



# THE GOVERNMENT OF KENYA

## MINISTRY OF ENVIRONMENT, WATER AND NATURAL RESOURCES

**KENYA WATER SECURITY AND CLIMATE RESILIENCE PROGRAM  
(KWSCR)**

**FINAL**

### **VULNERABLE AND MARGINALISED GROUPS FRAMEWORK**

**(VMGF)**

**(P117635)**

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Prepared by: **Tito Kodiaga** and **Lazarus Kubasu Nolasco**  
Senior Environmental Specialist and Senior Social Specialist  
Project Management Unit  
Kenya Water Security and Climate Resilience Project (KWSCR)  
Nairobi, Kenya.

## ABBREVIATIONS AND ACRONYMS

APL	Adaptable Program Loan
ASAL	Arid and Semi-Arid Lands
AWSB	Athi Water Services Board
CDA	Coast Development Authority
CDD	Community Driven Development
CoK	Constitution of Kenya
CPS	Country Partnership Strategy
CAADP	Comprehensive Africa Agriculture Development Program
CSO	Civil society organizations
CWSB	Coast Water Services Board
DSS	Decision Support System
EAs	Environmental Assessments
EA	Executing Agency
EIA	Environmental Impact Assessment
EMCA	Environmental Management and Coordination Act
EMP	Environmental Management Plan
ESIA	Environmental and Social Impact Assessment
ESMF	Environmental and Social Management Framework
ESMP	Environmental and Social Management Plan
FPIC	Free, prior and informed consultation
FS	Feasibility Study
GDP	Gross Domestic Product
GIS	Geographic Information System
GIZ	German Agency for International
GOK	Government of Kenya
GRM	Grievance Redress Mechanism
GRC	Grievance Redress Committee (GRC)
Ha	Hectares
HIV/AIDS	Human Immuno Deficiency Syndrome
IBRD	International Bank for Reconstruction and Development
ICT	Information and Communication Technologies
IDA	International Development Association
IE	Impact Evaluation
IF	Investment Framework
IMOC	Inter-Ministerial Oversight Committee
IPMP	Integrated Pest Management Plan
IPPF	Indigenous Peoples Planning Framework
KFS	Kenya Forest Service
KfW	German Reconstruction Credit Institute (Kreditanstalt für Wiederaufbau)
KNCHR	Kenya National Commission on Human Rights
Ksh	Kenyan Shilling
KWS	Kenya Wildlife Service
KWSIP	Kenya Water Sector Investment Program
KWSCRIP	Kenya Water Security and Climate Resilience Program
KWSCRIP-1	First Kenya Water Security and Climate Resilience Project
KWSCRIP-2	Second Kenya Water Security and Climate Resilience Project
KWSCRIP – AF	Additional Financing for KWSCRIP-1
LIRSSU	Legal and Institutional Reforms Support Sub-Unit
M & E	Monitoring and evaluation (M&E)
MDGs	Millennium Development Goals
MEMR	Ministry of Environment and Mineral Resources
MFW	Ministry of Forestry and Wildlife
MoA	Memorandum of Agreement

MOF	Ministry of Finance
MoRDA	Ministry of Regional Development Authorities
MPND	Ministry of Planning and National Development
MEWNR	Ministry of Water and Irrigation
NLC	National Land Commission
NEMA	National Environment Management Authority
NET	National Environmental Tribunal
NGOs	Non-Governmental Organization
NIB	National Irrigation Board
NMK	National Museums of Kenya
NRM	Natural Resources Management Project
OP/BP	Operational Policy/Bank Policy
PAD	Project Appraisal Document
PCR	Physical and Cultural Resources Plan,
PDO	Project Development Objective
PIC	Public Information Center
PIM	Participatory Impact Monitoring
PIM	Project Implementation Manual
PMP	Pesticide Management Plan
PMU	Project Management Unit
PPP	Private Public Partnerships
PPA	Project Preparation Advance
PRA	Participatory Rural Appraisal
PS	Permanent Secretary
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
RRA	Rapid Rural Appraisal
SA	Social Assessment
SESA	Strategic Environmental and Social Assessment
TA	Technical Assistance
TOR	Terms of Reference
TTL	Task Team Leader
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
WASREB	Water Services Regulatory Board
WaSSIP	Water and Sanitation Service Improvement Project
WB	World Bank
WIS	Water Information System
WRMA	Water Resources Management Authority
WRUA	Water Resources Users Association
WSB	Water Services Board

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# I EXECUTIVE SUMMARY

## I.1 Introduction

This Vulnerable and Marginalized Groups Framework (VMGF) has been prepared for the Government of Kenya (GOK), Ministry of Environment, Water and Natural Resources (MEWNR) the (client) under Kenya Water Security and Climate Resilience Program (KWSCRCP) because the project has triggered Operational Policy OP 4.10 and thus to ensure compliance to this World Bank policy which stipulate that, in the event, that indigenous people are likely to be affected by 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 Kenyan constitutions does not use the term “indigenous” but “vulnerable peoples” the framework shall take the name “Vulnerable and Marginalized People 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, then a VMGF must be prepared.

This VMGF for the Water Security and Climate Resilience Program has been prepared based on the OP 4.10 of the World Bank (“Bank”) and the applicable laws and regulations of the Government of Kenya. It is to guide the preparation of KWSCRCP sub projects investments that may affect Indigenous/ Vulnerable and Marginalised Groups (VMGs) in the KWSCRCP sub project areas.

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 Marginalised 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 marginalised 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
- (c) Ensure that the vulnerable and marginalised people receive social and economic benefits that are culturally appropriate and gender as well as inter-generationally inclusive. The VMGF must be based on free, prior and informed consultations with indigenous peoples.

The objectives of the policy are to avoid adverse impacts on vulnerable and marginalised groups and to provide them with culturally appropriate benefits.

### ***1.1.1 Reasons for the use of a Vulnerable and Marginalized Groups Framework***

A Vulnerable and Marginalised Groups Framework is developed when a number of KWSCRCP investments have been identified though not all. At the time of preparation and revision of this VMGF, (a) host sites had been identified; and (b) a number of vulnerable and marginalised groups whose rights and livelihoods may be affected adversely by the sub project investments had also been identified.

During project preparation, it is becoming clear that the sub project investments under KWSCRCP might impact on Indigenous Peoples (IP)/VMGs’ rights, lands, livelihoods and culture. To qualify for funding from the Bank and following best practice documented in the World Bank’s policy on Indigenous Peoples (OP 4.10), the Government of Kenya has commissioned the preparation of a Vulnerable and Marginalised

Groups Framework (VMGF) to cover indigenous group as defined by the Bank and vulnerable group as expanded by Government to ensure that the development process fully respects the dignity, human rights, economies, and culture of vulnerable and marginalised people and that the KWSCRП investments have broad community support from the affected vulnerable and marginalised people.

Some projects involve the preparation and implementation of annual investment programs or multiple subprojects. In such cases, and when the Bank's screening indicates that VMGs are likely to be present in, or have collective attachment to, the project area, but their presence or collective attachment cannot be determined until the programs or investments are identified, the borrower (in this case GOK) prepares a Vulnerable and Marginalized Groups Framework (VMGF). The VMGF provides for the screening and review of the proposed investments in a manner consistent with this policy. The KWSCRП will integrate the VMGF recommendations into the project design of each sub project investment.

The VMGF outlines the processes and principles of screening to determine if a proposed investment impacts adversely on vulnerable communities, the preparation of a VMGP including the social assessment process, consultation and stakeholder engagement, disclosure procedures, communication and grievances redress mechanism. A detailed VMGP will be prepared for each sub project investment once a project location is identified and screening conducted and determination via screening is made that VMGs are present in the project investment area.

The VMGF recognizes the distinct circumstances that expose VMGs to different types of risks and impacts from development projects. 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<sup>1</sup>. 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<sup>2</sup>. 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, this policy, together with the Involuntary Resettlement Policy (RPF) and Environmental and Social Management Framework (ESMF) already prepared for this KWSCRП, recognizes that VMGs play a vital role in sustainable development and emphasizes that the need for conservation should be combined with the need to benefit VMGs in order to ensure long-term sustainable management of critical ecosystems.

This VMGF describes the policy requirements and planning procedures that KWSCRП will follow during the preparation and implementation of sub projects investments especially those identified as occurring in areas where VMGs are present.

This VMGF is to be used by the MEWNR/KWSCRП in order to ensure that the World Bank indigenous people's policies, with emphasis on Operational Policy OP 4.10 (Indigenous People) are adequately addressed. The purpose of this VMGF is to ensure that management of issues related to vulnerable and marginalised people is integrated into the development and operation of proposed investments to be financed under the KWSCRП to ensure effective mitigation of potentially adverse impacts while enhancing accruing benefits.

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<sup>1</sup> OP 4.10, Section 4- defining Indigenous Group

<sup>2</sup> Ibid...Section 4

## 1.2 Program Background

Kenya has limited freshwater endowments and is projected to face rapid increases in water demand, driven by growth and urbanization. The country faces the additional challenge of high inter-annual and intra-annual rainfall variability that results in frequent and severe droughts and floods and could be exacerbated under a changing climate. Kenya has yet to adequately manage its ‘difficult’ hydrology, as evidenced in decades-long underinvestment in water storage that has not kept pace with growing needs or reigned in water’s most destructive forces. Government of Kenya (GoK) is planning a large scale water investment program to address these challenges, as well as new reforms to align the sector to the 2010 Constitution of Kenya.

Government of Kenya (GoK) has requested the World Bank’s support to prioritize, prepare, and finance these water resources development opportunities. The proposed Kenya Water Security and Climate Resilience Program (KWSCR) – which was agreed between the World Bank and GoK in the Country Partnership Strategy (2010-2013) responds to this request. The objective of the proposed KWSCR will be to support the institutionalization of processes and water-related investments to strengthen climate-resilient water resources development and management in Kenya.

## 1.3 Program Description

The achievement of Kenya’s development objectives on food security, poverty reduction, and economic growth depends on the ability of the country to efficiently use and manage its available water resources. Water is a productive input into priority economic sectors under Kenya’s Vision 2030 such as agriculture, industry, energy and tourism, and lack of water security causes economic losses and constrains growth potential. In 2004, the World Bank estimated that losses from climate variability average about 2.4 percent of Gross Domestic Product (GDP) per year with a further 0.5 percent loss from water resources degradation, seriously impacting the country’s economic growth and competitiveness.

With annual freshwater availability of approximately 526 m<sup>3</sup> per capita, Kenya is already classified as water scarce country. Over 80 percent of Kenya’s area is arid or semi-arid where a reliable supply of water is a limiting factor for economic development. Rapid increases in water demand are driven by population growth, economic growth, and urbanization. Underinvestment in water infrastructure in Kenya for the last two decades has resulted in a total water supply storage capacity of 3.1 m<sup>3</sup> per capita, one of the lowest levels in the world, which leaves the country vulnerable to climate and hydrologic variability.

The Ministry of Environment, Water and Natural Resources (MEWNR) is currently increasing water storage to 16 m<sup>3</sup> per capita by 2012 through the construction of new water supply reservoirs, though much more is needed in order to achieve water security. Catchment degradation compounds these challenges by increasing the intensity of flooding and reducing water storage capacity through reservoir sedimentation.

In response to these challenges, Government of Kenya is implementing a Kenya Water Security and Climate Resilience Program. Currently, KWSCR has two projects, the Kenya Water Security and Climate Resilience Project (KWSCR-1) (P117635) and the Coastal Region Water Security and Climate Resilience Project (KWSCR-2) (P145559). Additional Financing is being considered for WSCR-1 (P151660). This ESMF applies to those projects, as well as any future projects in the KWSCR Program.

The long-term objective of the program is to improve water security and build climate resilience by financing water related investment, strengthening water investment planning and preparation, improving water and climate investment risk management, and building a solid institutional framework. The primary

indicator of success by the end of the program will be increased water storage capacity to regulate water availability for productive use and increased climate resilience.

KWSCR-1 includes the following activities: (i) water resources development investments, including storage for all purposes; (ii) climate resilience and climate risk management investments; and (iii) water resources management investments, including institutional support. An Investment Framework is being developed that will establish the eligibility and preparation criteria and procedures that are required to be met in order for sub-projects/investments to be funded under the Project.

The Project was approved by the Bank Board in 2013. A Project Preparation Advance (PPA) in the amount of US\$ 2.96 million was initially approved to assist in preparing the Project. The KWSCR comprises three components. These are:

### ***1.3.1 Component 1: Investments in Water Resources Development***

This component supports climate resilience and water security for economic growth by financing the preparation of water resources development investments/sub-projects that meet the requirements of an Investment Framework (IF). The IF establishes the ‘rules of the game’ by making transparent the decision-making process on sub-project selection and ensuring that selected sub-projects are well-prepared, effectively contribute to realizing the objectives of building water security and climate resilience, and are implemented in a sustainable manner. The advantage of the framework approach is that it provides GoK, the World Bank and Development Partners the opportunity to invest early in ‘low hanging’ infrastructure and related activities provided that they are well-prepared, while establishing principles for selecting and preparing subsequent investments. In this regard, the IF serves as a short-term tool that provides quality control as the full-fledged investment planning process is established. However, the IF will have a longer term life, in that it will eventually guide future decisions on investments in the sector.

The IF consists of two parts: (i) sub-project selection/eligibility criteria and (ii) technical, economic, financial, social, environmental, and institutional guidelines for preparing investments at the feasibility level. Both parts of the IF must be met in order for a proposed sub-project to receive project financing. Sub-projects that could be considered for financing under the project include infrastructure and related activities for one or more of the following purposes:

1. Bulk water supply, including storage for surface water use and flow regulation, and groundwater development;
2. Water for productive and consumptive use;
3. Flood management infrastructures or drought mitigation; and
4. Watershed management.
5. Urban water supply systems
6. Sanitation programs

During project preparation, this initial IF has been developed and tested on investment proposals at various stages of development, in particular, the Lower Nzoia Irrigation Development Project. This initial IF has been reviewed in order to ensure that it is robust and reflects the country’s capacity to prepare investments in accordance with it. During project implementation, the initial IF will be gradually refined (e.g., guidelines specific to each of the sub-project types) and capacity will be built to ensure the effective application of the IF. Component 1 includes two sub-components: (i) Water Sector Investments and (ii) Water Investment Pipeline Facility.

### 1.3.2 Component 2: Water Sector Reforms and Planning and Management Instruments

Component 2 will support the current sector institutions, as well as the preparation, implementation and full functioning of the new legal and institutional framework resulting from alignments with the new Constitution of Kenya. It will also support the development of integrated and participatory water investment planning that leads to the development of a preliminary pipeline of investment proposals. The overall objective of this component will be to strengthen the enabling institutional and legal framework to sustainably advance Kenya's vast water sector investment program in order to achieve water security and climate resilience. To this end, Component 2 includes two sub-components: (i) support for water sector reforms and (ii) strengthening water management and investment planning.

### 1.3.3 Component 3: Support to Project Implementation

In the uncertain and dynamic environment arising from the alignment of the water sector to the new Constitution of Kenya, it is essential that implementation of project is based on an overall design and approach that ensures continuity, avoids unnecessary delays and cost increases, and mitigates against the potentially harmful effects of gaps and issues that will inevitably emerge during the transition period and as the new institutional, legal and policy framework of the sector is put in place. For these reasons, a Project Management Unit (PMU) will be established. This component will support the establishment of the PMU to provide for effective project implementation throughout the reform period (that is, prior to the launch of the reforms, during the transition period, and beyond, to the extent needed). Specifically, this component will finance the required office space, goods (e.g., vehicles), equipment (e.g., computers), staff, consultant services, travel, training and operating costs that will allow the PMU to carry out its responsibilities for project implementation. These responsibilities include project management and coordination, procurement and financial management, project monitoring and evaluation (including impact evaluation), social and environmental safeguards management and oversight, strategic project communications and outreach, investment sub-project selection and execution (for component 1), and other activity execution (for component 2).

**Component 1** of the KWSCRIP triggers the OP 4.10 since it is likely to involve the execution of sub project investments that may be located in areas where vulnerable or marginalised groups are present in, or have collective attachment<sup>3</sup> to, the project area. This VMGF and will be complemented by two other safeguards instruments: Environmental and Social Management Framework (ESMF) accompanied by Environmental and Social Management Plans (ESMPs) for each sub project identified and a Resettlement Policy Framework (RPF) which has also been prepared that provides standards and procedures for compensation for any land acquisition, assets, or restriction of access to resources that KWSCRIP investment may require, in accordance with World Bank OP 4.12 – Involuntary Resettlement.

## 1.4 Vulnerable and Marginalized Groups KWSCRIP Project Areas

The African Commission's Working Group of Experts on Indigenous Populations & Communities affirms that *“almost all African states host a rich variety of different ethnic groups. All of these groups are indigenous to Africa. However, some are in a structural subordinate position to the dominating groups and the state, leading to marginalization and discrimination. It is this situation that the indigenous concept, in its modern analytical form, and the international legal framework attached to it, addresses.”*

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<sup>3</sup> Collective attachment” means that for generations there has been a physical presence in and economic ties to lands and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites. “Collective attachment” also refers to the attachment of transhumant/nomadic groups to the territory they use on a seasonal or cyclical basis.

