEOP as regards the VMGs; and allow program managers and participants to evaluate whether the affected VMGs have maintained their rights, culture and dignity and that they are not worse off than they were before the project.*

The specific objectives of evaluation will include:

1. An assessment of the compliance of activities undertaken in relation to the objectives and methods identified in the VMGF;
2. An assessment of the consultation procedures that have taken place at the community and individual level;
3. An assessment on whether the affected communities have had access to mitigation activities;
4. The occurrence of grievances and extent of resolution of disputes;
5. An evaluation of the impact of the Project on youth employability and access to opportunities to earn a living ; and
6. Identification of actions that can improve the positive impact of the Project and mitigate potential negative impacts.

The VMGF will indicate parameters to be monitored, institute monitoring milestones and provide resources necessary to carry out the monitoring activities. The KYEOP/PCU will institute an administrative reporting system that will:-

- *Provide timely information about all grievances arising as a result of KYEOP activities;*
- *Identify any grievances that have not been resolved at a local level and require resolution through the involvement of the KYEOP/PCU;*

- *Document the timely completion of project obligations for all vulnerable and marginalized peoples grievances;*

The M&E reports for each Component will be prepared by each sub project executing partner agency of the KYEOP each year and presented to VMGs for feedback etc., before being handed over to the VMGF-committees at county level for discussion and prepare recommendations on how to fine-tune the VMGF . The M and E report will be submitted to this committee for review and then submitted to the KYEOP/PCU and the World Bank.

Every year an independent reviews will be carried out to further cross check the quality and to guarantee that the VMGs dignity, human rights, economies, and cultures are respected by the

KYEOP, that all decisions which affect any of these are based on the

A) Free, prior, and informed consultation with the VMGs youth

b) That the VMGs youth receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive,

c) That adverse effects on the VMGs communities are, as much as possible, avoided, and if this was according to the VMGF F sub project committees not feasible, minimize, mitigate, or compensate in a culturally appropriate manner, based on broad support by the VMGs

Participatory Impact Monitoring

The monitoring and evaluation of the VMGF implementation as well as the implementation of the sub projects in the operational areas inhabited by VMGs is an important management tool, which should include arrangements for the free, prior, and informed consultations with the affected VMGs. The implementation of the participatory impact monitoring (PIM) at county level will be an important element to assist the various structures to fine-tune their intervention in view to maximize culturally appropriate benefits and provide space for the indigenous peoples’ communities to voice their concerns.

The PIM will be based on the data gathered by the screening process/social assessments, the organizations of the VMGs, the relevant governmental structures (ministry of labour and social) at county level etc. The organizations representing the VMGs will play a key role as facilitator of the PIM process and the selection of the facilitators will be in close collaboration the decision of the communities, but it is advised to choose people who are able to elaborate on the basis of the PIM reports, which reflect the situation on the ground in a transparent and plausible way. Table below highlights M&E for VMGF. !

Monitoring and Evaluation Indicators for KYEOP/VMGF

Issues	Indicator	Responsibility	Data Sources
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Accessibility of project benefits to VMGs	Number of VMG households benefitting from project linked to power.	KEMP/PCU	MoE data reports
Capacity Building for implementation of VMGF	Number of individuals & institutions sensitized	KYEOP/PCU	Training workshops reports
Vulnerable and Marginalized Groups Orientation and Mobilization	Number of VMGs meetings; Number of VMGs sensitized	KYEOP/PCU Vulnerable and Marginalized Groups Organizations/Elders	Reconnaissance survey reports Community meeting reports
Consultations with Vulnerable and Marginalized Groups:	Number of PRA/RRA, consultations held with VMGs / outreach activities to Youth among VMGs Attendance of PRA/RRA PRA reports acceptable to VMGs	KYEOP/PCU Vulnerable and Marginalized Groups Organizations, County VMG Liason officers	Consultation reports
Mapping of community resources critical to VMGs training and internship	Level of VP participation Reports verified and accepted by VMGs	KYEOP/PCU Vulnerable and Marginalized Groups Organizations	Baseline survey reports Community transect reports
Development of strategies for participation of VMGs and mitigation measures	Level of participation of VMG youth in the project	KYEOP/PCU Vulnerable and Marginalized Groups Organizations	KYEOP/PCU reports Implementing agencies reports
Capacity Building	Types of training Number of Trainings Attendance by VMGs	KYEOP/PCU Vulnerable and Marginalized Groups Organizations	Training reports

Equitable representation of VMG in decision making organs	Number of meetings attended by VMG representatives Number and types of VMGs issues articulated	KYEOP/PCU Vulnerable and Marginalized Groups Organizations	District Level and National Steering Committee reports VMGO reports
Participatory M&E with VMG	Internal M&E External M&E Number of VMGs trained and intensified Number getting employed six months after completing	KYEOP/PCU Vulnerable and Marginalized Groups Organizations	M&E Reports Ministry of Public Service, Gender and Youth Affairs and other implementing Agencies

9. DISCLOSURE ARRANGEMENTS FOR VMGFS

9.1. COMMUNICATION FRAMEWORK

A Project Coordination Unit (PCU) housed in the DYA will manage the KYEOP/PCU and specific arrangements for administering project activities by the PMU at other levels will be established during project design.

In regard to ensuring compliance with the Banks' safeguards, the KYEOP/PCU will recruit or retain the current environmental and social safeguard specialist. These specialists will provide technical support and ensure compliance with the VMGF by coordinating and working with the executing institutions in the KYEOP. This communication framework elaborates principles, strategies and structures on how the KYEOP and the affected VMGs should interact at each stage of project preparation and implementation to satisfy the criteria of free, prior and informed consultations.

A sub project steering committee will be formed if a determination is made during the screening that the sub project is likely to be located in an area with VMGs and hence likely to interfere with their livelihood and rights. The committee will comprise, KYEOP/PCU representative, County and Sub County representative and a representative from the VMGs. This committee will provide a linkage between KYEOP, the VMGs and the County/sub County administration. It should meet once every month and work with county VMG focal point persons for all VMGF related issues at during the implementation of that sub project.

It should be informed about all kinds of KYEOP activities and communicate relevant information through the VMGs representatives to the vulnerable and marginalized communities. It should also gather information and feedback from the vulnerable and marginalized communities to channel them to the relevant governmental structures and the KYEOP/PCU.

The elected representative of the VMGs for a particular area will be in charge to facilitate the communication between the VMGs in their area. They will be elected during the pilot phase of the

VMGF after a further introduction and general discussion on the VMGF, the communication channels etc. to ensure that the elected representatives have broad community support and are elected on the base of free, prior and informed consultations.