***Indigenous Peoples (OP 4.10) will be triggered<sup>4</sup> by proposed investment projects to be implemented under the KWSCRIP.*** Since the KWSCRIP is countrywide in nature an initial screening indicates the presence of groups that meet the World Bank criteria for indigenous peoples who likely to be present in, or have collective attachment to, the project areas that may benefit from the project especially bearing in mind that exact locations of investments remain unknown at this point in time. In addition to OP 4.10, screening and profiling marginalized community and marginal groups will be done in line with the interpretation of section 260 of the Kenya Constitution, 2012 which provides a list of those categorized as Marginalized Communities and Marginalized Groups.<sup>5</sup> ***See table 1*** for indicative list of groups that are categorized as VMGs using criteria from section 260 of the Constitution of Kenya (CoK).

This VMGF documents all the vulnerable and marginalised groups in Kenya as defined by the Constitution of Kenya (CoK) on the communities' categorised thus so. The reason why all the vulnerable and marginalized groups are considered in this VMGF is principally because the KWSCRIP is national in scope and since the exact sub project investment locations are not known, the only sensible approach would be to consider all these communities and then during the sub project screening further determination and exclusion will be made.

Although the groups listed in ***table 1 (see section 4.32)*** are categorised as VMGs under GoK's legislation, they would also need to meet the Bank's criteria for determining whether they are Indigenous Peoples. Given that the application of OP 4.10 in Kenya is evolving, the framework document describes what groups GoK recognizes as vulnerable and marginalized and the Bank's policy criteria for determining if they are Indigenous Peoples. Through the social assessment process at the sub project level, an evaluation will be made if OP 4.10 policy will be triggered (it should be noted that some groups, such as the Ogiek and Sengwer, have met the criteria for OP 4.10 in other Bank-financed projects). Hence for that reason, the list provided in ***annex 7*** by GOK is only indicative for the moment.

The marginalised and vulnerable communities face similar problems. From the formal legal point of view they are citizens equal to all other Kenyans. However, they do not have the same access to land and other resources, social and political influence, legal status and/or organizational, technical or economic capacities as other citizens of Kenya. The Ogiek and Sengwer for example, who formerly ranged over broad areas of uninterrupted forests as full-time foragers, 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 continual expropriation of land and steadily intensifying restrictions on access to natural resources – especially forests - have further increased their sedentarization, marginalization, social discrimination, and impoverishment. The Ogiek and Sengwer, who are more dependent on forests than others, were - often in contravention of their legal utilization rights - forced out of forests with little or no compensation, and with little or no land to go to or resources to live on.

## **1.5 Vulnerable & Marginalized Groups Requirements**

The 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

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<sup>4</sup> See Annex 1 for World Bank Operational Policy (O.P.) 4.10 Indigenous Peoples.

<sup>5</sup> The Constitution states that a marginalized community/groups is one that meet the following criteria: (a) **A community** that are unable to participate in the integrated social economic life of Kenya as a whole due to (i) relatively small population or (ii) any other reasons; (b) **Traditional Community** that has remained outside the integrated social and economic life of Kenya as a whole; (c) **Indigenous community** that has retained a traditional lifestyle and livelihood based on a hunter-gatherer economy; and (d) **Pastoral persons or communities**, whether: (i) **nomadic or (ii) a settled community** that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya .

impacts of the MEWNR's planned investments/activities under the proposed KWSCRIP on vulnerable and marginalized groups.

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 assessment/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 Vulnerable and Marginalized Groups Framework (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 VMGPs, and addressing any grievances.*
- *Monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the project.*
- *Disclosure arrangements for VMGPs to be prepared under the VMGF.*

Consultation during the development of this document and on the document itself has occurred with a variety of stakeholder groups. Details of consultations and a list of those consulted are included in Annex 7 and Annex 8.

### **1.5.1 Screening, Preparation and Implementation of VMGPs**

The steps to be undertaken for the preparation of VMGP 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 the environmental and social specialists within the KWSCRIP/Project Management Unit (PMU) in collaboration with the agencies executing the specific sub project investment under the KWSCRIP and if needed using consultants with expertise on the social and cultural groups in the project area. Ideally the screening for VMGs should also follow the GOK's framework for identification of Vulnerable and Marginalized Groups (VMGs) according to the New Constitution of Kenya (CoK). However, owing to the fact that the list of groups considered to be vulnerable and marginalized by the GOK is extensive and may not necessarily meet the criteria for consideration of VMGs by the bank, during screening, the bank criteria for identification of VMGs as per OP. 4.10 will be used to make a determination instead.

If, based on the screening, it is concluded that IPs/VMGs are present in, or have collective attachment to, the project area, a social assessment will be undertaken by executing partner agencies of the KWSCRIP with direct support of the environmental and social specialists in the KWSCRIP/PMU to evaluate the projects' 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 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 will be mandatory as part of the preparation

of the VMGPs which will include engaging in free, prior, and informed consultation with the vulnerable and marginalized groups.

Preparation of a specific sub project VMGPs will be done in accordance with the requirements of OP 4. 10 and each VMGP will be submitted to the Bank for review before the respective investment is considered eligible for Bank financing under the broader investment framework. *Annex 3* section of this report outlines the contents of a VMGP.

The need for VMGPs will depend on the nature and scale of the sub project impact and vulnerability of VMGs. The social assessment will identify requirements for preparing a VMGP and/or incorporation of VMGP elements in other project design documents such as resettlement plan. A VMGP would be required if VMGs are found to be distinct and vulnerable and they experience significant impacts, 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

The VMGPs will set out the measures whereby the executing agency (EA) 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, VMGP will outline measures to minimize, mitigate, and compensate for the adverse impacts.

The level of detail and comprehensiveness of VMGP will vary depending on the specific subproject and the nature of impacts to be addressed. If the impacts are limited to acquisition of customary land, the elements of VMGP will be combined to the RAP. If VMGs are the sole or overwhelming majority of the subproject beneficiaries, the elements of the VMGP could be integrated into the sub project design or documents such as community development program to ensure that all VMGs participate in and receive culturally appropriate benefits from the sub project with a detailed VMGP prepared.

### **1.5.2 Consultation and Stakeholder Engagement**

This framework seeks to ensure that VMGs are informed, consulted, and mobilized to participate in the relevant subprojects. The Executing Agency for each sub project and Non-Governmental Organizations (NGOs) active in the project area will undertake consultation from the very beginning and will continue till end of the project. Participation of VMGs is to be ensured in selecting, designing and implementing the subprojects. The EA 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 EA will follow a timetable to consult VMGs at different stages of the project program cycle, especially during preparation of the civil works program. Also, the Executing Agency will undertake a social impact assessment (SIA) 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 in the relevant subproject area.

### **1.5.3 Grievance Redress Mechanisms**

A grievance redress mechanism will be developed for addressing the grievances from the affected IPs/VMGs related to sub project implementation. 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 EA will establish a culturally appropriate 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). The mechanism will build on VMGs or IPs traditional grievances management framework. Under the Grievance Redress Mechanism (GRM), a Grievance Redress Committee (GRC) will be formed for each sub project with involvement of VMGs representative & local stakeholders. The GRCs are to be formed and activated during the VMGPs implementation process to allow VMGs sufficient time to lodge 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 GRC, the process will be culturally sensitive at all time. The grievance redress mechanisms is designed with the objective of solving disputes at the earliest possible time which will be in the interest of all parties concerned and therefore implicitly discourages referring such matters to the law courts for resolution which would otherwise take a considerably longer time.

As is normal practice under customary law, attempts will be made to ensure that all disputes in communities are solved by the Indigenous Peoples traditional leaders after a thorough investigation of the facts using the services of his officials. The traditional dispute resolution structures existing for each of the VMGs will be used as the first step in resolving grievances.

All the grievances will be channeled to the existing structures in Kenya for handling grievances beginning with the traditional institutions as the first stop before resorting to the Kenyan Courts of Law as the last resort. The EA will make the public aware of the GRM through public awareness campaigns.

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 women or 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 VMGPs, 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.

#### **1.5.4 Disclosure**

This VMGF and sub project VMGPs will be made available to the affected VMGs in an appropriate form, manner, and language. Before project appraisal, the KWSCR/PMU will send the social assessment and draft VMGP to the Bank for review. 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, and the GOK will also make the documents available to the affected communities in the same manner as the earlier draft documents.

Each subproject VMGP will be disclosed to the affected VMGs with detailed information of the subproject. This will be done through public consultation and made available as brochures, leaflets, or booklets, using local languages. Summary of the VMGP will be made available in hard copies and in language at: (i) Offices of the EA; (ii) Sub-County or County Office; and (iv) any other local level public offices. Electronic versions of the framework as well as the VMGPs will be placed on the official website of the EA and MEWNR and the official website of Bank after approval and endorsement of the VMGF and each VMGP by the Bank.

### **1.5.5 Capacity Building and Training**

Effective implementation of the Vulnerable and Marginalized Groups Framework will require that adequate capacity enhancement within institutions and other stakeholders are undertaken including the VMGs especially in regard to monitoring and evaluation. There is need for capacity building through training to be conducted by KWSCRCP /PMU and the executing agencies of the KWSCRCP. In the initial preparatory stages the use of the environmental and social safeguard specialists within the KWSCRCP/PMU to prepare VMGPs working in collaboration with the staff from the executing agencies to learn on the job through pairing is recommended.

### **1.5.6 Monitoring and Evaluation**

The implementation of VMGPs will be monitored. KWSCRCP/PMU and the executing agency implementing specific sub project investments will establish a monitoring system involving KWSCRCP/PMU staff, partner implementing agencies, local governments, and VMGs to ensure effective implementation of VMGP. A set of monitoring indicators will be determined during VMGP implementation and will be guided by the indicators contained in the document (*see table 3 section 7*). The KWSCRCP/PMU support consultants will carry out monitoring. Appropriate monitoring formats will be prepared for monitoring and reporting requirements.

For subproject with significant adverse impacts on VMGPs, external experts or NGOs will be engaged by the EA to verify monitoring information of the VMGP for such sub-projects. The NGOs will collect baseline data including qualitative information and analyze the same to assess the impacts of the project on indigenous people. The external experts will advise on compliance issues and if any significant issues are found, the EA will prepare a corrective action plan or an update to the approved VMGP. The EA requires implementing the corrective actions and following up these actions to ensure their effectiveness.

Several key indicators and topics for monitoring and evaluation of VMGP are (i) process of consultation activities; (ii) appropriateness of affected assets valuation and compensation cultural, political and economic status of VMGPs in comparison with pre project condition; (v) status of VMGs as identified in the SA; (vi) any disadvantaged conditions to VMGs that was not anticipated during the preparation of VMGPs, that required corrective actions; and (vii) grievance redress issues.

The EA will collect required data/information and regularly analyze project outputs and impacts considering impact on VMGs, and semi-annually report the results to the Bank.

### **1.5.7 Annual Reporting and Performance Review Requirements**

Annual progress reports will be prepared by each KWSCRCP executing partner agency and the preparation of the progress reports will be supported by the environmental and social safeguards specialists in the KWSCRCP/PMU. These reports will be submitted to the KWSCRCP/PMU which will thereafter submit them to the Bank.

### **1.5.8 Budget**

All costs for implementation of VMGP will be financed by the KWSCRCP/Executing Agencies. 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 VMGP will mainly include costs for skills development & self-employment training of the VMGs, consultation/meetings, information dissemination, NGO/Agency hiring for VMGP implementation & monitoring, GRM etc. Once the subproject has been appraised and finalized in the context of the VMGF, the required budget is to be allocated by the EA for proper implementation of the VMGP. The VMGPs budget will also include costs for implementation of VMGPs, such as salaries and travel costs of the relevant KWSCRCP/PMU staff. In summary there should

be adequate budgetary provisions to implement any VMGP where necessary for the subproject development.

## 2 INTRODUCTION

Chapter 1 of this VMGF highlights and describes the Kenya Water Security and Climate Resilience Program (KWSCR - ) outlining the development objectives, justification for the projects including the different components and activities.

### 2.1 Program Description

#### 2.1.1 Country and sector context/Project Concept

Kenya has limited freshwater endowments and is projected to face rapid increases in water demand, driven by growth and urbanization. The country faces the additional challenge of high inter-annual and intra-annual rainfall variability that results in frequent and severe droughts and floods and could be exacerbated under a changing climate. Kenya has yet to adequately manage its ‘difficult’ hydrology, as evidenced in decades-long underinvestment in water storage that has not kept pace with growing needs or reigned in water’s most destructive forces. GoK is planning a large scale water investment program to address these challenges, as well as new reforms to align the sector to the 2010 Constitution of Kenya (CoK). GoK has requested the World Bank’s support to prioritize, prepare, and finance these water resources development opportunities. The proposed Kenya Water Security and Climate Resilience Project – which was agreed between the World Bank and GoK in the Country Partnership Strategy (2010-2013) responds to this request.

The proposed Program is currently expected to be in the order of about US\$ 700 million and will be implemented in two to three phases over a period of approximately eight years. The budget envelope reflects the vast water investment needs in Kenya, which the project aims to support, and the precise amount will be agreed during project preparation. The longer-term and phased approach demonstrates the Bank’s commitment to the sector, while providing the necessary flexibility for activity/investment identification and implementation, given the evolving institutional and reform process over the coming years in Kenya.

### 2.2 Sectoral and Institutional Context

Kenya’s low freshwater endowment of 526 m<sup>3</sup> per capita per year puts it in the bottom eight percent of countries globally. The country is characterized by significant geographical disparities in water availability and use. Over 80 percent of Kenya’s area is arid or semi-arid where a reliable supply of water is the limiting factor for economic development. Rapid increases in water demand are driven by population growth, economic growth, and urbanization. The increasing water stress also results in growing competition and conflicts over available water, as outlined in the Government of Kenya’s (GOK) economic development and poverty reduction plan, Vision 2030.

Lack of water security causes economic losses and constrains growth potential. Water is a prerequisite for economic production and human development. Securing a reliable supply of water for key economic areas will be critical to achieving Kenya’s development plans under Vision 2030. In 2004, the World Bank estimated that losses from climate variability average about 2.4 percent of Gross Domestic Product (GDP) per year with a further 0.5 percent loss from water resources degradation, seriously impacting the country’s competitiveness. Water security is therefore critical for Kenya’s two economic engines, Nairobi and Mombasa, and for the Arid and Semi-Arid Lands (ASALs) and western provinces; all of which experience significant water stress. A number of opportunities exist in ASALs and western provinces to increase the productive use of water through multipurpose water resource development. The productivity and resilience of the agricultural sector could be increased through a reliable supply of water; significant opportunities exist to increase both large-scale and small-scale irrigation.

Kenya’s “water towers,” which generate most of the country’s runoff, are degraded due to poor land use practices, deforestation, encroachment on recharge areas, and pollution. Catchment degradation increases

Kenya's vulnerability to hydrologic variability. Investments in storage must be accompanied by improvements in water service delivery and catchment protection.

Moreso, Kenya also faces risks associated with climate change. Increasing frequency and intensity of extreme weather events and progressive slow-onset climate-related threats are worsening the vulnerability of many poor Kenyan households and communities. Many of the vulnerable communities are located in poor rural areas or urban informal settlements. Their capacity to cope with the impacts of extreme weather events and adapt to slow-onset climatic changes is often limited. The increased risk of floods has been especially dangerous due to climate change and increased climate variability. Floods have caused major disturbances, destroying property and resulting in food insecurity and even loss of life. The government has recognized that anthropogenic factors like forest degradation and poor land use practices, disrupt watershed areas, drainage basins and flood plains and is including mitigation measures in Kenya Water Security and Climate Resilience Program.

### ***2.2.1 Relationship to Country Partnership Strategy (CPS)***

The proposed KWSCRCP is closely related to the goals outlined in the 2010-2013 Country Partnership Strategy (CPS) for Kenya (March 2010-2012). The World Bank Country Partnership Strategy (2010-2013), underinvestment in water storage leaves Kenya's economy highly dependent on favorable rainfall – which it cannot control – for agricultural production, electricity, and water supply. One of the key structural issues identified in the CPS is that “increased water storage will increase the reliability of water supply and enable Kenya to harness its water resources in support of its economic growth agenda”. The CPS specifically cites the identification of a pipeline of PPPs as important steps in this effort. The CPS also mentions potential Private Public Partnerships (PPPs) in the transport, electricity, water supply and irrigation sectors as key steps toward the goal of “unleashing Kenya's growth potential,” one of the three main objectives of the CPS.

The KWSCRCP is directly aligned with Kenya's commitment to the adaptation to climate change agenda, including by supporting the mainstreaming of Kenya's National Adaptation Plan (under preparation) by water sector institutions. By financing water investments that not only build resilience to climate variability and change, but also enhance agricultural productivity and food security, the project supports Kenya's development aspirations as enshrined in Vision 2030 and the continent's Comprehensive Africa Agriculture Development Program (CAADP).