9.2. DISCLOSURE

This VMGF was disclosed to the affected VMGs and stakeholders in an appropriate form, manner, and language in workshop held on February 8, 2016 at a workshop held at Embakasi Youth Empowerment Centre in Nairobi. Once the Bank accepts the documents as providing an adequate basis for project appraisal, the Bank will make them available to the public in accordance with Bank Policy on Disclosure of Information. Summary of the VMGF will be made available in hard copies at: (i) sub-county office; (ii) County Office; and (iv) any other local level public offices. Electronic versions of the VMGF will be placed on the official website of Ministry of Public Service, Gender and Youth Affairs and the official website of Bank after approval and endorsement of the VMGF by the Bank.

9.3. ROLES AND RESPONSIBILITIES

KYEOP/PCU

KYEOP/PCU specifically the environment and social safeguard specialists will remain responsible for:

- *Screening for projects affecting Vulnerable and Marginalized Groups;*
- *Review and approve project proposals, ensuring that they adequately apply the World Bank's Indigenous Peoples Policy;*
- *Assess the adequacy of the assessment of project impacts and the proposed measures to address issues pertaining to affected indigenous communities. When doing so project activities, impacts and social risks, circumstances of the affected indigenous communities, and the capacity of the applicant to implement the measures should be assessed.*
- *If the risks or complexity of particular issues, assess the adequacy of the consultation process and the affected indigenous communities' broad support to the project-Monitor project implementation, and include constraints and lessons learned concerning VMGs and the application of this VMGF in its progress and monitoring reports; it should be assured that affected VMGs are included in monitoring and evaluation exercises*

Non-Governmental Organizations/ civil Society Organizations

The NGOs present and active in the area will be used during the social assessment studies as well as during the monitoring and evaluation. The formation of Grievance Redress Committees and Steering Committees at county level will also include representation by NGOs.

World Bank

The Bank will receive all the VMGFs prepared and review and provide a No Objection or otherwise prior to sub project implementation. During implementation, the Bank will also conduct field monitoring and evaluation. The Bank will also approve the VMGF for the KYEOP.

10. VMGF IMPLEMENTATION BUDGET

All costs for implementation of VMGF will be financed by the KYEOP. The costs will be estimated during feasibility based on interviews with community members and relevant government officials. This will be updated after the detailed survey and investigation as well as further consultations with VMGs.

The budget for the implementation of the VMGF mainly includes costs for; capacity building/ training of the PCU/GoK staff, VMGs committee member's consultation/meetings, information dissemination, NGO/Agency hiring for VMGF implementation & monitoring, GRM etc. The VMGFs budget will also include costs for implementation of VMGF, such as salaries and travel costs of the relevant KYEOP/PCU staff. In summary there will be adequate budgetary provisions to implement any VMGF. The Government of Kenya will finance all the cost of the VMGF.

At this stage, it is not possible to estimate the exact number of VMGs who may be affected under KYEOP. It is therefore not possible to provide an estimated budget for the total cost of VMGF that may be associated with KYEOP implementation.

However, when these locations are known, and after the conclusion of the site-specific socioeconomic study, a detailed and accurate budgets for each VMGF will be prepared. Each VMGF will include a detailed budget, using the following template thus facilitating the preparation of a detailed and accurate budget.

Table 6: Indicative Budget

	Indicative Budgetary Item	Unit cost (USD)
1.	Stakeholders trainings/ consultation forums on VMGF	50,000
2.	Monitoring and evaluation studies on the implementation of VMGFs under KYEOP	30,000
3.	Evaluation of Job creation / employment programs under KYEOP among VMGs	100,000
4.	KYEOP/VMGFs training manual for Government staff and project committees	30,000
5.	Annual VMGFs audit	10,000
	Total	220,000.00

ANNEXES

ANNEX 1: SOCIAL SCREENING FORM

To be filled by KYEOP/PCU Team

SOCIAL SCREENING FORM FOR KYEOP ACTIVITIES	
A. BACKGROUND INFORMATION	
A 1. Type/description/justification of proposed activity	
A 2. Location of activity	
A3. Duration of activity	
A 4. Focal point and person for activity	
B. EXPECTED BENEFITS	
B1. Benefits for local people	
B2. Benefits to Vulnerable and Marginalized Groups (VMGs)	
B3. Total Number of expected beneficiaries	
B4. Total Number of expected Vulnerable and Marginalized Peoples beneficiaries	
B5. Ratio of B4 and B5; Are benefits distributed equitably?	YES NO ! If NO state remedial measures
C1. Has VMG orientation to project been done for this group?	YES NO
C2. Has PRA/consultations been with VMGs in the area	YES NO
C3. Did the VMG give broad support for project	! YES NO

Prepared by: _____ Verified by: _____ !

Date: _____ Date: _____ Note:

Attach sketch maps, PRA/RRA results and other relevant documents.

ANNEX 2: CONTENT FOR VULNERABLE AND MARGINALIZED GROUPS FRAMEWORK

OP 4.10, Indigenous Peoples Planning Framework	These policies were prepared for use by World Bank staff and are not necessarily a complete treatment of the subject.
<p>1. The Indigenous Peoples Planning Framework (IPPF) sets out:</p> <ul style="list-style-type: none">(a) The types of programs and subprojects likely to be proposed for financing under the project.(b) The potential positive and adverse effects of such programs or subprojects on Indigenous Peoples.(c) A plan for carrying out the social assessment for such programs or subprojects.(d) A framework for ensuring free, prior, and informed consultation with the affected Indigenous Peoples' communities at each stage of project preparation and implementation (see paragraph 10 of this policy).(e) Institutional arrangements (including capacity building where necessary) for screening project-supported activities, evaluating their effects on Indigenous Peoples, preparing IPPs, and addressing any grievances.(f) Monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the project.(g) Disclosure arrangements for IPPs to be prepared under the IPPF	

ANNEX 3: SAMPLE TERMS OF REFERENCE FOR DEVELOPING A VMGF

Note: the VMGF will be developed in detail commensurate to the impacts. Minimal adverse impacts are anticipated and VMGFs will focus on how to broaden reach of benefits to VMGs.

A. Executive Summary of the Vulnerable and Marginalized Groups Plan !

2. This section should concisely describe the critical facts, significant findings, and recommended actions.

B. Description of the Project/Background Information

3. This section provides a general description of the project; discusses project components and activities that may bring impacts on indigenous people; and identify project area.

The ToR should provide pertinent background for preparing the VMGF. This would include a brief description of:

- Statement of the project objectives,
- Implementing agency/sponsor and their requirements for conducting a VMGF ,
- Project components, especially those that will finance subprojects;
- Anticipated types of subprojects/components, and what types will not be financed by the project;
- Areas of influence to be assessed (description plus good map)
- Summary of environmental/social setting • Applicable Bank safeguards policies, and consequent Project preparation requirements.

The ToR should also include a brief history of the project, including alternatives considered, its current status and timetable, and the identities of any associated projects. Also include a description of other project preparation activities underway (e.g., legal analysis, institutional analysis, social assessment, baseline study).