The KWSCRCP is also aligned with the World Bank's Africa Regional Strategy, and particularly Pillar Two – Vulnerability and Resilience. Reducing vulnerability and building resilience in the water sector is the central purpose of the proposed project. To this end, the project will support establishing the minimal water infrastructural platform (including water storage) required to buffer against the most severe hydrologic shocks including floods and droughts and to lift Kenya out of a history of food insecurity, low productivity and constrained growth. Beyond infrastructure investments, the project will support the enabling institutional and information base to ensure that water investments are sustainably planned, developed and maintained for long term prosperity.

The KWSCRCP builds on other ongoing activities in Kenya's water program. Its design has been informed by and it will complement the World Bank Water and Sanitation Service Improvement Project's (WaSSIP's) detailed water master plan studies for Nairobi and the Coast. In particular, the project is coordinating with WaSSIP on the possibility of financing Mwache dam, which is a part of the coast water master plan, and there is potential for other investments identified through the master planning process to be picked up by the KWSCRCP. The World Bank Natural Resources Management (NRM) Project and Western Kenya Community Driven Development and Flood Mitigation Project are providing support for

watershed management, irrigation, and flood control, and ongoing experience has strengthened the water resources and climate risk management investments under the project.

### **2.2.2 Program Development Objectives (PDOs)**

With its focus on achieving water security and resilience to climate variability and change, the KWSCRP will support the higher level objectives of inclusive green growth as a pathway to sustainable development. In particular, the KWSCRP will foster growth that is efficient in its use of natural resources, clean in that it minimizes environmental impacts, and resilient in that it reduces social vulnerabilities and accounts for natural hazards and the role of environmental management and natural capital in preventing physical disasters.

Water-related investments that strengthen climate resilient growth; and (ii) the project results—increased water storage for productive use (i.e. water supply, irrigation, hydropower), enhanced performance of water investments, and increased resilience to floods and droughts within project impact area(s)

### **2.2.3 Objectives of the KWSCRP Projects**

The project development objectives of KWSCRP-1 (i) increase availability and productivity of irrigation water for project beneficiaries; and (ii) enhance the institutional framework and strengthen capacity for water security and climate resilience for the country.

The Project is a “framework operation” that will establish eligibility criteria and preparation guidelines that must be met in order for sub-projects/investments to be funded under the project. The Framework is intended to set the ‘rules of the game’ by establishing a rigorous evidence-based investment selection and preparation process, including specifying the technical, economic, financial, environmental, social, institutional, etc. requirements for sub-project funding.

The second project in the Program, the Kenya Coastal Region Water Security and Climate Resilience Project (KWSCRP-2) was approved by the World Bank Board on December 16, 2014. The project development objective of the KWSCRP-2 is to improve water security and build climate resilience in the Coastal Region by (i) increasing the supply of bulk water to Kenya’s Coastal region, including Mombasa; and (ii) increasing access to water, (iii) developing a demonstration irrigation project and (iv) supporting sustainable livelihood development in Kwale County.

## **2.3 Kenya Water Security and Climate Resilience Project (KWSCRP)**

The achievement of Kenya’s development objectives on food security, poverty reduction, and economic growth depends on the ability of the country to efficiently use and manage its available water resources. Water is a productive input into priority economic sectors under Kenya’s Vision 2030 such as agriculture, industry, energy and tourism, and lack of water security causes economic losses and constrains growth potential. In 2004, the World Bank estimated that losses from climate variability average about 2.4 percent of Gross Domestic Product (GDP) per year with a further 0.5 percent loss from water resources degradation, seriously impacting the country’s economic growth and competitiveness.

With annual freshwater availability of approximately 526 m<sup>3</sup> per capita, Kenya is already classified as water scarce country. Over 80 percent of Kenya’s area is arid or semi-arid where a reliable supply of water is a limiting factor for economic development. Rapid increases in water demand are driven by population growth, economic growth, and urbanization. Underinvestment in water infrastructure in Kenya for the last two decades has resulted in a total water supply storage capacity of 3.1 m<sup>3</sup> per capita, one of the lowest levels in the world, which leaves the country vulnerable to climate and hydrologic variability.

The Ministry of Environment, Water and Natural Resources (MEWNR) is currently increasing water storage to 16 m<sup>3</sup> per capita by 2012 through the construction of new water supply reservoirs, though much more is needed in order to achieve water security. Catchment degradation compounds these challenges by increasing the intensity of flooding and reducing water storage capacity through reservoir sedimentation.

In response to these challenges, the Kenya Water Security and Climate Resilience Project (“the Project”), financed through a credit by the International Development Association (IDA), is planned to be implemented by MEWNR from 2013-2020. The project was approved in FY13, and is expected to include the following activities: (i) water resources development investments, including storage for all purposes; (ii) climate resilience and climate risk management investments; and (iii) water resources management investments, including institutional support. The exact amount and scope of the project will be agreed during preparation. An Investment Framework will be developed that will establish the eligibility and preparation criteria and procedures that are required to be met in order for sub-projects/investments to be funded under the Project.

The Project was submitted to the Bank Board for consideration around mid-2013. In this regard, the World Bank approved initial loan for KWSCR I of USD\$150 million and USD\$200million for KWSCR II.

### **2.3.1 KWSCR Components:**

#### ***Component 1: Investments in Water Resources Development***

This component supports climate resilience and water security for economic growth by financing the preparation of water resources development investments/sub-projects that meets the requirements of an Investment Framework (IF). The IF establishes the ‘rules of the game’ by making transparent the decision-making process on sub-project selection and ensuring that selected sub-projects are well-prepared, effectively contribute to realizing the objectives of building water security and climate resilience, and are implemented in a sustainable manner. The advantage of the framework approach is that it provides GoK, the World Bank and Development Partners the opportunity to invest early in ‘low hanging’ infrastructure and related activities provided that they are well-prepared, while establishing principles for selecting and preparing subsequent investments. In this regard, the IF serves as a short-term tool that provides quality control as the full-fledged investment planning process is established. However, the IF will have a longer term life, in that it will eventually guide future decisions on investments in the sector.

The IF consists of two parts: (i) sub-project selection/eligibility criteria and (ii) technical, economic, financial, social, environmental, and institutional guidelines for preparing investments at the feasibility level. Both parts of the IF must be met in order for a proposed sub-project to receive project financing. Sub-projects that could be considered for financing under the project include infrastructure and related activities for one or more of the following purposes:

1. Bulk water supply, including storage for surface water use and flow regulation, and groundwater development;
2. Water for productive and consumptive use;
3. Flood management infrastructures or drought mitigation; and
4. Watershed management.

During project preparation, this initial IF has been developed and tested on investment proposals at various stages of development, in particular, the Lower Nzoia Irrigation Project. This initial IF has been reviewed in order to ensure that it is robust and reflects the country’s capacity to prepare investments in accordance with it. During project implementation, the initial IF will be gradually refined (e.g., guidelines specific to each of the sub-project types will be developed) and capacity will be built to ensure the effective application of the IF. The Investment Framework is an essential component of the Kenya Water Security and Climate

Resilience Program. Component 1 includes two sub-components: (i) Water Sector Investments and (ii) Water Investment Pipeline Facility.

### ***Component 2: Water Sector Reforms and Planning and Management Instruments***

Component 2 will support the current sector institutions, as well as the preparation, implementation and full functioning of the new legal and institutional framework resulting from alignments with the new Constitution of Kenya. It will also support the development of integrated and participatory water investment planning that leads to the development of a preliminary pipeline of investment proposals. The overall objective of this component will be to strengthen the enabling institutional and legal framework to sustainably advance Kenya's vast water sector investment program in order to achieve water security and climate resilience. To this end, Component 2 includes two sub-components: (i) support for water sector reforms and (ii) strengthening water management and investment planning. Each sub-component is described below.

#### **Sub-Component 2.1: Support for Water Sector Reforms**

This sub-component will support the current sector institutions, as well as the preparation, implementation and full functioning of the new legal and institutional framework. The objective of this support is to enhance the capacity of water sector institutions to fulfill their mandates, policies and strategies specifically related to the sustainability of the water sector investment program. Thus, the emphasis of this sub-component is on institutional and legal issues that contribute most directly to meeting project objectives and furthering the investment program. Targeted support will also be provided on an as need basis to the broader water sector reforms that could indirectly impact on project objectives. As and when the need arises, such additional areas will be proposed to the project's governance structure (e.g., IMOC) for possible support under the project.

Support will be provided during the three stages of the reforms: (i) pre reforms, including the finalization of legal and institutional instruments and provisions for their implementation, including the water sector transitional plan; (ii) the transition period; and (iii) post reforms, in order to sustain operations and to support fully functional institutions. Given the focus of support under this sub-component, activities will target those institutions (and their successors) that are considered most critical to meeting project objectives. The activities under this sub-component are outlined below.

***Contingency support to key water sector institution;*** - This activity will provide expert, rapid response to resolve or mitigate critical legal and institutional challenges that may emerge and could cause significant risk to meeting project objectives. Contingency support could be provided in areas related to migrating and adapting institutional mandates; transferring staff and assets; adapting organizations, structures, policies and strategies; and establishing procedures to enhance performance of key entities. Contingency response will be provided throughout all stages of legal and institutional reforms, described above. Complementarily, this activity will also provide for rapid response to support the broader water sector when the reform process poses significant risks or threats to meeting project objectives.

***Building the capacity of water sector institutions;*** - This activity will build and enhance the capacity of key entities to fulfill their core mandates and functions, as well as support non-core (yet critical) functions. This support will target those water sector institutions that are critical for meeting project objectives. The specific activities could include: assessing and mapping capacity needs for existing and new water sector institutions and developing staffing plans; supporting the capacity building of key entities so that they are able to develop and implement strategies, plans and core functions; supporting non-core but critical functions, including procurement and financial management; safeguards due diligence; strengthening critical procedures; and developing human capacity, including assistance for research needs, training to enhance staff capacity, development of guidance manuals, etc. This activity would also support PMU capacity building activities to support transfer of its responsibility to agencies involved in the project.



***Supporting institutional and legal reforms;***- This activity will build the enabling legal and institutional foundation for the water sector by providing support for the implementation of legal and institutional reforms, as well as the identification of legal and/or institutional issues and necessary modifications. The specific activities will be undertaken throughout the three stages of reforms, discussed above, and will target those institutional and legal reforms that are critical for meeting project objectives. Specific activities could include: developing time-bound and costed plans to implement the new legal obligations of existing and new water sector institutions; developing and/or enhancing legislatively mandated strategies and implementation plans with stakeholder participation; supporting the development of strategies and plans required to mainstream key policies (including the Climate Policy, National Adaptation Plan, and Disaster Management Policy); developing a financing policy and strategy for the water sector; and facilitating public participation and consultations with water sector stakeholders.

***Supporting the legal and institutional transition process;*** - This activity will support the constitutionally mandated water sector transition. The specific activities will focus on those entities and areas that most directly contribute to meeting project objectives and could include the following: supporting the rationalization and implementation of the water sector transition plan (including the migration and adaption of mandates, policies, strategies, programs and activities from existing to new entities resulting from the reform); supporting the Transition Authority to strengthen the water sector component of the national transitional plan; supporting key water sector institutions to implement the transition plans; and supporting aspects of the irrigation reform implementation strategy.

### **Sub-Component 2.2: Strengthening Water Management and Investment Planning**

The specific objective of sub-component 2.2 is to develop, test and install a new system for integrated, multi-sector water investment planning, and support use of this system to develop a preliminary pipeline of investments (activity1). The water investment planning process will aim to generate well-defined, coordinated, and sustainable investment options that increase water available for productive, economic and social uses, strengthen livelihoods, and reduce climate risks. Both enhancing stakeholder participation and modernizing and improving the water knowledge base and monitoring system are central to the investment planning process and will be supported by activities 2 and 3 under this sub-component. Catchment or basin vulnerability assessments and the preparation of basin disaster risk management plans could also be supported. The activities under this sub-component are outlined below.

***Developing and Applying a Water Investment Planning System;***- This activity will support the development, testing and implementation of a multi-sector and multi-stakeholder planning system that can be utilized at the sub-catchment or catchment (basin) level, and support using this planning system to develop a preliminary investment pipeline whose preparation activities can be financed under Sub-component 1.2.

Drawing from experiences elsewhere (e.g., Brazil, Uganda, etc), the planning system will be initially piloted in two to three catchments or basins and scaled up based on lessons learned. The investment planning system may include state of the art instruments and systems such as: a decision support system, water system simulation model, Geographical Information System (GIS) based water information system linked to the Decision Support System (DSS) and model that includes hydrological and socio-economic data, and a sub-catchment based hydrologic model. In catchments where flood and/or drought risks are a substantial problem, models would be developed to determine the frequency and magnitude of flood and drought risks and to map vulnerabilities so as to facilitate the development of sub-catchment (basin) flood and drought risk management plans. This activity would also support upgrading and filling of data gaps in the catchment (basin) knowledge base, strategic assessments of social and environmental issues in the catchment (basin), and mapping of natural habitats and biodiversity hotspots within the catchment (basin) so that environmental services can be modelled. To this end, this activity would finance acquisition of data sets,

including satellite imagery; surveys and mapping exercises; acquisition of models and analytical tools; consultants for special studies and surveys; and the actual preparation of catchment and sub-catchment water allocation, water management and investment plans. The activity will also support preparation of a strategic environmental and social assessment (SESA) that will look at the linkages between the proposed investment plan and the likely or potential impacts on the ground. The SESA will identify appropriate criteria to be included in the planning system and ensure that the environmental and social dimensions at the strategic/sectoral level are embedded in the overall approach, including, in particular, the cumulative impacts aspects.

This activity will also support application of this planning system towards development of a preliminary investment pipeline based on and consistent with the catchment and sub-catchment water allocation, water management and investment plan. This will include support to the relevant sponsor agencies to carry out the work required for building the pipeline. Investment proposals that could feed into the preliminary investment pipeline will be selected by the Project Management Unit (PMU), in close collaboration with relevant sponsor agencies, using the Investment Framework. Pre-feasibility level investment proposals (developed under Component 1) will be incorporated in the catchment planning process to develop catchment water allocation, water management and investment plans. The sub-project investments recommended in the investment plan will be screened by the PMU for addition to the preliminary investment pipeline for FS under Component 1.

***Developing a System for Stakeholder Participation;***- This activity will support the development of a system for stakeholder participation at the national, regional and catchment levels in order to: (i) raise awareness and promote greater understanding and appreciation of the catchment water resource system, its potential and its limits; (ii) facilitate greater “buy-in” or commitment on the part of catchment stakeholders to the plans for water management, water allocation, and investment in the catchment; (iii) reduce stakeholder vulnerability by improving access to information, including on drought and flood risks; and (iv) create continuing mechanisms and processes that are accepted by water users and other key stakeholders and institutionalized within the catchment for conflict resolution, water regulation and enforcement, and other water management measures. This activity will finance specialized consultancies to develop a system, processes and procedures for stakeholder identification and mapping, stakeholder organization and mobilization, stakeholder training, and communications. These consultancies will also provide training and capacity building to support the implementation of this system of enhanced stakeholder participation in the selected two to three pilot catchments or basins.

***Strengthening Water Information System;***-This activity will finance the improvement and modernization of the Water Resources Information System (WIS). The enhanced WIS would support improved planning, regulation and enforcement; water resource assessments using hydrologic models; water system models and the DSS; and disaster risk (flood and drought) management plans. The WIS would include the hydro-meteorological monitoring network, measurement, data transmission, data storage, and data analysis and data dissemination. The system will monitor water flows and discharges, water quality and sediment loads, and groundwater availability/levels and quality using real-time, low cost modern communications. The features and details of the WIS design and implementation will be need-based and utilize current and projected information and communications technology (ICT) infrastructure in Kenya, including provision for future upgrading and expansion. Lessons from previous initiatives will be taken into account in systems design. As a first step, this activity will finance a consultancy to upgrade the design and modernize the WIS.

### ***Component 3: Support to Project Implementation***

In the uncertain and dynamic environment arising from the alignment of the water sector to the new Constitution of Kenya, it is essential that implementation of project is based on an overall design and

approach that ensures continuity, avoids unnecessary delays and cost increases, and mitigates against the potentially harmful effects of gaps and issues that will inevitably emerge during the transition period and as the new institutional, legal and policy framework of the sector is put in place. For these reasons, a Project Management Unit (PMU) will be established.

This component will support the establishment of the PMU to provide for effective project implementation throughout the reform period (that is, prior to the launch of the reforms, during the transition period, and beyond, to the extent needed). Specifically, this component will finance the required office space, goods (e.g., vehicles), equipment (e.g., computers), staff, consultant services, travel, training and operating costs that will allow the PMU to carry out its responsibilities for project implementation. These responsibilities include project management and coordination, procurement and financial management, project monitoring and evaluation (including impact evaluation), social and environmental safeguards management and oversight, strategic project communications and outreach, investment sub-project selection and execution (for component 1), and other activity execution (for component 2).