C. Social Impact Assessment

4. This section should among others entail:

- (i) Review of the legal and institutional framework applicable to indigenous people in the project context where relevant.
- (ii) Provide baseline information on the demographic, social, cultural, and political characteristics of the affected Vulnerable and Marginalized Groups (VMGs); the land and territories that they have traditionally owned or customarily used or occupied; and the natural resources on which they depend.
- (iii) Identify key project stakeholders and elaborate a culturally appropriate and gender-sensitive process for meaningful consultation with VMGs at each stage of project preparation and implementation, taking the review and baseline information into account.

(iv) Assess, based on meaningful consultation with the affected indigenous people's communities, the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is a gender-sensitive analysis of the relative vulnerability of, and risks to, the affected indigenous people's communities given their particular circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to those available to other social groups in the communities, regions, or national societies in which they live.

(v) Include a gender-sensitive assessment of the affected VMGs perceptions about the project and its impact on their social, economic, and cultural status.

(vi) identify and recommend, based on meaningful consultation with the affected indigenous peoples communities, the measures necessary to avoid adverse effects or, if such measures are not possible, identifies measures to minimize, mitigate, and/or compensate for such effects and to ensure that the indigenous peoples receive culturally appropriate benefits under the project.

Information Disclosure, Consultation and Participation 5. This section of the ToR should:

(i) Describe the information disclosure, consultation and participation process with the affected VMGs that was carried out during project preparation;

(ii) Summarize their comments on the results of the social impact assessment and identifies concerns raised during consultation and how these have been addressed in project design;

(iii) in the case of project activities requiring broad community support, document the process and outcome of consultations with affected indigenous people's communities and any agreement resulting from such consultations for the project activities and safeguard measures addressing the impacts of such activities;

(iv) Describe consultation and participation mechanisms to be used during implementation to ensure indigenous people's participation during implementation; and

(v) Confirm disclosure of the draft and final VMGF to the affected VMGs.

E. Beneficial Measures

6. This section should describe and specify the measures to ensure that the VMGs receive social and economic benefits that are culturally appropriate, and gender responsive.

F. Mitigation Measures

7. This section should specify the measures to avoid adverse impacts on indigenous people; and where the avoidance is impossible, specifies the measures to minimize mitigate and compensate for identified unavoidable adverse impacts for each affected indigenous people groups.

G. Capacity Building

8. This section should provide measures to strengthen the social, legal, and technical capabilities of (a) government institutions to address indigenous people's issues in the project area; and (b) indigenous people's organizations in the project area to enable them to represent the affected indigenous peoples more effectively.

H. Grievance Redress Mechanism

9. This section should describe the procedures to redress grievances by affected indigenous people's communities. It also explains how the procedures are accessible to VMGs and culturally appropriate and gender sensitive.

I. Monitoring, Reporting and Evaluation

10. This section should describe the mechanisms and benchmarks appropriate to the project for monitoring, and evaluating the implementation of the VMGF. It also specifies arrangements for participation of affected indigenous people in the preparation and validation of monitoring, and evaluation reports.

J. Consulting Team

11. The general skills required of VMGF team are: Social Specialist or Anthropologist, Stakeholder engagement specialist, Community Development expert.

K. Services, Facilities and Materials to be provided by the Client

The ToR should specify what services, facilities and materials will be provided to the Consultant by the World Bank and the Borrower, for example:

1. The Project ISDS and draft PAD;
2. Relevant background documentation and studies;
3. Example VMGFs that demonstrate best practice, especially from the region or country;
4. Making all necessary arrangements for facilitating the work of the Consultant and to provide access to government authorities, other Project stakeholders, and Project sites.

L. Schedule and Deliverables

Specify dates for the consultancy deliverables (e.g. detailed work plan within 2 weeks, interim report within 7 weeks, and final draft report within 10 weeks of contract signature), and the overall duration of the consultancy (e.g. 15 weeks from contract signature).

M. Technical Proposal Contents

The ToR should require a technical proposal that at least:

5. Demonstrates that the Consultant understands the overall scope and nature of the VMGF preparation work, and what will be required to respond satisfactorily to each component of the ToR;
6. Demonstrates that the Consultant and his proposed team have relevant and appropriate experience to carry out all components of the ToR. Detailed curriculum vitae for each team member must be included;
7. Describes the overall methodology for carrying out each component of the ToR, including desk and field studies, and data collection and analysis methods; and

8. Provides an initial plan of work, outputs, and staff assignments with levels of effort by task.

N. Budget and Payments

The ToR should indicate if there is a budget ceiling for the consultancy. The ToR should specify the payment schedule (e.g. 10% on contract signature, 10% on delivery of detailed work plan, 40% on delivery of interim report, 30% on delivery of final draft VMGF, and 10% on delivery of final VMGF). !

O. Other Information

Include here lists of data sources, project background reports and studies, relevant publications, and other items to which the consultant's attention should be directed.

ANNEX 4: SAMPLE FACT SHEET FOR VMGFs; VMGF REVIEW – FACT SHEET FOR VMGF

To be filled by KYEOP/PCU Team and World Bank as part of review and monitoring !

[Country] – [Project ID #] – [Project Name]

Last Update: [11/20/ 2008] A.	PROJECT DATA AND RECOMMENDED ACTIONS	
Reviewer:	Date of Mission:	
Country:	Project Loan Amount:	
Project title:	Total Project Cost:	
Project ID:	Appraisal Date:	
IPP #:	Effectiveness Date:	
Task Manager:	Closing Date:	
Environment Spec.	Last PSR/ISR	
Social Spec.		
MTR	Last Aide Memoire	
REVIEW SUMMARY (Based on Desk and Field Review) Issues / Observations Proposed Actions (short term / long term, for TTL, SD, etc.)		
B. SAFEGUARD IDENTIFICATION AND COMPLIANCE AT PREPARATION		
1 Environmental Safeguard Classification:		

2 Safeguard Policies Triggered at Preparation According to the ISDS, EDS, ESDS, PAD:

!

Applicable

!

Source

Environmental Assessment (OP/BP 4.01)

Natural Habitats (OP/GP 4.04)

Forestry (OP 4.36)

Pest Management (OP 4.09)

Cultural Property (OP 4.11) – OPN 11.03

Indigenous Peoples (OP 4.10)

Safety of Dams (OP/BP 4.37)

Projects in Disputed Areas (OP/BP 7.60)

Involuntary Resettlement (OP 4.12) – OD 4.30

Projects on International Waterways (OP/BP 7.50)

3 Project Objective and Components

!

Project Objectives

!

Project Description

4 Social Safeguard Triggers: Are there any social safeguard policies which should have been triggered but were not?

C. SOCIAL MANAGEMENT PLANS AT PREPARATION

This review is based on IPP PAD SA RAP ISDS (check all that applies)

SCREENING

Have all IP groups in project area been identified (is screening by the Bank adequate)?

SOCIAL ASSESSMENT

Has a social assessment taken place (is baseline data given)? Provide summary of social assessment.

Has the legal framework regarding IPs been described?

Have benefits/ adverse impacts to IP groups been identified?

CONSULTATION, PARTICIPATION, COMMUNITY SUPPORT

Have IPs been involved in free, prior and informed consultation (at the project's preparation stage)? Are there any records of consultations? Is there a description of steps for increasing IPs participation during the project implementation?

Does the project have verifiable broad community support (and how has it dealt with the issue of community representation)?

Is there a framework for consultation with IPs during the project implementation?

INDIGENOUS PEOPLES PLAN

Is there a specific action plan (implementation schedule)?

Does the IPP include activities that benefit IP?

Are activities culturally appropriate?

Have institutional arrangements for IPP been described?

Is there a separate budget earmarked for IPP?

Are there specific monitoring indicators? If yes, are these monitoring indicators disaggregated by ethnicity?

Has a complaint/conflict resolution mechanism been outlined?

Disclosure: Were IPP/IPPF disclosed at the *Infoshop*? Y / N

!

Was IPP/IPPF disclosed in Country and in a form and language accessible to IPs? Y / N

!

What's missing: _____

SPECIAL CONSIDERATIONS

If applicable, what considerations have been given to the recognition of the rights to lands and natural resources of IPs

If applicable, what considerations have been given to the IP sharing of benefits in the commercial development of natural and cultural resources?

Does the project involve the physical relocation of IPs (and have they formally agreed to it)? If yes, has the project prepared a resettlement instrument (resettlement policy framework, process framework, resettlement action plan)?

D. IMPLEMENTATION AND SUPERVISION (Based on initial desk review and verified by field assessment)

1 Social Safeguards

a. Have issues (anticipated and unexpected) been monitored and reported systematically in Aide Memoires and ISRs? Have appropriate actions been taken?

a. Were social specialists included in supervision missions and how often?

a. What are the project impacts on IPs culture, livelihoods and social organization?

a. In terms of consultation process, are there ongoing consultations with the IP communities? Are there records of carried out consultations?

a. Have any social risks been identified? Have appropriate risk management strategies/actions been recommended to the Borrower?

a. Are IPOs (beyond the community level) actively engaged throughout the life of the project?

a. Does the project contribute to the respect of IP rights as recognized by the country's legal and policy systems?

1. Effectiveness

a. Are IPPF and/or IPP implemented satisfactorily? Are they effective? Is funding adequate?

a. In relation to the implementation of IPPF/ IPP, were problems identified, if any? If yes, how were they resolved by the Borrower?

Effectiveness of Monitoring Program

3.1 Has the monitoring program been adequately supervised? Are performance indicators effective?

1. Effectiveness of Institutional Responsibilities/Training as outlined in the project documents

1. Effectiveness of relevant Legal Covenants: Is compliance with legal covenants being adequately supervised?

E. SITE VISIT(s)

- Date
- Location

1.1 Activity

1.2 Observations

F. OVERALL ASSESSMENT (including desk and field reviews)

1 Overall Assessment and Risk Rating

1.1 To what extent is the OP4.10 relevant in delivering effective development to IP?

1.2 To what extent has OP4.10 (and previously OD4.20) been applied and how?

1.3 To what extent has OP4.10 been efficacious (cost effective) in achieving its objectives?

2 Recommendations

3.1 Project specific

3.2 Country / Program specific

3 List of Attachments

- *Key People Met - photos -etc.*

G. FEEDBACK FROM TTL / SD

- Date of feedback received

ANNEX 5: THREE POINT RANK ORDER SYSTEM FOR VMGFS (SAMPLE)

To be filled by KYEOP/PCU Team and World Bank as part of review and monitoring

Criterion	Points	Explanation
Screening		
1. Have all IP groups in project area been identified (is screening adequate)?	0	Not stated
	0.5	The names of some groups have been mentioned; baseline survey has been proposed; Aggregates all groups together
	1	Detailed description of all indigenous groups is given
Social Assessment		
2. Has a social assessment been done (Is baseline data given)?	0	Not stated
	0.5	Proposed to collect all relevant data - no specifics; data briefly stated; or not updated, data not disaggregated
	1	Disaggregated population data of IP; relevant socio-economic indicators have been stated; data that needs to be collected are listed;
3. Has legal framework been described?	0	Not stated
	0.5	Brief mention of framework given
	1	Constitutional provisions, legal statutes and government programs in relevant sectors related to indigenous peoples stated
Have benefits/ adverse impacts to IP groups been identified?	0	Not Discussed
	0.5	Potential impacts have been briefly discussed
	1	Potential positive and negative impacts identified and discussed
Consultation, Participation, Community Support		

Have IP been involved in free, prior and informed consultation at the project implementation stage? Are there any records of consultation?	0	Not determinable
	0.5	Brief mention that consultations have taken place; no details provided
	1	Detailed description of process given; appropriate methods used, interlocutors are representative
Does project have verifiable broad community support (and how has it dealt with the issue of community representation)?	0	Not stated
	0.5	States that IP groups will be involved in preparing village/community action plans; participation process briefly discussed
	1	Detailed description of participation strategy and action steps given
7. Is there a framework for consultation with IPs during the project implementation?	0	No
	0.5	Passing mention
	1	Detailed arrangements
Indigenous People Plan		
8. Is there a specific plan (implementation schedule)?	0	Not stated
	0.5	Flexible time frame (activities need to be proposed); given activity wise; year-wise distribution; mentioned but integrated into another project document (RAP, etc.); no separate treatment; combined with RAP;
	1	Detailed description given
9. Does the IPP/IPDP include activities that benefit IP	0	Not stated
	0.5	Activities stated but not detailed
	1	Activities clearly specify
10. Are activities culturally appropriate?	0	Not stated
	0.5	Cultural concerns noted but not explicit
	1	Activities support cultural norms

11. Have institutional arrangements for IPP been described?	0	Not stated	community support (and how has it dealt
	0.5	Mentioned but integrated into another project document (RAP, etc.); no separate treatment	
	1	Detailed description of agencies involved in implementation of plan, including applicable IPO's or tribal organizations.	
12. Is a separate budget earmarked for IPP?	0	Not stated	
	0.5	Mentioned but integrated into another project document (RAP, etc.); not broken down activity-wise	
	1	Detailed description given	
Are there specific monitoring indicators?	0	Not mentioned	

	0.5	Proposed that monitoring indicators shall be designed later; Project outcomes that need to be monitored are stated
	1	Monitoring indicators disaggregated by ethnicity
Has a complaint/conflict resolution mechanism been outlined?	0	Not mentioned
	0.5	Passing mention of mechanism in document
	1	Detailed description and few concrete steps of mechanism given
Were the Indigenous Peoples Plan or Framework (IPP/IPPF) disclosed in Infoshop and in Country in an appropriate language?	0	No
	0.5	Disclosed in Infoshop
	1	Detailed Summary in appropriate form, manner and language
Special Considerations		
If applicable, what considerations have been given to the recognition of the rights to lands and natural resources of IPs?	0	None
	0.5	Passing mention
	1	Detailed considerations
17. If applicable, what considerations have been given to the IP sharing of benefits in the commercial development of natural and cultural resources?	0	None
	0.5	Passing mention
	1	Detailed considerations
18. Does the project involve the physical relocation of IPs (and have they formally agreed to it)?	0	No resettlement unless with their prior consent
	0.5	Only within traditional lands or territories
	1	Yes, physical relocation outside their traditional territories with no compensation or consent

ANNEX 6: PROFILE OF VULNERABLE AND MARGINALIZED GROUPS IN KENYA !