## 2.4 The Vulnerable and Marginalized Groups in Operational Areas

There is no internationally agreed upon definition of indigenous people” (UN Human Rights and Indigenous Issues: 92). But for operational purposes and in line with other international organizations, such as the UN Working Group on Indigenous Populations, the UN Permanent Forum on Indigenous Issues and the International Labor Organization (ILO), the OP 4.10 of the World Bank suggests “to use 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.”*

The African Commission’s Working Group of Experts on Indigenous Populations & Communities outlines the problems related to the use of the term “indigenous peoples” in Africa: *“There is no question that all Africans are indigenous to Africa in the sense that they were there before the European colonialists arrived and that they have been subject to sub-ordination during colonialism. We thus in no way question the identity of other groups. When some particular marginalized groups use the term indigenous to describe their situation, they use the modern analytical form of the concept (which does not merely focus on aboriginality) in an attempt to draw attention to and alleviate the particular form of discrimination they suffer from. They do not use the term in order to deny other Africans their legitimate claim to belong to Africa and identity as such”* (ACHPR 2005: 88). *“Almost all African states host a rich variety of different ethnic groups (...). All of these groups are indigenous to Africa. However, some are in a structural subordinate position to the dominating groups and the state, leading to marginalization and discrimination. It is this situation that the indigenous concept, in its modern analytical form, and the international legal framework attached to it, addresses”* (ACHPR 2005: 114).

In that logic it becomes clear that the concept of Indigenous Peoples is not fixed once and forever, but that it is possible that certain groups, which are marginalized and discriminated at national level, might at a local level be in a dominant position or at least able to defend their rights, interest and to voice their needs in local fora. Social discrimination might also change with time. It is possible that a group, which at a certain period had been in a dominant or equal position to others becomes marginalized and socially discriminated.

Nevertheless, it seems as in most cases indigenous peoples remain, for structural reasons (for example because they are employing different livelihood patterns), in a marginalized and discriminated position.

## 2.5 Project Implementation

Under Component 3 of the project, a Project Management Unit (PMU) will be established within the Ministry of Environment, Water and Natural Resources (MEWNR) or its successor resulting from the reforms. The PMU will report to the Permanent Secretary (PS) of MEWNR and will be granted a high degree of autonomy to ensure efficient and timely implementation of the project. The PS may delegate his authority to a senior officer (director level), to whom the PMU will directly report. The PMU will be granted operational autonomy to apply rules, criteria, and procedures agreed with the World Bank. The PS, as the accounting officer of MEWNR, will delegate financial management, procurement, tender evaluation, selection and contracting responsibilities to the PMU. Notwithstanding these provisions, the PMU's actions will be accountable to the MEWNR and subject to review by Kenya Auditor General.

The PMU is a transitional entity. One of its important roles will be to support development within the current and successor agencies – which would typically implement most of the project's investment sub-projects and activities – the required capacities for procurement, financial management, monitoring and evaluation, safeguards implementation, and sub-project and activity execution. In the interim, the PMU will undertake these roles on behalf of those agencies through the services of consulting firms (e.g., Engineer), or by procuring an appropriate Implementation Support Consultancy that would be embedded within each agency.

The core roles of the PMU are fiduciary (procurement and financial management), management and coordination, reporting, monitoring and evaluation, the application of the Investment Framework (including safeguards frameworks), and monitoring of and technical support to the institutional and legal reform process. It will review the results and recommendations of each pre-feasibility and feasibility study, apply the Investment Framework and make recommendations on investment ready sub-projects.

The PMU will ensure the application of social and environmental frameworks (ESMF, VMGF and RPF) by assessing the capacity of sponsor agencies to prepare safeguards instruments and to implement safeguards requirements (as the case may be). In the event that sponsor agencies are found to have insufficient capacity in these areas, it will work with the agency to prepare a support plan and TORs, as well as procure the additional required services. The PMU will monitor the activities of all agencies involved in the project and their consultants, evaluate performance, propose measures to enhance performance and ensure timely implementation, and provide regular reporting to the World Bank.

For works under Component 1, the PMU will procure and contract the services of an Engineering Firm (The “Engineer”) based on a TOR prepared in collaboration with the relevant agency. The Engineer will be responsible for reviewing or preparing detailed designs and bidding documents (in case they would not be ready), completing the tender documents and selecting the contractor(s) in collaboration with the PMU. The role of the Engineer is to provide expert advice and represent the PMU when administrating the construction contract, to make certain decisions that become binding on the parties to the construction contract(s), and to provide direction to the contractor, including for example, issuing certificates, ordering variations and payment schedules, etc.

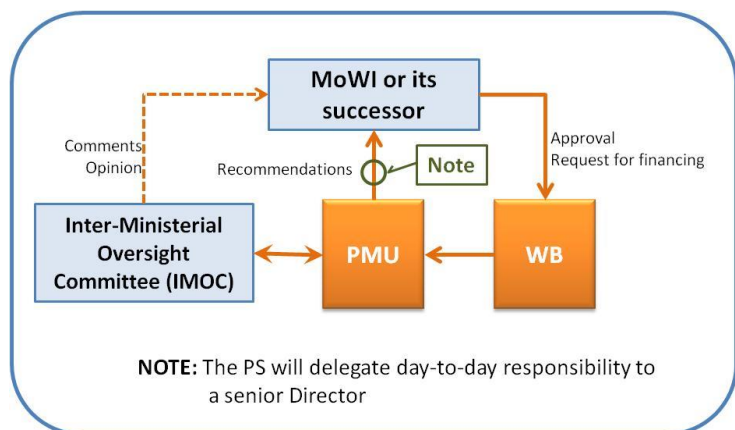
A specific sub-unit of the PMU, the Legal and Institutional Reforms Support Sub-Unit (LIRSSU), will be established to support the legal and institutional reforms associated with aligning the water sector to the new Constitution of Kenya (sub-component 2.1). The LIRSSU will be responsible for providing strategic and technical input and oversight to support the institutional and legal reform process, including by directly executing specific activities on behalf of relevant agencies and/or by managing and supervising

consultancies that provide specialized support. To this end, the LIRSSU will undertake the requisite work to stay fully abreast of the status of the evolving institutional and legal reforms, as well as any issues and challenges that may arise. It will work pro-actively to identify needs and recommend areas of targeted support to mitigate issues associated with the reform process. It will also accept proposals for support on a demand basis to provide 'just in time' analytical support for the process.

The PMU Manager will have a core staff of professionals with the necessary expertise and experience to undertake the PMU's core functions. These could include civil service staff on secondment (in accordance with current civil service rules) or those from the private sector. The PMU will be empowered to undertake autonomous and competitive staff selection, based on criteria agreed with the World Bank.

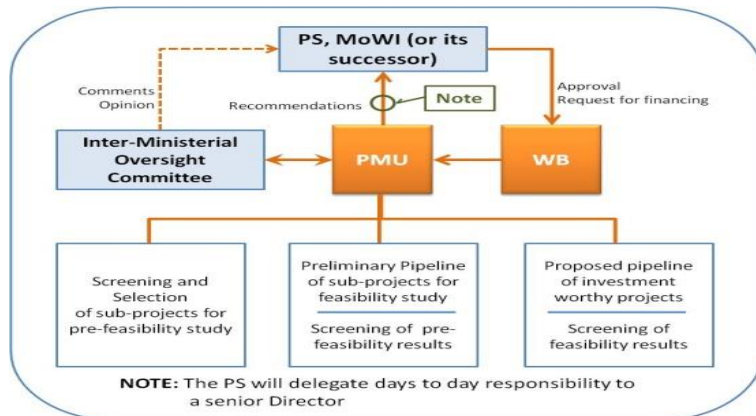
An Inter-Ministerial Oversight Committee (IMOC) will be established, primarily as a consultative group and to provide high level, strategic guidance on project activities. It will be comprised of the permanent secretaries (PSs) of ministries with a relevant role in the water sector (including Ministry of Regional Development Authorities, Ministry of Agriculture, and Ministry of Environment and Mineral Resources or their successors), as well as the Ministry of Finance. The IMOC will be chaired by the PS, MEWNR (or its successor), who will make all final decisions related to the project. Membership can be extended beyond this core group to other agencies on an as need basis.

**Figure 1: Proposed KWSCR-PCU Design**



### 2.5.1 Implementation Arrangements

**Screening and sub-project selection;** - There are three points in the process of developing the investment ready pipeline (refer Figure 1 above). The PMU will collaborate with sponsor agencies to develop the preliminary pipeline of projects proposed for feasibility study (Component 2.2), and it will review the results of feasibility studies (Component 1). In the latter case, the PMU will apply the Investment Framework (IF) to identify and select viable investment ready sub-projects; in the former case, to select sub-projects for pre-feasibility work and the preliminary investment pipeline, a short form of the IF will be developed under the project and applied by the PMU.



**Figure 1 - Screening and selection of sub-projects and consultation with the IMOC and with PS approval**

As shown in Figure 2, the screening results and recommendations of the PMU will be reviewed by the IMOC. With the IMOC’s advice and suggestions, the PMU will make appropriate revisions and present its recommendations to the PS. The PS will approve the PMU’s proposals –sub-projects for which pre-feasibility studies and feasibility studies will be undertaken and sub-projects to add to the pipeline of investment ready sub-projects – and authorize the PMU to proceed with the next steps.

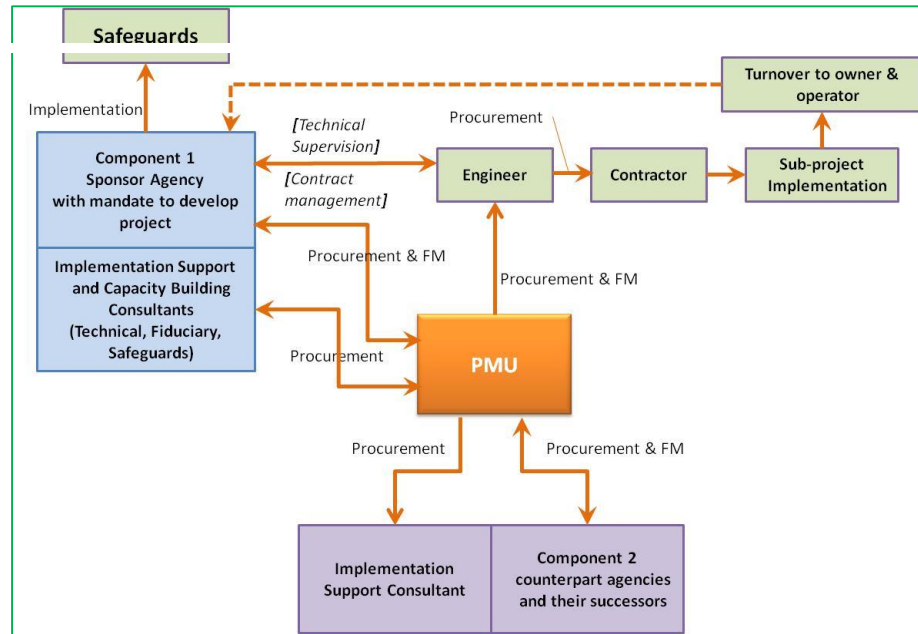
**Sub-project preparation;**-The next step in the process of pipeline development is to undertake the appropriate preparation studies for each of the agreed sub-projects. In the case of the preliminary investment pipeline (Component 2.1), the PMU will assist the sponsor agency or its successor to prepare the TOR using a generic or standard pre-feasibility study TOR approved by the Bank and will procure the services of a consulting firm to undertake the study. The PMU may bundle several pre-feasibility TORs into a single procurement, particularly when the sub-projects are clustered in a single or adjacent sub-basins. Cost estimating factors and assumptions will be developed in consultation with MEWNR and the World Bank. A similar approach will be used for sub-projects selected from the preliminary pipeline for feasibility study (Component 1.2), except that they will not be bundled unless they could or should be (for example, a storage dam and the irrigated area served by the associated reservoir).

**Works;**-Typically, a PMU would not be directly involved in the execution of works, but none of the agencies that are likely to sponsor a sub-project for implementation (refer Figure 3) have sufficient capacity to undertake the responsibilities and functions of executing agency for Component 1 investment ready projects. The approach in these cases will be as shown in the **Figure 3**. The PMU will procure and contract the services of the Engineer based on a TOR prepared in collaboration with the sponsor agency.

The Engineer will be responsible for reviewing or preparing detailed designs and bidding documents (if they were not prepared by the feasibility study consultant), completing the tender documents and selecting the contractor(s) in collaboration with the PMU. The role of the Engineer is to provide expert advice and represent the PMU when administrating the construction contract, to make certain decisions that become binding on the parties to the construction contract(s), and to provide direction to the contractor, including for example, issuing certificates, ordering variations and payment schedules, etc. The Engineer will act independently, fairly and impartially as a professional engineer.

The PMU will take steps to build the capacity of the sponsor agency, such that it would eventually acquire sufficient capacity to undertake these technical tasks, and, in particular, technical supervision and contract management. The PMU may procure the services of an Implementation Support Consultant to be embedded into the sponsor’s organization in order to strengthen capacity. In some cases this may be sufficient to allow the sponsor agency to assume these important roles.

**Safeguards instruments preparation and implementation;** - It is the responsibility of the implementing agency to prepare Vulnerable and Marginalized Groups Plans (VMGPs) as well as other safeguard instruments like RAPs, ESIA, IPMPs during the feasibility study and to submit to the World Bank. These documents are to be reviewed by the World Bank and must receive a no-objection from the World Bank and approval of NEMA (in the case of ESIA) before the sub-project can be implemented. The implementation safeguards instruments requires competent staff, and if consultants are used to supplement appropriate sponsor staff they must qualified social specialists for VMGPs preparation. None of the likely sponsor agencies (e.g., National Irrigation Board, Ministry of Regional Development Authorities) have been assessed to have sufficient capacity to take full responsibility for safeguards preparation and implementation. Hence, the PMU will agree with the sponsor agency on a support plan, consultant TOR



and procure the necessary services.

## 3 METHODOLOGY AND CONSULTATION

The study was conducted using the following approaches and methodologies namely:

### 3.1 Detailed and in-depth literature review

Review on the existing baseline information and 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*
- *KWSCRIP Draft Project Appraisal Document*
- *Constitution of Kenya*
- *Relevant legislative documents in Kenya on vulnerable and marginalised groups*

### 3.2 Interactive Discussions

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 KWSCRIP Executing Agencies has also been held in regard to vulnerable and marginalized groups. In November and December 2012 during KWSCRIP/PMU workshops, representatives from EAs were present and issues related to VMGs were discussed.

The following key institutions likely to implement the KWSCRIP have been consulted so far and as the program partners become clearer and defined additional consultation will be undertaken. They include;-

1. Department of Regional Development Authorities
2. Ministry of Environment ,Water and Natural Resources (MEWNR)
3. National Irrigation Board (NIB)
4. State Department of Environment
5. National Environment Trust Fund
6. Coast Development Authority
7. Lake Victoria North Water Services Board (LVNWSB)
8. Lake Victoria South Water Services Board (LVSWSB)
9. Coast Water Service Board (CWSB)
10. Athi Water Services Board (AWSB)
11. National Environment Management Authority (NEMA)
12. Mombasa Water and Sewerage Company (MOWASCO)

The list is not exhaustive.

These discussions were very insightful in understanding the issues and are the basis for most of the measures contained in this VMGF. Details of the discussions and a list of those consulted are included in Annex 7 and Annex 8.

### 3.3 Preparation of VMGF

This involved;-



- *Collation of baseline data on the Vulnerable and Marginalized Communities in Kenya including lifestyle, livelihood, history;*
- *Identification of positive and negative impacts of the proposed investments on the VMGs;*
- *Formulation of monitoring and evaluation plan.*

## 4 SOCIAL ASSESSMENT OF THE VULNERABLE & MARGINALISED GROUPS IN KWSCRP OPERATIONAL AREAS

The KWSCRP is a country wide project that is envisioned over the next ten years to provide water services to the country. The actual specific project investments are not yet known and specifically the locations which would be significant in helping to make a determination of the locations of the marginalized and vulnerable communities. Since the scope of the KWSCRP is national it 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 7* 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 banks 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 and Sengwer, have met the criteria for OP 4.10 in other Bank-financed projects).

### 4.1 Vulnerable and Marginalized Peoples in Kenya

In Kenya, the peoples who identify with the indigenous movement are mainly pastoralists and hunter-gatherers as well as a number of small farming 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. Both pastoralists and hunter-gatherers 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.

### 4.2 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 7* 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 Cherangany Hills were the Cherangany 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 group 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 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 Sub-County.

### *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 channelled 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 laborer), 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, 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, Otola, 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 Marsabet, 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 Eji iyo 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 Qalaafo (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 accesses 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 bee-keeping 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<sup>6</sup>. 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, Mandera 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.

## **4.3 No specific legislation on Vulnerable & Marginalized Groups in Kenya**

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

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<sup>6</sup> (Source: Organization for the Development of Lamu Communities (ODLC)

focus, attention and support. The CoK goes further and defines who are VMGs in Kenya and describes the VMGs in Kenya.

#### 4.3.1 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<sup>7</sup>*”. 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.

Kenya’s 2010 Constitution<sup>8</sup> 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

#### 4.3.2 The Bill of Rights

Kenya’s bill of rights aims at the preservation of individual and communal dignity, the promotion of social justice and the realization of human potential. Through *Article 24<sup>9</sup>*, 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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<sup>7</sup> Kenya Constitution Making Committee, 2004, definition guiding ‘Indigenous communities’

<sup>8</sup> 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.