Sengwer: The Sengwer live in the three administrative districts of Marakwet, West Pokot and Trans Nzoia in and along Cherangany Hills. They are estimated to be 50,000 (30,000 of them live in their traditional territories and another 20,000 in the diaspora).

Livelihood: Before the colonial time, Sengwer used to be hunters and honey-gatherers. Following their contacts with the Arabs and the Maasai some adopted small scale agriculture (shifting cultivation) and/or livestock rearing, but hunting remained their main source of livelihood until the 1920s. The elders reported collective as well as individual hunting techniques. Gathering of fruits and other non-timber-forest-products is mostly done by women, while honey collection from beehives as well as from natural places such as holes in trees etc. is traditionally a male activity. Millet and Sorghum are the “traditional” crops, which were inherited from the Arab traders and mostly planted in the lowlands.

The current status of Indigenous Sengwer

The Sengwer have increasingly settled and now practice agriculture and livestock rearing and outlying areas where some honey gathering is still practiced. The forest dwelling Sengwer (Emboul) have been/are being moved out of gazette forests and as a result face restrictions on access to natural resources- especially forests and which have further increased their sedentarization.

Turkana: The Turkana people are the second largest of the pastoral people of Kenya with a population of 1,034,000

They occupy the far northwest corner of the nation, an area of about 67,000 square kilometers. This nomadic community moved to Kenya from Karamojong in eastern Uganda from around 1700. The Turkana tribe occupies the semi Desert Turkana District in the Rift valley province of Kenya. . Turkana warriors today still take pride in their reputation as the most fearless fighters in East Africa.

Location in the Country - Rift Valley Province, Turkana, Samburu, Trans-Nzoia, Laikipia, Isiolo districts, west and south of Lake Turkana; Turkwel and Kerio rivers

Livelihood: Like the Maasai Turkana people keep herds of **cattle, goats and Camel**. Livestock is a very important part of the Turkana people. Their animals are the main source of income and food. Turkana’s have also pursued other non-pastoral income-earning activity in both urban and rural environments. This includes various forms of wholesale and retail trade (e.g. selling livestock, milk, hides and skins, honey, and artisan goods etc.), traditional rental property ownership and sales, waged employment (local and non-local, including working as a hired herder, farm worker, and migrant labourer), farming (subsistence and commercial), and the gathering and selling of wild products (e.g. gum arabic, firewood, or medicinal plants). Fishing in Lake Turkana is another, long standing form of diversification. Fishermen along Lake Turkana migrate to follow the patterns of fish movement. Many of them have also taken up weaving mats and baskets particularly near the lake where weaving material is readily available from the Doum

Palm. Other natural resource-based livelihood diversification activities have included the collection and sale of aloe, gum arabic, honey, wild fruits, firewood, and the production and sale of charcoal and alcohol.

Rendille: The Rendille are a Cushitic tribe that inhabits the climatically harsh region between Marsabit hills and Lake Turkana in Northern Kenya where they neighbor the Borana, Gabbra, and Samburu and Turkana tribes. They (Rendile) they are culturally similar to the Gabbra, having adopted some Borana customs and being related to the Somali people to the east. Rendille are semi-nomadic pastoralists whose most important animal is the camel. The original home of the Rendille people was in Ethiopia. They were forced to migrate southwards into Kenya due to frequent conflicts with the Oromo tribe over pasture and water for their animals. There are about eight or nine sub clans including the Urowen, Dispahai, Rongumo, Lukumai (Nahgan), Tupsha, Garteilan, Matarbah, Otol, and Saale with an estimated population of 63,000.

Location in country

The Rendille are located in Eastern Province, Marsabit District, between Lake Turkana and Marsabit Mountain. The primary towns include Marsabet, Laisamis, Merille, Logologo, Loyangalani, Korr, Kamboi, Ngurunit, and Kargi.

Livelihood: The Rendille people are traditionally pastoralists keeping goats, sheep, cattle, donkeys, and camels. Being pastoralists, the lifestyle of the Rendille revolves around their livestock. In the northerly areas, camels are their main source of livelihood. Are best adapted to the desert conditions that prevail in the northern Kenya. The camels are an important source of milk and meat. Their nomadic lifestyle has become more prominent in the areas exposed to little urbanization and modernization. In the recent past though, their livelihood has experienced constant competing interests from the Samburu and Gabra leading them to conflicts over land and water resources particularly at the borderline of the boundary districts.

Gabra: The Gabra are an Oromo people who live as camel-herding nomads, mainly in the Chalbi desert of northern Kenya and the highlands of southern Ethiopia. They are closely associated with other Oromo, especially their non-nomadic neighbors, the Borana. The Gabra speak the Borana dialect of Oromo, which belongs to the Cushitic branch of the Afro-Asiatic language family and have a population of about 3,000. They are located in Samburu District, Lake Baringo south and east shores; and in Rift Valley Province (Chamus), Baringo District.

Livelihood: Gabra are pastoralists who keep and depend on cattle, sheep, goats, donkey, and camels. They solely rely on access to water and pastures for the survival of their livestock. Cattle provide the majority of income from livestock production followed by goats, sheep, and camels. – The bulk of the grain consumed by Gabra household in this zone is purchased. This includes maize, rice, and sugar. Households also rely on the wild food including fruits and berries, honey, roots, and tubes. Climate change has had an impact on new weather patterns and prolonged drought pushing the Gabra community to frequent water shortages. They have a conglomerate of peoples living north of the Tana River in Kenya, the area around Lake Turkana and the highlands of southern Ethiopia.

Ajuran: The Ajuran are ethnically Somalis. They are descendants of a kingdom that ruled Somalia before the advent of Europeans into Africa. . The Ajuran live in the North Eastern Kenya and Eastern part of Ethiopia. Some of those who settled in present day Kenya eventually adopted the language and customs of their neighbors and hosts, the Borana. The Ajuran are best known in Somali history for establishing the Gareen dynasty based in Qalafo (now part of Ethiopia). The Gareen dynasty ruled parts of East Africa from the 16th to the 20th century. Among the Kenyan Ajuran people, the majority speak the Borana language as their first language while others speak the Somali language as their first language especially those from Wajir North District in the areas of Wakhe and Garren. The link between the Garreh and Ajuran is their primary language, which are Borana and not Somali. Population: 59,000.

Location in the Country: Eastern Province, Marsabit, Isiolo and Moyale districts, Wajir North.

Livelihood: The Ajurans, like the rest of other Somali tribes of Northern Kenya have traditionally lived a nomadic life. This way of life is dictated by the climate, which is semi-arid with two seasonal rains. They follow water and pasture for the animals they keep such as cattle, camels, goats, sheep, donkeys and mules that provide them their livelihood. Where the land is good for farming there are settled populations growing corn, millet, sorghum and some fruits and vegetables. The Ajuran live in an area with relatively high rainfall and good pasture for their animals. The intrusion by others has periodically resulted in clashes. Today, the Ajuran allow others to live and pasture their animals in their communal land. Some of the main causes of their vulnerability include the following: erosion of assets due to armed conflict during intermittent inter/intra-clan conflict, resulting in poverty; protracted conflict and insecurity; Poor access to economic/employment opportunities.

Maasai: Kenya's most well known ethnic tribe, the Maasai is semi-nomadic people located primarily in Kenya and northern Tanzania. They are considered to be part of the Nilotic family of African tribal groups. The Maasai probably migrated from the Nile valley in Ethiopia and Sudan to Maasailand (central and south-western Kenya and northern Tanzania) sometime around 1600 AD, along the route of lakes Chew Bahir and Turkana bringing their domesticated cattle with them. The Maasai speak the Maasai language, an Eastern Nilotic language closely related to Samburu (or Sampur), the language of the Samburu people of central Kenya, and Camus spoken south and southeast of Lake Baringo. Maasai's population is about 684,000 and is located in the Rift Valley Province, Kajiado and Narok districts.

Livelihood: The Maasai are cattle and goat herders, their economy almost exclusively based on their animal stock, from which they take most of their food: meat, milk, and even blood, as certain sacred rituals involve the drinking of cow blood.

Ilchamus: They are originally a pastoralist people who used to live on the mainland but due to clashes they have been forced to migrate to an island in Lake Baringo. It is a very traditional and culturally bound society, hierarchical and male-dominated. Many are uneducated and illiterate. They communicate mainly in their local language. They have a population of 34,000 and are located in Southeast and south shore of Lake Baringo, and southwest shore as far north as Kampiya Samaki.

Livelihood: The majority of the Ilchamus practice both livestock rearing and agriculture, but on the islands in Lake Baringo there are about 800 Ilchamus who live nearly entirely from fishing. They live from fishing in small boats made of balsam tree that dates back maybe a thousand years. They also do some souvenirs and they have some livestock. The mainland Ilchamus are semi-pastoralists with a long history of small scale agriculture. The main types of livestock owned by the Ilchamus are cattle (zebus), sheep (red Maasai and dopper cross) and goats (small east African), but their herds are significantly smaller than those of their neighbours. The key problems they face are insufficient security against aggressions from their neighbours, access to water and encroachment on their land due to the non-existence of land titles. The nearest markets are at Marigat and Kiserian.

Aweer: The Aweer are a remnant hunter-gatherer group living along the Kenyan coast in Lamu District on the mainland. In the last 30 years, the Aweer have faced very difficult times. In 1967, their homeland was severely affected by the war between Kenya and Somalia. Traditionally they depend on their elders for leadership and do not normally meet for village discussion. They practice polygamy and each wife has her own house in which she lives with her children. The husband does not have his own home but lives with each wife periodically. The Aweer have a population of 8,000 and are located in the Coast Province, behind Lamu, and Tana River districts in forests; North-Eastern Province, Garissa District.

Livelihood: They are indigenous hunter/gatherers famous for their longbows and poison arrows. The Aweer are often referred to - and even sometimes refer to themselves - as the "Boni". Considered by some as pejorative, Boni is based on the Swahili word "kubuni" which means 'to move', in reference to their proclivity, historically, to move around in pursuit of their livelihoods, rather than settle in one place. The lives of the Aweer were drastically changed when the Kenyan government curtailed their traditional way of life as a response to the insecurity of the region after the Shifta War (1963–1967), forcing them to settle in villages along the Hindi-Kiunga Road on Government Land between the Boni National Reserve and the Dodori National Reserve while adopting slash and burn agriculture.

Pokot: They speak Pökoot, language of the Southern Nilotic language family, which is close to the Marakwet, Nandi, Tuken and other members of the Kalanjen grouping. Kenya's 2009 census puts the total number of Pokot speakers at about 620,000 in Kenya. They are considered part of the Kalenjin people who were highland Nilotic people who originated in southern Ethiopia and migrated southward into Kenya as early as 2,000 years ago. Though the Pokot consider themselves to be one people, they are basically divided into two sub-groups based on livelihood. Population: 662,000. The Pokot are located in the Rift Valley Province, Baringo and West Pokot districts.

Livelihood: Currently, Pokot are semi-nomadic, semi-pastoralists who live in the lowlands west and north of Kapenguria and throughout Kacheliba Division and Nginyang Division, Baringo District. These people herd cattle, sheep, and goats and live off the products of their stock. The other half of the Pokot is agriculturalists. Mixed farming is practiced in the areas of Kapenguria, Lelan and parts of Chepararia. These areas have recorded rainfall between 120mm to 160mm while pastoral areas include Kiwawa, Kasei, Alale and parts of Sigor receiving 80mm and

120mm. The livelihood of the Pokot has led to constant conflict between them and other pastoral communities – the Turkana, Matheniko and the Pokot of Uganda. Over access to semi-arid savannah and wooded grassland terrain that cuts along the habitation area. Resources such as land, pasture, water points are communally owned and they are no specific individual rights.

Endorois: Endorois community is a minority community that was living adjacent to Lake Baringo and has a population of about 20,000. However, the Government of Kenya forcibly removed the Endorois from their ancestral lands around the Lake Bogoria area of the Baringo and Koibatek Administrative Districts, as well as in the Nakuru and Laikipia Administrative Districts within the Rift Valley Province in Kenya. Endorois are a community of approximately 60,000 people who, for centuries, have lived in the Lake Bogoria area. They claim that prior to the dispossession of Endorois land through the creation of the Lake Hannington Game Reserve in 1973, and a subsequent re-gazetting of the Lake Bogoria Game Reserve in 1978 by the Government of Kenya, the Endorois had established, and, for centuries, practiced a sustainable way of life which was inextricably linked to their ancestral land.

The British claimed title to the land in the name of the British Crown. At independence in 1963, the British Crown's claim to Endorois land was passed on to the respective County Councils. However, under Section 115 of the Kenyan Constitution, the Country Councils held this land in trust, on behalf of the Endorois community, who remained on the land and continued to hold, use and enjoy it. The Endorois' customary rights over the Lake Bogoria region were not challenged until the 1973 gazetting of the land by the Government of Kenya. The act of gazetting and, therefore, dispossession of the land is central to their current predicament.