<sup>9</sup> 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...."

established by *Article 24*<sup>10</sup>. 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 part of the national values spelt out in *Article 10*<sup>11</sup> 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 fulfil the rights in the Bill of Rights and requires the State to take progressive legislative, policy and other measures...' to achieve the progressive realization of the rights guaranteed under Article 43<sup>12</sup>. 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 post-ratification domestication procedures and makes it easier for right holders to seek remedies for rights violations or denials.

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<sup>10</sup> Ibid..7

<sup>11</sup> 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, non-discrimination and protection of the marginalised;*

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

<sup>12</sup> Constitution of Kenya, Article 43, 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;*

(d) *to clean and safe water in adequate quantities;*

(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.*

### 4.3.3 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, Watta, Munyayaya, Yakuu ... were not legally recognised as separate tribes'.<sup>13</sup> 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 basis of discrimination based on the misconception that they hinder development.<sup>14</sup> 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 realisation of these communities' fundamental human rights and freedoms.<sup>15</sup>

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 realise 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 marginalised 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 non-discrimination 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.

### 4.3.4 Non-discrimination

*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

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<sup>13</sup> 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.

<sup>14</sup> Report of the UN Special Rapporteur on Indigenous Peoples in Kenya (n 4 above) para 11.

<sup>15</sup> As above, para 21.

discriminatory on paper but which, when applied, create disproportionate disadvantage for some groups more than others. *Article 27*<sup>16</sup> 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*<sup>17</sup>). 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 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 recognises 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.

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<sup>16</sup> 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 realisation 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

<sup>17</sup> Constitution of Kenya, Article 204. (1) There is established an Equalisation 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 Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised 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 Equalisation 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 marginalised communities exist.

#### 4.3.4 *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 in public. Indigenous people's cultures are also linked to spiritual freedom.<sup>18</sup> 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<sup>19</sup>. It provides that a '*person belonging to a cultural or linguistic community shall not be denied the right, with other 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*<sup>20</sup>'.

#### 4.3.5 *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

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<sup>18</sup> Second Periodic Report to the UN Human Right Committee, CCPR/C/KEN/2004/2 27<sup>th</sup> September 2004 para 29.

<sup>19</sup> The Constitution of Kenya, 2010, Article 44

<sup>20</sup> Ibid ....article 44

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<sup>21</sup>. The Commission is responsible for promoting, monitoring, and investigating issues related to gender and equality. Its work also includes auditing the status of special interest groups including ‘minorities, marginalized persons and women<sup>22</sup>. 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.

#### **4.3.6 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 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 *Article 10*<sup>23</sup>, 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

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<sup>21</sup> National Gender and Equality Commission Act (2011)

<sup>22</sup> National Gender and Equality Commission Act (2011), art. 8.

<sup>23</sup> Constitution of Kenya, Article 10.

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 in the second and third senses also. The objects of devolution include (Art. 174)(c)<sup>24</sup> 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 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*

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<sup>24</sup> 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 recognising 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 recognise 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 marginalised 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.



### 4.3.7 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 realisation of this right.

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 marginalised groups with special opportunities in education.

### 4.3.8 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.

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 compulsory taken possession of, and no interest in or right over property of any description shall be compulsory 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.

*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 communities<sup>25</sup>. 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 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 individualise land titles.

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.

#### **4.4 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

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<sup>25</sup> 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.

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

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

<b>Instrument</b>	<b>Date of deposit of ratification/accession</b>
<u>International Covenant on Civil and Political Rights</u> (ICCPR)	1 May 1972
<u>International Covenant on Economic, Social and Cultural Rights</u> (ICESCR)	1 May 1972
Optional Protocol to ICCPR	-
<u>International Convention on the Elimination of All Forms of Racial Discrimination</u> (CERD)	13 September 2001
Art 14 of CERD	-
<u>Convention on the Elimination of All Forms of Discrimination against Women</u> (CEDAW)	9 March 1984
Optional Protocol to CEDAW	-
<u>Convention on the Rights of the Child</u> (CRC)	30 July 1990
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

### 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
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

<u>African Charter on Human and Peoples' Rights</u>	23 January 1992
<u>Convention Governing the Specific Aspects of Refugee Problems in Africa</u>	23 June 1992

<u>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</u>	-
<u>Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights</u>	4 February 2004
<u>African Charter on the Rights and Welfare of the Child</u>	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	-

#### 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 emphasise 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.

Article 7, in particular, embodies the move to recognising 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 well-being 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.

#### 4.4.2 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."<sup>26</sup> 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 global issues, like development, multicultural democracy and decentralization<sup>27</sup>. 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 by the Vienna Declaration and Programme of Action.<sup>28</sup>

The text recognises 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.

#### 4.5 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

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<sup>26</sup> Declaration on the Rights of Indigenous Peoples United Nations Permanent Forum on Indigenous Issues [http://en.wikipedia.org/wiki/Declaration\\_on\\_the\\_Rights\\_of\\_Indigenous\\_Peoples#cite\\_ref-FAQ\\_1-0](http://en.wikipedia.org/wiki/Declaration_on_the_Rights_of_Indigenous_Peoples#cite_ref-FAQ_1-0)

<sup>27</sup> [United Nations adopts Declaration on Rights of Indigenous Peoples](#) United Nations News Centre, 13 September 2007.

<sup>28</sup> Vienna Declaration and Programme of Action, Part II, paragraph 29

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 utilising 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 characterisation 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. 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 itself 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.

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.

#### 4.6 Challenges in Constitutional Implementation

Kenya’s 2010 Constitution provides a rich and complex array of civil and political rights, socio-economic 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.

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.



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.

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 derogatory	Estimated Population <sup>29</sup>	Livelihood <sup>30</sup>	Administrative Location Counties <sup>31</sup>
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

<sup>29</sup> Internet based – several sites

<sup>30</sup> Source: ERMIS Africa Ethnographic Survey of Marginalized Groups, 2005-2012

<sup>31</sup> Ibid.

8. Endorois	Dorobo	60,000	Fishing/Farmers/ Livestock Keeper	Baringo, Laikipia
9. Borana		136,936	Pastoralists	Marsabit, Wajir
10. Gabra		31,000	Pastoralists	Marsabit, Samburu
11. Rendille		62,000	Pastoralists	Marsabit, Samburu
12. Turkana		1,008,463	Pastoralists	Turkana, Baringo, Laikipia
13. Pokot		62,000	Pastoralists	West Pokot /Baringo
14. Maasai		666,000	Pastoralists	Narok, Kajiado

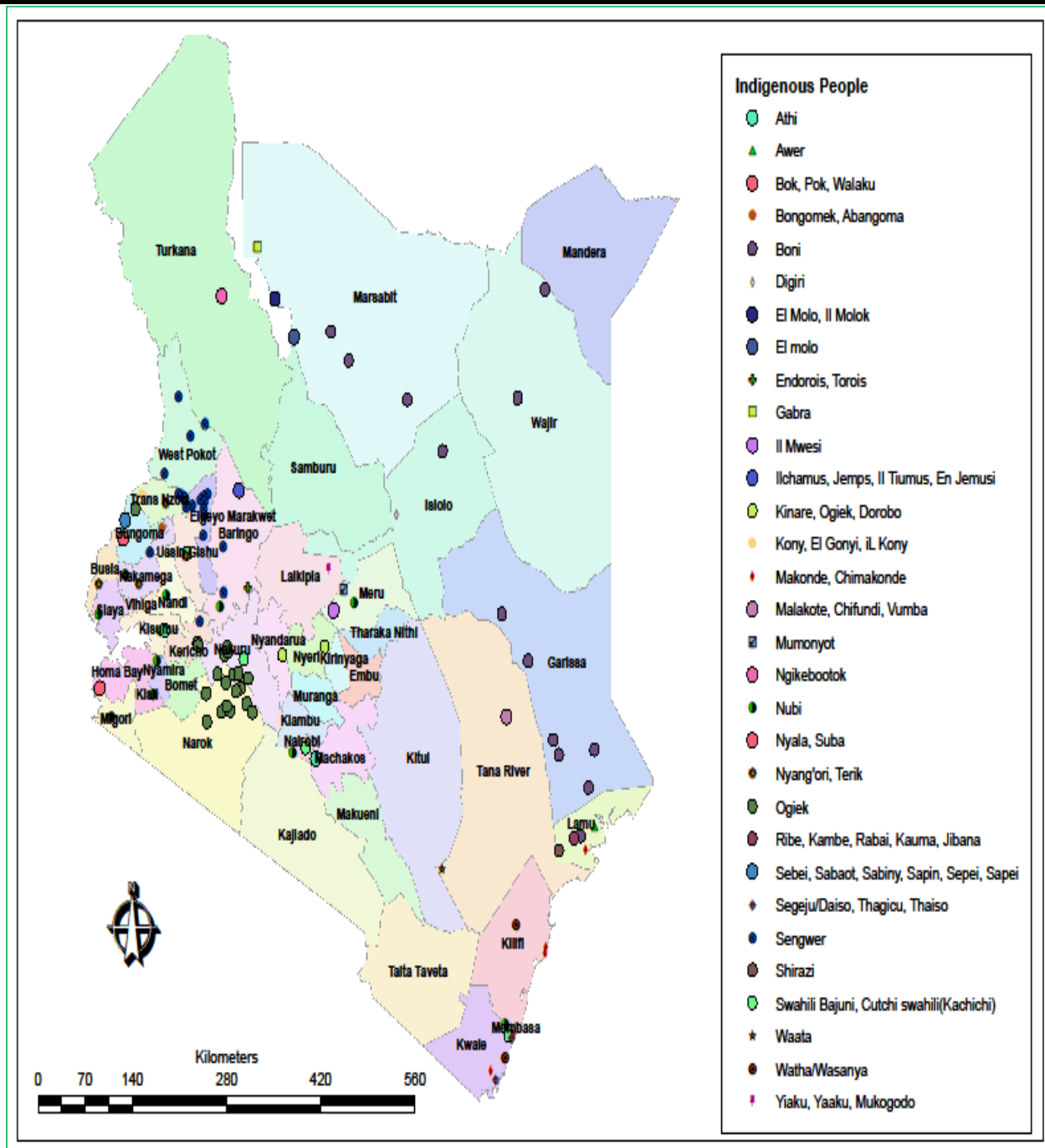


Figure 4. Map showing locations of Vulnerable and Marginalized Groups as per the CoK

# 5 POTENTIAL POSITIVE AND NEGATIVE IMPACTS OF KWSCRP ON VULNERABLE & MARGINALISED GROUPS

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 KWSCRP proposed sub project investments to the vulnerable and marginalised communities include among others:

## 5.1 Potential Beneficial Impacts

- *Water availability and access that will boost local economic development*
- *Increased numbers of people with access to safe drinking water*
- *Reduction in water-borne diseases*
- *Improved nutritional status*
- *Enhanced food security*
- *Reduced vulnerability levels associated with water scarcity or floods*
- *Disaster risk reduction and climate risk*
- *Reduced poverty levels*
- *Improved levels of cleanliness, sanitation and hygiene*
- *Reduced workloads and distances by women and girls to the river to fetch water*
- *Time freed from fetching water for women and girls re-directed to other development initiatives*
- *Better access to water by milk cows boosting household income and household food security*
- *Children no longer left in the care of grandparents when women and girls go to fetch water*
- *Improved infrastructure and services (e.g. access to clean water, power, roads)*
- *Better health outcomes, due to improved services and delivery,*
- *Improved support for education and better resources and facilities*
- *Enhanced employment and business opportunities*
- *Increased income flows through compensation payments*
- *Improved living standards due to increased wealth*
- *Government assistance for community development initiatives and livelihood support programs*
- *Environmental restoration and protection (e.g. through reforestation initiatives, improved fire management)*
- *Special measures for the improvement of marginal groups (e.g. through education, small business development programs).*

## 5.2 Potential Negative Impacts

Adverse project impacts include:

- *Concentration of people and livestock around constructed water points*
- *Loss of land*
- *Loss of water rights*
- *Increased encroachment on territory by outsiders who will be attracted by water availability*
- *Increase in soil erosion*
- *Loss of biodiversity*
- *Payment for water (which is currently fetched by women free of charge)*

- *Increased incidences of water borne disease-malaria, bilharzias, etc*
- *Possible destruction of water sources*
- *Loss of or limited access to grazing land/pasture*
- *Physical or economic displacement and resettlement*
- *Reduced ability to carry on traditional livelihoods due to loss of access to land and/or damage or destruction of key resources (forests, water, fisheries)*
- *Destruction of, or damage to, culturally significant sites and landscapes – both tangible and intangible*
- *Social dislocation and erosion of cultural values as a result of rapid economic and social change(e.g. the shift from a subsistence to a cash economy)*
- *Increased risk of exposure to diseases such as AIDS, tuberculosis and other communicable diseases*
- *Increased exposure to alcohol, gambling and other “social vices”*
- *Further marginalization of some groups (e.g. women)*
- *“Outsiders” (e.g. workers) moving on to traditional lands due to areas being opened up by the construction of dams, bulk water supply, irrigation schemes-Large-scale uncontrolled in-migration contributing to increased competition for resources and social tensions.*

### **5.3 Proposed Mitigation Measures**

A summary of the potential adverse impacts of sub project investments under KWSCRП on VMGs and possible mitigation actions are highlighted in **table 2** below and should be considered as a guideline in the development of investment specific VMGP in terms of mitigation measures and considerations.

**Table 2. Potential Adverse Project Impacts and Mitigation Measures**

<i>Impact</i>	<i>Possible Actions</i>	<i>Responsibilities and Issues</i>
Concentration of people and livestock around water points a likely cause of conflict or degradation of soil	Ensure adequate distribution of water points for both people and livestock	Initial costs might be higher, but in long run will be cost effective and will contribute to environmental sustainability.
Loss of water rights	<p>Ensure that adequate benefits and/or compensation be provided based on agreements reached through free, prior and informed consultations</p> <p>Project should work with the marginalized and vulnerable communities to ensure that any agreements made on water provision are honored</p>	<p>KWSCRП executing agencies will implement any agreements reached under the KWSCRП framework. KWSCRП and the GOK would provide resources to implement these agreements.</p> <p>KWSCRП executing agencies will also implement any other agreements reached under the framework of other projects. In this case, the associated development partner or the GOK would be expected to provide the necessary resources.</p>
Loss of Land	<p>No displacement of VMGs and thus exclude all sub projects screened and determined to trigger displacement of VMGs.</p> <p>Because physical relocation of VMGs is particularly complex and may have significant adverse impacts on their identity, culture, and customary livelihoods, the Bank requires the borrower to explore alternative project designs to avoid physical relocation of Indigenous Peoples. In exceptional circumstances, when it is not feasible to avoid relocation, the borrower will not carry out such relocation without obtaining broad support for it from the affected Indigenous Peoples' communities as part of the free, prior, and informed consultation process. In such cases, the borrower prepares a resettlement plan in accordance with the requirements of OP 4.12, Involuntary Resettlement that is compatible with the VMGs cultural preferences, and includes a land-based resettlement strategy. As part of the resettlement plan, the borrower documents the results of the consultation process. Where possible, the resettlement plan should allow the affected VMGs to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.</p>	KWSCRП/MEWNR and executing partner agencies
Increased risk of exposure to diseases such as HIV/AIDS, tuberculosis and other communicable diseases	Design public health messages and measures to combat spread of diseases	KWSCRП/MEWNR/MOPHS

Physical/Economic Displacement of VMGs	No physical displacement of VMGs and thus exclude all sub projects screened and determined to trigger displacement of VMGs  Compensate the VMGs economically displaced	KWSCR/MEWNR and executing partner agencies
Loss of traditional livelihoods	Design projects to blend with traditional livelihoods to the extent possible particularly during the resettlement period.	KWSCR/MEWNR and executing partner agencies
Encroachment on and degradation of land, territory and natural resources	Provide for meaningful representation of the VMGs in decision making in KWSCR sub project development - investment planning and operations and maintenance of service provision – providing for the VMPs the voice to shape the benefits they would like to see from the project.  Implement VMGP to re-assert VMGs rights to land and other natural resources affected by the project.  Ensure adherence to the project Resettlement Policy Framework.  Control in-migration of people from outside the area.	Strict control of migration may not be possible within the context of Kenya where there is no restriction to free movement of citizens.
Participation of women in decision-making processes)	KWSCR executing agencies should include community stakeholders in the ownership and decision making to encourage the community to decide on self-management and financing of the operations and maintenance of their own infrastructure Increase hygiene and public health campaigns to sensitize the community  Increase funding to community water supply bodies to ensure that water is treated while at the same time ensuring that water supply facilities are rehabilitated and kept in good condition.	Capacity of women to be enhanced through exposure and leadership training so that at least one third of them can get involved in the management water service and management institutions including attending meetings convened by such institutions.
Increased incidences of water- borne diseases	Mitigation Plan for combating Water Borne related diseases to be put in place	Government of Kenya-Ministry of Public Health and Sanitation
Increased marginalization and exclusion of the VMGs	Adequate communication framework to ensure VMPs voices are heard, pending issues resolved and grievances heard  Strike a balance between water supply in rural and urban areas	KWSCR/MEWNR

## 6 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 communities, of the potential adverse and positive effects of the project be designed and used in consultation. It is likely that some of the proposed investments will result in significant adverse impacts for vulnerable and marginalized communities and as such the VMGs should be informed and consulted 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 the KWSCR, and other local civil society organizations (CSOs) identified by the affected Vulnerable and Marginalized Groups.