The area surrounding Lake Bogoria is fertile land, providing green pasture and medicinal salt licks, which help raise healthy cattle. Lake Bogoria is central to the Endorois religious and traditional practices. The community's historical prayer sites, places for circumcision rituals, and other cultural ceremonies are around Lake Bogoria. These sites were used on a weekly or monthly basis for smaller local ceremonies, and on an annual basis for cultural festivities involving Endorois from the whole region. The Endorois believe that the spirits of all Endorois, no matter where they are buried, live in the Lake, with annual festivals taking place at the Lake. They believe that the Monchongoi forest is considered the birthplace of the Endorois and the settlement of the first Endorois community.

Livelihood: Dependent on land and fishing from Lake Bogoria. Critically, land for the Endorois is held in very high esteem, since tribal land, in addition to securing subsistence and livelihood, is seen as sacred, being inextricably linked to the cultural integrity of the community and its traditional way of life.

Boni: The Boni people are known for their unique tradition of whistling to birds that guide them to honey. They are found in Northeastern Kenya's district of Ijara and Lamu district. They are concentrated mainly in Witu, Hindi and Kiunga divisions. The community is located in villages of Bargoni (Hindi Division), Milimani, Bodhei, Basuba, Mangai, Mararani, Kiangwe and Kiunga (Kiunga division), Pandanguo and Jima (Witu Division). Their population is about 4,000, compared to 25,000 half a century ago (Source: Organization for the Development of Lamu Communities (ODLC)). They are nomadic hunter-gatherer tribe of mainly Cushitic origin with a

unique characteristic. The community sources their subsistence from forest products such as honey, wild plants/fruits for consumption and medicinal purposes.

The Boni live in forested areas of the district i.e. within the Witu and Boni forests. They live deep into the forest and only come out to the periphery when there is hardship or hunger. They perceive the forest in the Boni inhabited areas as communally theirs. However, with the gazettement of all the forest by the government this has become a source of conflict.

Watha: The Watha people are mostly found in the rural arid and semi-arid lands of the country. The people are traditionally hunters and gatherers. In Malindi, the Watha community is found in four divisions (i.e. Malindi, Langobaya, Marafa and Magarini). In Tana River district the Watha are found in Sombo and Laza divisions while in Mandera the Watha are found in Central division. The population of Watha community in the districts is estimated at approximately 30,000 persons. This is only 2.7% of the entire Malindi, Mandera and Tana River population.

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The Watha people are traditionally hunters and gatherers. However since the government abolished unlicensed hunting of game and wild animals, the Watha people now live in permanent settlements, some of them along the river and where there are forests, mainly in the mixed farming and livestock farming zones. The forests afford them an opportunity to practice bee keeping while those along the river practice crop production.

The land tenure system in the district is communal ownership. Most of the land in the three districts of Malindi, Mandera and Tana River are currently under trust land by the county councils.

Kenya's 2010 Constitution provides a rich and complex array of civil and political rights, socioeconomic rights and collective rights that are of relevance to indigenous communities. While important, constitutional provisions alone are not enough. They require a body of enabling laws, regulations and policies to guide and facilitate their effective implementation. In 2011, Kenya's parliament enacted 22 laws. In the main, these laws are of general application and will have a bearing on the way in which the state exercises power in various sectors, some of them of fundamental importance to indigenous communities.

The revamped judiciary is already opening its doors to the poorest and hitherto excluded sectors of Kenyan society. Indicative of this changed attitude on the part of the judiciary - at least at the highest level – is the fact that the deputy president of the Supreme Court met with elders from the Endorois indigenous people in July 2001.

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Additionally, the adoption of a law establishing the Environment and Land Court is important for indigenous communities given that the Court will “hear and determine disputes relating to environment and land, including disputes: (a) relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) relating to compulsory acquisition of land; (c) relating to land administration and management; (d) relating to public, private and community land and

contracts, chooses in action or other instruments granting any enforceable interests in land; and
 (e) any other dispute relating to environment and land

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The new Revenue Allocation Commission, mandated by Article 204 of the Constitution to earmark 0.5% of annual state revenue to the development of marginalized areas, in addition to 15% of national revenue for direct transfer to county governments. In implementing Article 59 of the Constitution, the government has created a) the Human Rights Commission b) the Commission on Administrative Justice and c) the Gender Commission.

An indicative list of Vulnerable and Marginalized Groups in Kenya

Source: ERMIS Africa Ethnographic Survey of Marginalized Groups, 2005-2012

Name	Other Names Usually derogatory	Estimated Population	Livelihood	Administrative Location Counties
1. Sengwe r		50,000	HG/Farmers	Trans-Nzoia; Uasin-Gishu; West Pokot; KeiyoMarakwet
1. Ogiek	Dorobo	40,000	HG/Farmers	Nakuru; Baringo; Uasin Gishu; Bomet; Kericho; Narok; Nandi
1. Waatha	Wasanye	13,000	HG/Farmers	Kwale; Tana River; Marsabit, Kilifi
1. Aweer	Boni	7,000	HG	Lamu, Tana River
1. Yiaaku	Dorobo	4,000	HG/Farmers	Laikipia
1. El Molo		2,900	Fishing	Marsabit, Samburu
1. Ilchamus		33,000	Fishing/Farmers/ Livestock Keeper	Baringo
1. Endorois	Dorobo	60,000	Fishing/Farmers/ Livestock Keeper	Baringo, Laikipia
1. Borana		136,936	Pastoralists	Marsabit, Wajir, Isiolo
1. Gabra		31,000	Pastoralists	Marsabit, Samburu
1. Rendille		62,000	Pastoralists	Marsabit, Samburu
1. Turkana		1,008,463	Pastoralists	Turkana, Baringo, Laikipia, Isiolo

1. Pokot		62,000	Pastoralists	West Pokot /Baringo
1. Maasai		666,000	Pastoralists	Narok, Kajiado

Figure 4: Map showing locations of and Marginalized Groups /IPs in Kenya.

ANNEX 7: MINUTES FOR NATIONAL DISCLOSURE FORUM ON VULNERABLE AND MARGINALIZED GROUPS FRAMEWORK HELD MONDAY 8TH FEBRUARY 2016 AT EMBAKASI YOUTH EMPOWERMENT CENTRE, NAIROBI

Vulnerable and Marginalized Groups Framework (VMGF) disclosure forum was held on Monday 8th February 2016 at Embakasi Youth Empowerment Centre, Nairobi. A total of 73 participants attended.