*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 in the following ways:-*

### 6.1 Sub Project Investment Screening

Screening of all the KWSCR project investments will be a mandatory requirement prior to implementation to determine if vulnerable and marginalized people are present because the sub project investment locations have not yet been identified. Any project investment involving involuntary resettlement, acquisition or physical relocation of VMGs will be avoided at all costs and actually excluded for consideration.

Early in sub project preparation, screening to determine whether Indigenous Peoples are present in, 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. The Government of Kenya's framework for identification of VMGs during project screening will be followed only and only when that framework is consistent with this policy. However, the sub projects 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

#### **Box 1. The Elements of Free, Prior and Informed Consent**

- 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 on Indigenous Interests (UNPFII), the Tebtebba Foundation, the International Indian Treaty Council and others.

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 VM. This will be done during the screening phase of the sub project implementation.

**Box 2.** Indigenous Peoples in the Africa Region. Applying OP 4.10 in the Sub-Saharan African context poses significant challenges, the most important of which is determining to whom the policy applies. Many countries in the region are multi-ethnic, with tribal and local affiliations often cutting across geographical boundaries and national identities. Due to migration of peoples and attendant assimilation from inter-marriage, plus centuries of colonialism, the notions of —place and —group identity are often unclear. As a result, governments in the region, as well as local groups themselves, have become highly sensitive to applying and using the term Indigenous Peoples. Meanwhile, there are parallel efforts at the global level to officially recognize distinct, vulnerable social and cultural groups. These efforts, while meeting international definitions of Indigenous Peoples, have been difficult to apply in AFR due to increasing disagreements between government and local populations, especially grassroots social organizations and their advocates who support a more inclusive view. In the past, the Bank’s Indigenous Peoples Policy has been applied to some of the most marginalized and vulnerable social and cultural groups who date back to pre-colonial times. Bank-financed projects provided social services and livelihood support to groups with relatively small populations who traditionally, and in a few cases still, live by foraging (hunting, gathering, and fishing) and whose claims to land have been routinely rejected by neighboring groups (adapted from World Bank 2011).

### 6.1.1 Preparation of Social Screening Form

The KWSCR/PMU Environmental and Social Specialists will prepare the screening forms in collaboration with the executing agency for the specific sub project considered for implementation. A sample screening form is shown in *annex I*. The OP 4.10 of the World Bank suggests “to use 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, even though the GOK has an exhaustive list of VMGs, the above stated definition and characteristics of VMGs according to the Bank will be used to screen and determine if indeed the VMGs on the GOK list meet the threshold and can be considered indigenous. If the results show that there are VMGs in the zone of influence of the proposed sub-project, a Social Assessment (SA) will be planned for those areas.

**Screening Criteria:** The KWSCR/PMU, the sub project EA and Consultants responsible for subproject preparation and implementation will visit all VMGs settlements near the selected subproject areas which may be affected and influenced by the subproject components. Public meetings will be arranged in selected communities by the EA/KWSCR/PMU with the VMGs and their leaders to provide them information about the subproject and take their views on the subproject.

During this visit, the screening team mentioned above will undertake screening of the VMGs with the help of the community leaders and local authorities. 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 households along the zone of influence of the proposed subproject.
5. Any land acquisition required from any VMGs for the subproject?
6. If so, any alternatives to avoid land acquisition?
7. If no, will this subproject be excluded?
8. Will a VMGPs be required if a subproject passes through any VMG?
9. If no, why?

If the results of the screening indicate the presence of VMGs in the zone of influence of the proposed subproject, a social assessment will be undertaken for those areas.

## 6.2 Social Assessment Process

If, based on the screening, the KWSCR/PMU concludes that VMGs are present in, or have collective attachment to, the project area; the executing agency of that sub project will undertake a 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 sub project's potential and effects on the Vulnerable and Marginalized Groups present. The KWSCR/PMU will prepare detailed Terms of Reference (ToR) 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 VMGPs.***

The social assessment will also identify if the proposed investment will involve change in use or management of commonly held properties in the community as well as involving the commercial development of natural and cultural resources on lands or territories that VMGs traditionally owned, or customarily used or occupied. 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.

Sub project investments will comply with the following other than social screening namely:-

- *Conserve and sustainably use land and other natural resources that impact on VMGs and other communities*
- *Provide equitable share of benefits to VMGs and mitigate any possible adverse impacts*
- *Be socially and culturally acceptable to the VMGs and economically feasible so that the VMGs are not further discriminated/marginalized*
- *Be institutionally feasible: Local institutionally capacity should be adequate to take up activities*
- *Be environmentally sustainable and avoid detrimental impacts from those activities that cannot be mitigated*
- *Be elected and owned by the VMGs and other communities through participatory consultation*
- *Be supported by training and capacity building to enhance VMGs and community development*

### 6.2.1 Steering Committee for sub projects

A sub project steering committee will be established at the project area once it has been determined that VMGs are present in an area and that a VMGP is needed. The steering committee will comprise of the following representatives from the area namely:-

1. County Administrator/representative
2. Sub-County Administrator

3. Representative of CBOs/NGOs active in the area
4. Representative of the VMGs
5. Women representative from the VMGs
6. Youth representative from the VMGs
7. Government ministries representatives e.g. Ministry of Lands, Ministry of Environment and Mineral Resources, Ministry of Youth and Gender, Ministry Culture and National Heritage etc.
8. Consultants (social specialists)
9. Representative from the Executing Agency e.g. Social Development Specialist

### **6.2.2 Role of Sub Project Steering Committee**

The sub project steering committee will play the following roles in relation to the development of VMGPs.

1. Identification of the VMGs
2. Support in undertaking the Social Assessment
3. Facilitate meetings with VMGs and consultants
4. Recommend mitigation measures for the VMGPs
5. Address grievances from VMGs
6. Monitor implementation of the VMGPs

## **6.3 Methodology of Social Assessment**

### ***Combined qualitative and quantitative analysis method***

Since a 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.

### ***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.

### ***Logic framework analysis method***

This method is used to analyze causalities of things, and identify the project objectives and the related prerequisites by analyzing a series of processes related to the project in order to improve the project design.

### ***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. In the stakeholder analysis method, we have to first identify different stakeholders involved in the Project and prepare a stakeholder identification table, then evaluate their attitudes to and expectations for the Project, and their importance for the success of the Project, and analyze their interactions with the Project, and finally propose measures to be taken for different stakeholders during project implementation.

### ***Participatory assessment***

Participatory assessment is a method that involves all stakeholders in SA. The key points include listening to all stakeholders' opinions sincerely, extensively, patiently and modestly, 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 compensation and resettlement 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: ① socioeconomic survey; ② related agency analysis; ③ social gender analysis; ④ social impact analysis; ⑤ poverty analysis; and ⑥ social risk assessment.

#### ***6.3.1 Survey/Data Gathering Methods***

The process of gathering baseline information on 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. There is absolute need to map the community resources where the project investments are targeted to determine the sphere of influence, how the vulnerable and marginalized communities utilize the said resources so as identify their access to and/or control of these.

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 (vi) mitigation measures of adverse impacts if any.

The following survey methods should be used mainly in SA for sub project investments where a VMGP is required:

***Literature review:*** is intended to learn the history and background of the project, and the social and economic development of each subproject 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 Peoples and Involuntary Resettlement, including:

- ***Statistics:*** social and economic development statistics of the sub project area; census and sampling population survey data; statistics on social relief.
- ***Documents:*** documents of construction, traffic on project implementation; provisions of civil affairs authorities on minimum living security; documents of the social security authorities on unemployment and medical insurance
- ***Research findings:*** existing research findings on road construction planning, flood control, water treatment, and other findings related to the Project Design documents related to the Project: project proposals, feasibility study reports and relevant documents
- ***Review of Legal Framework:*** A review, on a scale appropriate to the project, of the legal and institutional framework applicable to VMGs. However, a common shortcoming in addressing the legal issues, whether in the section on the legal framework or later on in the VMGP, is the lack of

correspondence between the legal rights of VMGs and project design. In many cases the description of indigenous legislation is very general and is not fully consistent with the specific situation of VMGs in the project area, for instance regarding land and natural resources, an issue of importance to Indigenous Peoples.

- ***Focus Group Discussions (FGD):*** Should be held with officials and technicians of competent authorities aimed to learn their attitude to, ideas about and suggestions for the Project, local social and economic development level, social security condition, people's employment, per capita income level, local impacts of the Project, production level and living standard of stakeholders, and government policies on project implementation.

### **6.3.2 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.

### **6.3.3 Stakeholder Consultation**

Once screening has been conducted and an investment found to be located in an area where vulnerable and marginalized groups are present, the existing administrative structures –county and Sub-County leaders will be used to inform the vulnerable and marginalized communities about the proposed sub project. County or Sub-County Development Committees in collaboration with the agencies within KWSCRП executing the investments will facilitate and arrange for consultative meetings with members of the vulnerable and marginalized groups and in these meetings there will be free and prior information about the proposed sub project, the proposed location, and potential adverse impacts of the project on the marginalized and vulnerable groups.

Such consultations 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. Engagement, wherever possible, will be undertaken through traditional authorities and structures within communities and with respect for traditional decision-making structures and processes. However, recognition of the limitation these structures sometimes pose for some groups, such as women and young people will be taken into account.

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 and environmental 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 KWSCRП*

- *Traditional knowledge informs the design and implementation of mitigation strategies and is treated respectfully*
- *There is mutual understanding and respect between the KWSCR/MEWNR and executing agencies 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.*

#### **6.3.4 Impact Identification Including Long Term**

The assessment of each sub project investment 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, regions, or national societies in which they live.

Another concern is that while projects may consider short-term positive or negative impacts, they usually fail to consider the long-term impacts that project interventions could have on the livelihood, social organization and cultural integrity of VMGs, such as irrigation, dams or road improvement projects that may open up remote areas and increase pressure on indigenous lands and resources. Therefore the identification of impacts will have to consider the long term impacts as well.

#### **6.3.5 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 compensation may include among others;-

1. Building and operating schools
2. Enhancing food security
3. Achieving secure land rights

#### **6.3.6 Development of strategies for participation of Vulnerable and Marginalized Groups**

Participation will be through meetings with the different groups of the vulnerable and marginalized communities primarily to ensure that the results of the mapping exercise are presented and comments including review of the results are done and agree on its implications regarding proposed investments and activities, resource access restrictions, mitigation/compensatory measures and VMGs participation arrangements for project activities. Sub project activities selected should ensure that the VMGs do not:

- *Face further physical and economic displacements from land and forests traditionally utilized by them as source of livelihood and basis for their cultural and social system,*
- *lose further legal access to natural resources, which are an important source of livelihood and basis for their cultural and social system,*

- *Become even more marginalized in the society and disintegrate from the nation, receive less assistance from governmental services,*
- *Have less capacities to defend their legal rights,*
- *Become or remain as dependent of other ethnic groups, and*
- *Lose their cultural and social identity.*

### **6.3.7 Strategies for inclusion of women and youth**

While it is important to acknowledge the role of elders and other traditional community leaders, it should not automatically be assumed that those who occupy formal leadership positions, whether they be traditional or government appointed, represent all interests in the community. In particular, the KWSCR/PMU and its executing partners need to be sensitive to those sections of the community who are frequently excluded from the decision-making process, such as women and young people.

During the Social Assessment, where it is determined that traditional decision-making structures exclude women and younger people, 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 KWSCR/PMU 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 KWSCR/PMU 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*
- *Conduct an initial risk analysis prior to entering the area and implement controls to mitigate key risks*
- *Ensure that all representatives of the KWSCR/PMU and executing partner agencies (including third party subcontractors and agents) 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.*

It is a good idea for representatives of KWSCR/PMU and executing partner agencies to be present at initial meetings wherever possible and to meet with the traditional heads of communities, as this demonstrates respect and sets the scene for building long-term trust and relationships with communities.

1. Agreement on acceptable 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. Agreement on a mechanism to resolve disputes or grievances in order to proactively address the likelihood that differences of opinion will arise.
3. Agreement on the terms and conditions for the provision of any ongoing community 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 current or future generations who may be affected by the decisions, and to ensure transparency in the decision-making process. Support the communities' capacity to engage in decision making: for example, by providing access to independent expert advice, capacity building, facilitation and mediation, or involving external observers.

### **6.3.8 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 natural resource management, including social screening, will be assessed. This will be conducted through a detailed capacity needs assessment geared at ascertaining the inherent strengths and capacities and designing a capacity building/strengthening plan. This VMGF proposes the provision of training for the VMGs in among others resource mapping, natural resource management evaluation, planning, record keeping, basic account keeping and monitoring and evaluation.

The staff within the KWSCR/PMU will provide training for the partner executing agencies in social impact, 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.

### **6.3.9 Establish equitable representation of VMGs in decision making organs within KWSCR**

The KWSCR/PMU will ensure that the VMGs are well represented in the county and Sub-County steering committees to articulate issues important to them including ensuring that in each sub project if and when screening ascertains that VMGs are likely to be affected, as part of equitable representation, VMGs will be represented in the sub project implementation and planning unit. They will help make decisions on their needs and priorities with facilitation and guidance from KWSCR/PMU and the partner executing agencies. In so doing, VMGs representatives will take the following into account:

- *Conservation of natural resources by adopting specific, tangible actions that demonstrate sustainable use and management, linked with improving their livelihoods while upholding their rights, culture and dignity.*
- *Social sustainability ensuring that their livelihoods and way of life are not adversely impacted but rather improved and that there is equitable share of benefits with VMGs and that measures to mitigate or eliminate adverse impacts, if any, on them are adequate*
- *Environmental sustainability ensuring that detrimental environmental impacts such as depletion of biodiversity are avoided or mitigated*

## **6.4 Bank Decision on Sub Project Investments**

In deciding whether to proceed with the project, the KWSCR 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 KWSCR/PMU will prepare and submit to the Bank a detailed report (Vulnerable and Marginalized Groups Plan) that documents:

1. The findings of the social assessment;
2. The process of free, prior, and informed consultation with the affected VMGs';
3. Additional measures, including project design modification, that may be required to 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 Indigenous Peoples' communities during project implementation, monitoring, and evaluation; and
5. Any formal agreements reached with VMGs' communities and/or the VMGOs.

The Bank reviews the process and the outcome of the consultation carried out by the KWSCRIP 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. The Bank will however not proceed further with project processing if it is unable to ascertain that such support exists.

#### **6.4.1 Who Conducts the SA**

The social assessment (SA) will be undertaken by the social consultants who will be recruited by the KWSCRIP/PMU and the EA. 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 for leading the development of an action plan with the ethnic minority leaders, project engineers and other staff. If the SA indicates that the potential impact of the proposed sub-project will be significantly adverse or that the VMGs rejects the project, the sub-project will not be implemented in that locality; no further action is needed in this case.



## 7 THE VULNERABLE & MARGINALISED GROUPS PLAN

The constitution of Kenya recognizes a number of communities in various parts of the country and vulnerable and marginalized (*see table 1 and annex 3*) but although they may be considered VMGs under GoK's legislation, they also need to meet the Bank's criteria for determining whether they are indigenous. The Bank's policy criteria for determining indigenouness will be used during the social assessment and a determination and evaluation made if the policy will be triggered. If the VMGs support the sub-Project implementation a VMGP will be developed.

This Vulnerable and Marginalized Groups Framework (VMGF) contains specific measures to ensure that the VMGs receive social and economic benefits that are culturally appropriate, including measures to enhance the capacity of the project implementing agencies and other stakeholders. This VMGF calls for the preparation of a VMGP for each sub project investment screened and determined to be implemented in areas where VMGs are present or have a collective attachment. The Vulnerable and Marginalized Groups Plan (VMGP) will be prepared in a flexible and pragmatic manner, and its level of detail will varies depending on the specific project and the nature of effects to be addressed.

### 7.1.1 *Elements of a Vulnerable and Marginalized Groups Plan*

All the VMGPs that will be prepared under the KWSCRCP will include the following elements, as needed:

1. A summary of a scale appropriate to the project, of the legal and institutional framework applicable to Indigenous Peoples. Baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples' communities, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend.
2. A summary of the social assessment.
3. A summary of results of the free, prior, and informed consultation with the affected VMGs that was carried out during project preparation and that led to broad community support for the project.
4. A framework for ensuring free, prior, and informed consultation with the affected VMGs during project implementation
5. An action plan of measures to ensure that the VMGs receive social and economic benefits that are culturally appropriate, including, if necessary, measures to enhance the capacity of the project implementing agencies.
6. When potential adverse effects on VMGs are identified, appropriate action plans of measures to avoid, minimize, mitigate, or compensate for these adverse effects.
7. The cost estimates and financing plan for the VMGP; each sub project will bear full cost of assisting and rehabilitating VMGs.
8. Accessible procedures appropriate to the project to address grievances by the affected VMGs arising from project implementation. When designing the grievance procedures, the borrower takes into account the availability of judicial recourse and customary dispute settlement mechanisms among the VMGs'.
9. Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the VMGP. The monitoring and evaluation mechanisms should include arrangements for the free, prior, and informed consultation with the affected VMGs'.

### *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.

**Table 3. Vulnerable and Marginalized Groups Framework**

Issues	Activity	Responsibility	Indicators
Screening	Carry out an inventory of VMGs in the proposed sub project operation areas	KWSCR/PMU and executing partner executing agencies/VMGs	
Vulnerable and Marginalized Groups Orientation and Mobilization	Reconnaissance survey  Community meetings	KWSCR/PMU and partner executing agencies/ Vulnerable and Marginalized Peoples Organizations/ Elders	Population and dynamics of VMPs in screened areas well understood by key players  VMGs in all areas identified give broad support for the project
Consultations with Vulnerable and Marginalized Groups	Participatory Rural Appraisals	KWSCR/PMU and executing partner 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	Baseline Surveys	KWSCR/PMU and executing partner executing agencies 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	KWSCR/PMU and executing partner 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
Carry out VMGP(s), if the need arises	If the inventory documents that the proposed sub projects dams might impact on the indigenous peoples: carry out VMGPs  Carry out training and provide backstopping		The VMGPs are accepted by the GoK, the World Bank and the VMGs
Capacity Building	Trainings for VMGs and VMPOs	KWSCR/PMU and executing partner executing agencies VMGOs	VMGs and VMGOs use training to advance their cause

Equitable representation of VMGs in decision making organs	Election of representatives Annual Steering Committee meetings Bi-annual Sub-County Level meetings	KWSCR/PMU and executing partner executing agencies VMGOs	Active participation of VMGs in forums  VMGs and M&E indicate that representation is satisfactory to the VMGs
Participatory M&E with VMGs	Internal M&E External M&E	KWSCR/PMU and executing partner executing agencies VMGOs	M&E reports accessible to VMPs and implementing agencies  Mechanism for feedback into VMGF in place and implemented
Training and Capacity Building for implementation of VMGPF	Training of staff from KWSCR/PMU partner executing agencies and VMG Organizations	KWSCR/PMU and executing partner executing agencies	Participants are able to implement VMGF

## 8 STRATEGY FOR PARTICIPATION & CONSULTATION WITH VULNERABLE & MARGINALISED GROUPS

Participation of VMGs in selection, design and implementation of the subprojects will largely determine the extent to which the VMGP objectives would be achieved. Where adverse impacts are likely, the Executing Agency (EA) will undertake prior and informed consultations with the likely affected indigenous communities and those who work with and/or are knowledgeable of indigenous people's development issues and concerns. To facilitate effective participation, EA will follow a timetable to consult indigenous people communities at different stages of the Project program cycle, especially during preparation of the civil works program. The primary objectives would be to examine the following:

- 1) To seek their inputs/feedback to avoid or minimize the potential adverse impacts associated with the required works;
- 2) Identify culturally appropriate impact mitigation measures; and
- 3) Assess and adopt economic opportunities which the EA 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 subproject located in an area inhabited by VMGs, the EA will consult the VMGs about the need for, and the probable positive and negative impacts associated with the expansion/renovation works. Second, prior to detailed impact assessment, ascertain how the VMGs in general perceive the need for undertaking physical works for the subproject and gather any inputs/feedback they might offer for better outcomes, which would eventually be addressed in VMGPs and design of the physical works.

The EA will:

- 1) Facilitate widespread participation of VMGs with adequate gender and generational representation; customary/traditional VMG organizations; community elders/leaders; and civil society organizations VMGs development issues and concerns.
- 2) Provide them with all relevant information about the subproject, including that on potential adverse impacts, organize and conduct the consultations in manners to ensure free expression of their views and preferences.
- 3) Document details of all consultation meetings, with VMGs perceptions of the proposed works and the associated impacts, especially the adverse ones; any inputs/feedbacks offered by VMGs; and an account of the conditions agreed with indigenous people.

The EA will assess the detailed impacts at household and community levels, with a particular focus on the adverse impacts perceived by VMGs and the probable (and feasible) mitigation and community development measures. To ensure continuing informed participation and more focused discussions, the EA will provide indigenous people with the impact details of the proposed civil works. Consultations will cover topics/areas concerning cultural and socioeconomic characteristics, as well as those indigenous people consider important. Consultations will continue throughout the preparation and implementation period, with increasing focus on the households which might be directly affected. Consultation stages, probable participants, methods, and expected outcomes are suggested in the VMGs consultation matrix below.

**Table 4. VMGs Consultation Matrix**

Consultation Stages	Consultation Participants		Consultation	Expected
	Project Authority	VMGs Community	Method	Outcome
<b>Reconnaissance &amp; ground verification of existing and location/sites for sub projects</b>	KWSCR/PMU, project consultants (Social Scientist) and other stakeholders	VMGs, including organizations, community leaders/elders	Open meetings & discussions, visit of proposed sub project 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
<b>Screening of the proposed sub projects</b>	KWSCR/PMU, APs, consultants (Social Scientists) & other stakeholders	VMGs, including likely affected IPs, IP organizations, community leaders/elders, key informants	Open meetings, focus group discussions, spot interviews, etc.	Identification of major impact issues, feedback from VMGs and would-be affected persons for the civil works
<b>In-depth study of risks and benefits taking into consideration, inter alia the conditions that led to community consensus</b>	KWSCR/PMU, project consultants (Social Scientist), NGOs / CBOs, other knowledgeable persons	Would-be affected VMGs, VMGs, 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
<b>Social Assessment (SA)</b>	KWSCR/PMU, project consultants (Social Scientist)	Adversely affected individual VMGs./households	Structured survey questionnaires covering quantitative & qualitative information	Inputs for VMGP, and identification of issues that could be incorporated into the design of the civil works
<b>Preparation of civil works and VMGP</b>	KWSCR/PMU, project consultants (Social Scientist) and other stakeholders	VMGs, organizations, community leaders/elders, adversely affected VMGs	Group consultations, hot spot discussions, etc.	Preparation of VMGP, and incorporation of SA inputs into engineering design to avoid or minimize adverse impacts, and VMGs development programs
<b>Implementation</b>	KWSCR/PMU, APs, consultants (Social Scientists) & other stakeholders	Individual VMGs, organizations, community leaders/elders & other stakeholders	Implementation monitoring committees (formal or informal)	Quick resolution of issues, effective implementation of VMGP
<b>Monitoring &amp; Evaluation</b>	KWSCR/PMU, APs, consultants (Social Scientists), NGOs & CBOs	VMGs organizations/ groups and individuals	Formal participation in review and monitoring	Identification & resolution of implementation issues, effectiveness of VMGP

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

- The project needs to accommodate the most vulnerable and destitute members of VMGs, especially those who have been living in the project area.

- Encourage members of VMGs' to be get involved in various development planning, implementation, operation and maintenance (O&M) activities in the project through arranging related training;
- Assist members of VMGs' to develop their capacity and capability to enable them to participate in proposed sub projects;
- Explore avenues for creating employment opportunities for VM women;
- The project should ensure adequate resources and technical support for the implementation of the action plan for VMGs'.
- 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 indigenous community members in various training activities as part of the project to make their livelihoods more sustainable;

Once the VMGs are identified in the project area, the VMGPs will ensure mitigation of any adverse impact of the project. The sub project should ensure benefits to the VMGs by providing, in consultation with the VMGs 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 and any VMGPs
- Development of accountability mechanism to ensure the planned benefits of the project are received by indigenous people;
- Involve suitably experienced NGOs to address the VMGs' vulnerability through developing and implementing action plans;
- Ensuring appropriate budgetary allocation of resources for the VMGs' development plans;
- Provision of technical assistance for sustaining the VMGF;
- Ensure that VMGs traditional social organizations, cultural heritage, traditional political and community organizations are protected;

## 9 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 lodge 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 VMGPs are finalized.

Vulnerable and marginalized local communities and stakeholders may raise a grievance at all times to the KWSCR/PMU and the executing agencies about any issues covered in this framework and the application of the framework. The VMGs 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 project-specific frameworks and VMGPs 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 investments can be a source of conflict with non-VMGs as well. These include, for example:

- *Establishing a project investment in the absence of broad community support*
- *Inadequate engagement or decision-making processes*
- *Inadequate or inequitable compensation for land*
- *Inequitable distribution of benefits*
- *Broken promises and unmet expectations of benefits*
- *Failing to generate opportunities for employment, training, supply or community development*
- *Environmental degradation*
- *Disruption to amenity and lifestyle*
- *Loss of livelihood*
- *Violation of human rights*
- *Social dislocation*
- *Historical grievances not being adequately addressed.*

In addition, however, there are some contextual factors that have particular salience for vulnerable and marginalized people and their relations with sub project investments. 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 land and the recognition of sovereignty are very important for many VMGs and can lead to serious conflict if they are not handled sensitively and with due respect for the rights of affected groups.

### 9.1 Overview

A key element during the development of the sub project investment VMGPs 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, that are culturally sensitive. 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 sub project level by the relevant institutions and partners.

Before proceeding with any grievance, the Implementing Agency will ensure that traditional mechanism within the indigenous communities affected by the project has been considered, explored and exploited.



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 receipt of entitlements, without resorting to expensive and time-consuming legal actions. If the grievance procedure fails to provide a result, complainants can still seek legal redress bearing in mind that the constitution of the Government of Kenya recognizes the rights of vulnerable and marginalized groups.

## **9.2 Grievance Redress Process**

All sections of the community where a sub project investment is identified, including those with low levels of literacy, should be able to access the grievances mechanism easily. The KWSCR/PMU 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 downstream and remote communities.

A grievance redress mechanism will be developed for addressing the grievances from the affected VMGs related to sub project implementation. 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 EA 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).

### **9.2.1 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 VMGP is needed. Under the Grievance Redress Mechanism (GRM), a Grievance Redress Committee (GRC) will be formed for each sub project with involvement of VMGs representative & local stakeholders. The GRC will comprise of the following representatives from the area namely;-

1. County Administrator/representative
2. Sub-County Administrator
3. Representative of CBOs/NGOs active in the area
4. Representative of the VMGs
5. Women representative from the VMGs
6. Youth representative from the VMGs
7. Government ministries representatives e.g. Ministry of Lands, Ministry of Environment and Mineral Resources, Ministry of Youth and Gender, Ministry Culture and National Heritage etc.
8. Consultants (social specialists)
9. Representative from the Executing Agency e.g. Social Development Specialist

The GRCs are to be formed and activated during the VMGPs implementation process to allow VMGs sufficient time to lodge 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 mechanisms is designed with the objective of solving disputes at the earliest possible time which will be in the interest of all parties concerned and therefore implicitly discourages referring such matters to the law courts for resolution which would otherwise take a considerably longer time.

As is normal practice under customary law, attempts will be made to ensure that all disputes in communities are solved by the traditional leaders via the GRC after a thorough investigation of the facts using the services

of his officials. 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 women or 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 VMGPs, 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 KWSCRIP understand the cultural preferences that VMGs have for dealing with disputes. Well-designed and executed baseline studies should be used to help to build this understanding.

Before the approval of individual VMGPs all the affected VMGs will have to be informed of the process for expressing dissatisfaction and to seek redress. The grievance procedure will be simple and administered as far as possible at the local levels to facilitate access, flexibility and ensure transparency.

### ***9.2.2 Use of Alternative Dispute Resettlement Mechanisms***

The Land Act, 2012, Part VIII/128 provides for dispute resolution through the Land and Environment Court. However, as is normal practice under customary law, all disputes in communities are solved by the leaders after a thorough investigation of the facts using the services of local officials. The traditional dispute resolution structures existing for each of the MVGs will be used as the first step in resolving grievances. All attempts will be made to settle grievances. Those seeking redress and wishing to state grievances would do so by notifying their traditional leader of the VMGs or the appropriate Sub-County authority, who will in turn inform and consult with MEWNR/KWSCRIP/PMU and implementing partner agencies of the particular sub project investment.

### ***9.2.3 Further Redress-Kenya Court 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.

### ***9.2.4 Complain Pattern***

If a complaint pattern emerges, KWSCRIP, the Sub-County and County administrations, with the traditional leaders will discuss 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. KWSCRIP, the Sub-County and regional administrations and the traditional leaders and representatives will be responsible for communicating any changes to future potential PAPs when the consultation process with them begins.

In selecting a grievance structure, the VMGs 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 investment 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 corporate 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.

### 9.2.5 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 KWSCR/PMU 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.*
- *Nature of complaint or issue raised*

#### *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 close-out of the issue and what has been done to achieve it. This feedback provides an opportunity for executing partner agency in the KWSCR/PMU 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 KWSCRIP sub project investments 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. Funding will be allocated in during the preparation of each VMGP to support community-based research to highlight the VMGs perspective which could further provide a deeper understanding of the causes of conflict.

### *9.2.6 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 VMGPs 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 for each sub project investment 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.*

# 10 MONITORING AND REPORTING ARRANGEMENTS

## 10.1 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 Indigenous peoples 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 KWSCRCP partner executing agency implementing that particular sub project with oversight from the KWSCRCP/PMU. Each executing partner agency of the KWSCRCP 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 KWSCRCP/PMU.

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

- *Effective communication and consultation takes place;*
- *Reporting of any grievances that require resolution;*
- *Document the performance of the KWSCRCP 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 income and standard of living within the communities; and
6. Identification of actions that can improve the positive impact of the Project and mitigate potential negative impacts.

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

- *Provide timely information about all grievances arising as a result of KWSCRCP activities;*
- *Identify any grievances that have not been resolved at a local level and require resolution through the involvement of the KWSCRCP/PMU ;*
- *Document the timely completion of project obligations for all vulnerable and marginalized peoples grievances;*

The M&E reports for each sub project investment will be prepared by each sub project executing partner agency of the KWSCRCP each year and presented to VMGs for feedback etc., before being handed over to the VMGF-committees at Sub-County or county level for discussion and prepare recommendations on how to fine-tune the VMGP. There will be a sub project steering committee which will be established for each sub project where VMGs are involved and a representative of the VMGs will sit in this committee. The

M and E report will be submitted to this committee for review and then submitted to the KWSCR/PMU and the World Bank.

Every year an independent external evaluation will be carried out to further crosscheck the quality and to guarantee that the indigenous peoples' dignity, human rights, economies, and cultures are respected by the KWSCR, that all decisions which affect any of these are based on the free, prior, and informed consultation with the indigenous peoples, that the indigenous peoples receive social and economic benefits that are culturally appropriate and gender and inter-generationally inclusive, that adverse effects on the indigenous peoples' communities are, as much as possible, avoided, and if this was according to the VMGPF sub project committees not feasible, minimize, mitigate, or compensate in a culturally appropriate manner, based on broad support by the indigenous peoples' communities.

### ***10.1.1 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 Sub-County or 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 (lands, forests, development and social) at county or Sub-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 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 5. Monitoring and Evaluation Indicators for KWSCR/VMGF**

<b>Issues</b>	<b>Indicator</b>	<b>Responsibility</b>	<b>Data Sources</b>
Capacity Building for implementation of VMPPF	Number of individuals & institutions trained	KWSCR/PCU	Training workshops reports
Vulnerable and Marginalized Groups Orientation and Mobilization	Number of VMGs meetings; Number of VMGs sensitized	KWSCR/ PMU Vulnerable and Marginalized Groups Organizations/Elders	Reconnaissance survey reports Community meeting reports
Consultations with Vulnerable and Marginalized Groups:	Number of PRA/RRA Attendance of PRA/RRA PRA reports acceptable to VMGs	KWSCR/PMU Vulnerable and Marginalized Groups Organizations	RRA reports PRA reports
Mapping of community resources critical to VMGs	Level of VP participation Reports verified and accepted by VMGs	KWSCR/ PMU Vulnerable and Marginalized Groups Organizations	Baseline survey reports Community transect reports
Development of strategies for participation of VMGs and mitigation measures	Number of projects passed by social screening Number of sub projects implemented	KWSCR/ PMU Vulnerable and Marginalized Groups Organizations	KWSCR reports Implementing agencies reports
Capacity Building	Types of training Number of Trainings Attendance by VMGs	KWSCR/ PMU 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	KWSCR/ PMU Vulnerable and Marginalized Groups Organizations	Sub-County Level and National Steering Committee reports VMGO reports
Participatory M&E with VMG	Internal M&E External M&E	KWSCR/ PMU Vulnerable and Marginalized Groups Organizations	

# II DISCLOSURE ARRANGEMENTS FOR VMGPs

## II.1 Communication framework

Ministry of Environment, Water and Natural Resources (MEWNR) is the principal implementing institution for this project and a senior official in the Ministry will be the overall Project Coordinator. MEWNR will also be responsible for day-to-day implementation (project management, financial management, procurement, disbursement, monitoring, including environmental and social aspects of the project etc.) for all components.

Due to the planned restructuring of key ministries, the KWSCRП will be managed by a Project Management Unit (PMU) initially housed in the Ministry of Environment, Water and Natural Resources and then, if necessary, transferred to the successor Ministry responsible for water resources management and development. 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 MEWNR/PMU will recruit or retain the current environmental and social safeguard specialist supporting the preparatory phase of the KWSCRП. These specialists will provide technical support and ensure compliance with the VMGF by coordinating and working with the executing institutions in the KWSCRП.