The forum was officially opened by the Deputy County Commissioner of Embakasi sub-county, Mr. Peter K. Mbugi. In his speech he emphasized that everybody was very important in Kenya and hence inclusion of minority communities was crucial in realizing vision 2030. Mr. Keverenge who spoke on behalf of the Director of Youth Affairs encouraged participants to participate freely since the forum was meant for them. He asked them to honestly provide feedback on the project so that the ministry would serve them better

Participants comprised of youth leaders from VMGs (30), opinion leaders from VMG communities, chiefs and assistant chiefs (12), county officers from counties with VMG presence (6), community elders, youth development and gender officers from Nairobi county (10), national youth officers who led the consultation process (5), one consultant from World Bank and one representative from the National Youth Council.

Participants concurred that the VMGF had captured issues as presented during the social assessment in: Kwale with the Wakifundi and Tswakka; Isiolo with the Sakuye and the Turkana; Nakuru with the Ogiek; and Trans Nzoia with the Sengwer.

In discussions during the disclosure the participants were happy with the project as well as with the framework. Comments raised are summarized below.

- The project is inclusive and the framework empowering to VMGs and that as a result if well implemented it will;
 - a. Help youth acquire knowledge and skills that are aimed at changing their lives;
 - b. Reduce tribal clashes where communities especially in Northern Kenya are involved in cattle rusting which is mainly led by idle youth;
 - c. Address unemployment nationally and especially if the project is rolled out in all the 47 counties ensuring the problem is tackled across the country;
 - d. Enhance youth participation in the project activities and assist in the realization of Vision 2030;

- e. Allow youth participation in development initiatives as provided for in the Constitution of Kenya, 2010;
 - f. Create employment opportunities at the grassroots level, hence reducing poverty; Include all communities in the country and are happy that there are mechanism to reach out to VMGs /VMGs are recognized
 - g. Reduce youth dependency on parents/guardians;
- Project phasing in implementation will simplify the rather complex project;
 - The project should provide short training geared to market needs appropriate to youth who are also supporting their own families;
 - The project should equip youth with knowledge and skills necessary for development/ change;
 - The project should reach a wider scope of youth beneficiaries. It was noted that youth of 16 - 29 years are the very needy;
 - VMGs recognized that the project will:
 - a. lead to reduction in general crime, consumption of alcohol and drug abuse due to employment opportunities;
 - b. curb youth radicalization, livestock rustling and general insecurity; and
 - c. combat backward looking cultural practices such as early marriages and female genital mutilation thereby facilitating access and continued education

Participants felt the following issues needed modifications;

- The project should provide Loans to be accessed by both individual youth and youth groups;
- The project should provide Loan top up facilitates in case of genuine failure of business in situations beyond human control or in cases of those doing very well to act as role models;
- The project should ensure that business initiatives financed through the project were insured;
- Project should provide grant awards to best performing individuals/groups;
- Consider to penalize those who deviate from pursuit of the project's objectives as the plan presented by individuals;
- Individuals not affiliated to a group be not eligible to a grant in order to ensure a mechanism for follow up;
- Integrate peace building activities (e.g. youth sports) in areas with conflicts to promote unity and cohesion among communities;
- Pastoralists and governments to provide land for business centres such as markets and workshops since rents in some towns like Isiolo were prohibitive for small businesses;

- Incorporate mobile money services and banking since some places have no banking services;
and
- The framework is in line with the constitution on public participation.

Questions	Responses government team and other stakeholder
<p>1. Why could the loans not be high like from ksh100, 000 to 300,000?</p> <p>2. Why was the project not considering youth beyond 30 years?</p> <p>3. How do the youth below 18 years and without a national identity card access the benefits?</p> <p>4. What will be the minimum period required for a group to qualify for a loan/grant?</p>	<p>1. The project targets poor vulnerable youth, who only need small grants to initiate a business. Youth at this level have limited capacity to manage huge amounts.</p> <p>2. -Study showed that youth between-16-29 were most vulnerable of all youth, hence the priority for this project</p> <p>3. The project will use the youth own trusted guardian as provided by youth in case of mobile phones .One of the chief suggested that youth without IDs could use birth certificates but after a long discussion participants felt that most VMGs youth did not even have the birth certificates</p> <p>4. The project grants were to individuals and not groups. However, most participants felt that youth groups should be used to vet the for eligible beneficiaries since some were known jokers</p>

Comments

There was a pro-longed debate whether the project should give Loans or grants but eventually participants concluded grants were better since most of the youth were vulnerable but there should be proper vetting and follow up to ensure more deserving and committed youth access the grants.

Some participants recommended that training be provided in the existing local institutions that were cheap and practical to their needs while ensuring adult youth could also attend to other activities to support their livelihoods.

Some of the youth felt that if the project and framework was applied the way it is most youth would benefit. However, some had fears that most projects are not implemented as planned?

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Youth from vulnerable communities are the most affected by harmful cultural practices such as FGM and early marriages due to their vulnerability that pre-disposes to such practices for survival or due to lack of knowledge or social support system?

List of MPGY officers facilitating the process:

1.	Irungu Kioi		Technical Team Leader
2.	Franklin Mbae		Technical Team Member
3.	Mercy Kimemia		Technical Team Member
4.	Ruth Musau		Technical Team Member
5.	Johnstone Keverenge		Director's Representative

(List of participants attached.)

GALLERY PHOTOS: VMGF DISCLOSURE AT YOUTH EMPOWERMENT CENTRE, NAIROBI.





ANNEX 8: LIST OF PARTICIPANTS



KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT VMGs Disclosure Forum

County: Nairobi
Venue: Embakasi Youth Empowerment Center
Date: February 8, 2016

List of Attendance

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**KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT
VMGs Disclosure Forum**

County: Nairobi
Venue: Embakasi Youth Empowerment Center
Date: February 8, 2016

List of Attendance

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**KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT
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County: Nairobi
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KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT
VMGs Disclosure Forum

County: Nairobi
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Date: February 8, 2016

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**KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT
VMGs Disclosure Forum**

County: Nairobi
Venue: Embaki Youth Empowerment Center
Date: February 8, 2016

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10.					
11.					
12.					
13.					



KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT
VMGs Disclosure Forum

County: Nairobi
Venue: Embakasi Youth Empowerment Center
Date: February 8, 2016

List of Attendance

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11.					
12.					
13.					



KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT
VMGs Disclosure Forum

GRASP DISCUSSION
KWALE COUNTY

County: Nairobi
Venue: Embakasi Youth Empowerment Center
Date: February 8, 2016

List of Attendance

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**KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT
V46s Disclosure Forum**

County: Nairobi
Venue: Embakasi Youth Empowerment Center
Date: February 8, 2016

List of Attendance

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Thirua County - County

**KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT
VMGs Disclosure Forum**

County: Nairobi
Venue: Embakasi Youth Empowerment Center
Date: February 8, 2016

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KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT
VMGs Disclosure Forum

GROUP DISCUSSION
KWALE COUNTY

County: Nairobi
Venue: Embakasi Youth Empowerment Center
Date: February 8, 2016

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