The executing agencies of this project will report periodically to the PMU/MEWNR/KWSCRП on all issues and aspects related to this project including vulnerable and marginalized people in regard to ensuring safeguards.

This communication framework elaborates principles, strategies and structures on how the KWSCRП 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 of the MEWNR, KWSCRП/PMU representative, a representative from the executing partner implementing the sub project, a representative from the VMGs. In addition sector ministries including Environment and Mineral Resources, Lands, Gender, Sports, Culture and Social Affairs will also be in this committee. This committee will provide a linkage between KWSCRП, the VMGs and the Sub-County or county administration. It should meet once every month and work as focal point for all VMGF related issues at during the implementation of that sub project.

It should be informed about all kinds of KWSCRП 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 KWSCRП/PMU.

The elected representative of the VMGs for a particular sub project 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.



## 11.2 Disclosure

This VMGF and sub project VMGPs will be made available to the affected VMGs in an appropriate form, manner, and language. Before project appraisal, the KWSCR/PMU will send the social assessment and draft VMGP to the Bank for review. 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, and the GOK will also make the documents available to the affected communities in the same manner as the earlier draft documents.

Each subproject VMGP will be disclosed to the affected VMG with detailed information of the subproject. This will be done through public consultation and made available as brochures, leaflets, or booklets, using local languages. Summary of the VMGP will be made available in hard copies and in culturally understandable language at: (i) Offices of the EA; (ii) Sub-County or County Office; and (iv) any other local level public offices. Electronic versions of the framework as well as the VMGPs will be placed on the official website of the EA and MEWNR and the official website of Bank after approval and endorsement of the VMGF and each VMGP by the Bank.

## 11.3 Roles and Responsibilities

### 11.3.1 KWSCR/Executing Agencies

Each of the selected KWSCR partner executing agencies implementing a particular sub project investment will remain principally responsible for following the requirements of this framework. They will ensure that VMGs are consulted and benefit in culturally appropriate ways. They will avoid adverse impacts on indigenous communities, or where this is not possible develop with the participation of affected communities measures to mitigate and compensate for such impacts. Finally, they are responsible for reporting to KWSCR/PMU on project progress and any unexpected and unintended events affecting VMGs.

### 11.3.2 KWSCR/PMU

KWSCR/PMU 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—and not provide funding until such broad support has been ascertained; and*
- *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 indigenous communities are included in monitoring and evaluation exercises*
- *Prepare Terms of Reference for undertaking of Social Assessment and preparation Vulnerable Group Peoples Plan where they have been impacted by any KWSCR investment.*

### 11.3.3 Non-Governmental 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 of each sub project. The formation of Grievance Redress Committees and Steering Committees for each sub project investment will also include representation by NGOs.

#### **11.3.4 World Bank**

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

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22. *World Bank 2011, Implementation of the World Bank's Indigenous Peoples Policy A Learning Review (FY 2006-2008)*
23. *UN Human Rights and Indigenous Issues: 92*
24. *UN Declaration on the Rights of Indigenous Peoples United Nations Permanent Forum on Indigenous Issues*
25. *Organization for the Development of Lamu Communities*

# 13 ANNEX

## 13.1 Annex I-Social Screening Form

This form/checklist will be filled by KWSCR/PMU Team

SOCIAL SCREENING FORM FOR KWSCR 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?	<input type="checkbox"/> YES <input type="checkbox"/> NO If NO state remedial measures
C. POTENTIAL ADVERSE SOCIAL IMPACTS	
C1. Will activity entail restriction of access of VMP to lands and related natural resources	<input type="checkbox"/> YES <input type="checkbox"/> NO If yes exclude from project
C2. Will activity entail commercial development of natural and cultural resources critical to VMGs	<input type="checkbox"/> YES <input type="checkbox"/> NO If yes exclude from project
C3. Will activity entail physical relocation of Vulnerable and Marginalized Peoples <input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO If yes exclude from project
D. CONSULTATION WITH IP	
D1. Has VMP orientation to project been done for this group?	<input type="checkbox"/> YES <input type="checkbox"/> NO
D2. Has PRA/RRA been done in this area?	<input type="checkbox"/> YES <input type="checkbox"/> NO
D3. Did the VMP give broad support for project	<input type="checkbox"/> YES <input type="checkbox"/> NO

Prepared by: \_\_\_\_\_ Verified by: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

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

## 13.2 Annex 2- Contents Vulnerable and Marginalized Groups Framework

<p><b>OP 4.10, Indigenous Peoples Planning Framework</b></p>	<p><b>These policies were prepared for use by World Bank staff and are not necessarily a complete treatment of the subject.</b></p>
<p>1. The Indigenous Peoples Planning Framework (IPPF) sets out:</p> <ul style="list-style-type: none"> <li>(a) The types of programs and subprojects likely to be proposed for financing under the project.</li> <li>(b) The potential positive and adverse effects of such programs or subprojects on Indigenous Peoples.</li> <li>(c) A plan for carrying out the social assessment for such programs or subprojects.</li> <li>(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).</li> <li>(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.</li> <li>(f) Monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the project.</li> <li>(g) Disclosure arrangements for IPPs to be prepared under the IPPF</li> </ul>	

### 13.3 Annex 3-Contents of Vulnerable and Marginalized Groups Plan (VMGP), OP 4.10

#### Indigenous Peoples Development Plan

##### *Prerequisites*

Prerequisites of a successful development plan for indigenous peoples are as follows:

- (a) The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project.
- (b) Studies should make all efforts to *anticipate adverse trends* likely to be induced by the project and develop the means to avoid or mitigate harm.
- (c) The institutions responsible for government interaction with indigenous peoples should possess the social, technical, and legal skills needed for carrying out the proposed development activities. Implementation arrangements should be kept simple. They should normally involve appropriate existing institutions, local organizations, and nongovernmental organizations (NGOs) with expertise in matters relating to indigenous peoples.
- (d) Local patterns of social organization, religious beliefs, and resource use should be taken into account in the plan's design.
- (e) Development activities should support production systems that are well adapted to the needs and environment of indigenous peoples, and should help production systems under stress to attain sustainable levels.
- (f) The plan should avoid creating or aggravating the dependency of indigenous people on project entities. Planning should encourage early handover of project management to local people. As needed, the plan should include general education and training in management skills for indigenous people from the onset of the project.
- (g) Successful planning for indigenous peoples frequently requires long lead times, as well as arrangements for extended follow-up. Remote or neglected areas where little previous experience is available often require additional research and pilot programs to fine-tune development proposals.
- (h) Where effective programs are already functioning, Bank support can take the form of incremental funding to strengthen them rather than the development of entirely new programs.

##### *Contents of VMGP*

The development plan should be prepared in tandem with the preparation of the main investment. In many cases, proper protection of the rights of indigenous people will require the implementation of special project components that may lie outside the primary project's objectives. These components can include activities related to health and nutrition, productive infrastructure, linguistic and cultural preservation, entitlement to natural resources, and education. The project component for indigenous people's development should include the following elements, as needed:

- (a) *Legal Framework.* The plan should contain an assessment of (i) the legal status of the groups covered by this OD, as reflected in the country's constitution, legislation, and subsidiary legislation (regulations, administrative orders, etc.); and (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights. Particular attention should be given to the rights of indigenous peoples

to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forests, wildlife, and water) vital to their subsistence and reproduction.

(b) *Baseline Data.* Baseline data should include (i) accurate, up-to-date maps and aerial photographs of the area of project influence and the areas inhabited by indigenous peoples; (ii) analysis of the social structure and income sources of the population; (iii) inventories of the resources that indigenous people use and technical data on their production systems; and (iv) the relationship of indigenous peoples to other local and national groups. It is particularly important that baseline studies capture the full range of production and marketing activities in which indigenous people are engaged. Site visits by qualified social and technical experts should verify and update secondary sources.

(c) *Land Tenure.* When local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing legal recognition of the customary or traditional land tenure systems of indigenous peoples. Where the traditional lands of indigenous peoples have been brought by law into the domain of the state and where it is inappropriate to convert traditional rights into those of legal ownership, alternative arrangements should be implemented to grant long-term, renewable rights of custodianship and use to indigenous peoples. These steps should be taken before the initiation of other planning steps that may be contingent on recognized land titles.

(d) *Strategy for Local Participation.* Mechanisms should be devised and maintained for participation by indigenous people in decision making throughout project planning, implementation, and evaluation. Many of the larger groups of indigenous people have their own representative organizations that provide effective channels for communicating local preferences. Traditional leaders occupy pivotal positions for mobilizing people and should be brought into the planning process, with due concern for ensuring genuine representation of the indigenous population. No foolproof methods exist, however, to guarantee full local-level participation. Sociological and technical advice provided through the regional environment divisions (REDs) is often needed to develop mechanisms appropriate for the project area.

(e) *Technical Identification of Development or Mitigation Activities.* Technical proposals should proceed from on-site research by qualified professionals acceptable to the Bank. Detailed descriptions should be prepared and appraised for such proposed services as education, training, health, credit, and legal assistance. Technical descriptions should be included for the planned investments in productive infrastructure. Plans that draw upon indigenous knowledge are often more successful than those introducing entirely new principles and institutions. For example, the potential contribution of traditional health providers should be considered in planning delivery systems for health care.

(f) *Institutional Capacity.* The government institutions assigned responsibility for indigenous peoples are often weak. Assessing the track record, capabilities, and needs of those institutions is a fundamental requirement. Organizational issues that need to be addressed through Bank assistance are the (i) availability of funds for investments and field operations; (ii) adequacy of experienced professional staff; (iii) ability of Indigenous Peoples' own organizations, local administration authorities, and local NGOs to interact with specialized government institutions; (iv) ability of the executing agency to mobilize other agencies involved in the plan's implementation; and (v) adequacy of field presence.

(g) *Implementation Schedule.* Components should include an implementation schedule with benchmarks by which progress can be measured at appropriate intervals. Pilot programs are often needed to provide planning information for phasing the project component for indigenous peoples with the main investment. The plan should pursue the long-term sustainability of project activities subsequent to completion of disbursement.

(h) *Monitoring and Evaluation.* Independent monitoring capacities are usually needed when the institutions responsible for indigenous populations have weak management histories. Monitoring by representatives of Indigenous Peoples' own organizations can be an efficient way for the project management to absorb the perspectives of indigenous beneficiaries and is encouraged by the Bank. Monitoring units should be staffed by experienced social science professionals, and reporting formats and schedules appropriate to the project's needs should be established. Monitoring and evaluation reports should be reviewed jointly by the senior management of the implementing agency and by the Bank. The evaluation reports should be made available to the public.

(i) *Cost Estimates and Financing Plan.* The plan should include detailed cost estimates for planned activities and investments. The estimates should be broken down into unit costs by project year and linked to a financing plan. Such programs as revolving credit funds that provide indigenous people with investment pools should indicate their accounting procedures and mechanisms for financial transfer and replenishment. It is usually helpful to have as high a share as possible of direct financial participation by the Bank in project components dealing with indigenous peoples.



## 13.4 ANNEX 4: SAMPLE TERMS OF REFERENCE FOR DEVELOPING A VMGP

### 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 VMGP. This would include a brief description of:

- Statement of the project objectives,
- Implementing agency/sponsor and their requirements for conducting a VMGP,
- 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

(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) (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 VMGP 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 VMGP. 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 VMGP 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:

- The Project ISDS and draft PAD;
- Relevant background documentation and studies;
- Example VMGPs that demonstrate best practice, especially from the region or country;
- 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:

- Demonstrates that the Consultant understands the overall scope and nature of the VMGP preparation work, and what will be required to respond satisfactorily to each component of the ToR;
- 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;
- Describes the overall methodology for carrying out each component of the ToR, including desk and field studies, and data collection and analysis methods; and
- 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 VMGP, 10% on delivery of final VMGP).

### **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.

## 13.5 Annex 5; Sample Fact Sheet for VMGPs; VMGP Review – Fact Sheet for VMGPs

This form/checklist will be filled by KWSCR/PMU Team and World Bank as part of review and monitoring

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

Last Update: [11/20/ 2008] A.	<b>PROJECT DATA AND RECOMMENDED ACTIONS</b>
<b>Reviewer:</b>	<b>Date of Mission:</b>
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
<b>REVIEW SUMMARY (Based on Desk and Field Review)</b>	
<b>Issues / Observations</b>	
<b>Proposed Actions (short term / long term, for TTL, SD, etc.)</b>	
<b>B. SAFEGUARD IDENTIFICATION AND COMPLIANCE AT PREPARATION</b>	
<b>1 Environmental Safeguard Classification:</b>	
<b>2 Safeguard Policies Triggered at Preparation According to the ISDS, EDS, ESDS, PAD:</b>	
<b>Applicable</b>	
<b>Source</b>	
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)	
<b>3 Project Objective and Components</b>	
<b>Project Objectives</b>	
<b>Project Description</b>	
<b>4 Social Safeguard Triggers:</b> Are there any social safeguard policies which should have been triggered but were not?	
<b>C. SOCIAL MANAGEMENT PLANS AT PREPARATION</b>	
<b>This review is based on IPP PAD SA RAP ISDS (check all that applies)</b>	
<b>SCREENING</b>	
<b>Have all IP groups in project area been identified (is screening by the Bank adequate)?</b>	
<b>SOCIAL ASSESSMENT</b>	
<b>Has a social assessment taken place (is baseline data given)? Provide summary of social assessment.</b>	
<b>Has the legal framework regarding IPs been described?</b>	
<b>Have benefits/ adverse impacts to IP groups been identified?</b>	
<b>CONSULTATION, PARTICIPATION, COMMUNITY SUPPORT</b>	
<b>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?</b>	

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?
<b>INDIGENOUS PEOPLES PLAN</b>
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 <i>Infoshop</i> ? Y / N
Was IPP/IPPF disclosed in Country and in a form and language accessible to IPs? Y / N
What's missing:
<b>SPECIAL CONSIDERATIONS</b>
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)?
<b>D. IMPLEMENTATION AND SUPERVISION (Based on initial desk review and verified by field assessment)</b>
<b>1 Social Safeguards</b>
1.1 Have issues (anticipated and unexpected) been monitored and reported systematically in Aide Memoires and ISRs? Have appropriate actions been taken?
1.2 Were social specialists included in supervision missions and how often?
1.3 What are the project impacts on IPs culture, livelihoods and social organization?
1.4 In terms of consultation process, are there ongoing consultations with the IP communities? Are there records of carried out consultations?
1.5 Have any social risks been identified? Have appropriate risk management strategies/actions been recommended to the Borrower?
1.6 Are IPOs (beyond the community level) actively engaged throughout the life of the project?
1.7 Does the project contribute to the respect of IP rights as recognized by the country's legal and policy systems?
<b>2 Effectiveness</b>
2.1 Are IPPF and/or IPP implemented satisfactorily? Are they effective? Is funding adequate?
2.2 In relation to the implementation of IPPF/ IPP, were problems identified, if any? If yes, how were they resolved by the Borrower?
<b>Effectiveness of Monitoring Program</b>
3.1 Has the monitoring program been adequately supervised? Are performance indicators effective?

3	<b>Effectiveness of Institutional Responsibilities/Training as outlined in the project documents</b>
4	<b>Effectiveness of relevant Legal Covenants:</b> Is compliance with legal covenants being adequately supervised?
<b>E. SITE VISIT(s)</b>	
- Date	
- Location	
1.1 Activity	
1.2 Observations	
<b>F. OVERALL ASSESSMENT (including desk and field reviews)</b>	
<b>1 Overall Assessment and Risk Rating</b>	
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?	
<b>2 Recommendations</b>	
3.1 Project specific	
3.2 Country / Program specific	
<b>3 List of Attachments</b>	
- Key People Met	
- photos	
-etc.	
<b>G. FEEDBACK FROM TTL / SD</b>	
- Date of feedback received	

### 13.6 Annex 6; Three Point Rank Order System for VMGPs

This form/checklist will be filled by KWSCR/PMU Team and World Bank as part of review and monitoring

Criterion	Points	Explanation
<b>Screening</b>		
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
<b>Social Assessment</b>		
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
<b>Consultation, Participation, Community Support</b>		
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
<b>Indigenous People Plan</b>		
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
	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
<b>Special Considerations</b>		
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



### 13.7 Annex 7 - Summary of Consultation Issues

	Summary of Issues	Feedback to the Issues
	<b>Positive Feedback from the Community about the KWSCR Project</b>	
1.	Water access will be improved among the indigenous/vulnerable communities	The communities' positive appraisal of the project were acknowledged and appreciated by KWSCR PMU consult
2.	Water availability will fast-track economic development, agricultural development and	
3.	The program will also reduce vulnerability experienced by vulnerable groups from the phenomenon of climate change, drought and flood	
4.	Water reforms will strengthen water supply and service delivery to the rural areas.	
5.	Economy will improve industries and agriculture are going to grow	
	<b>Concerns and Fears about the Projects</b>	
1.	Sometimes the Government of Kenya makes discriminatory compensation looking down upon indigenous or vulnerable communities because they have no point of redress. We hope KWSCR will fairly compensate those who lose any asset on this project.	Anybody losing an asset will compensated fairly and justly at replacement cost whether he is a from dominant ethnic community or minority community or a local farmer or pastoralist.
2.	Indigenous people have witnessed loss of their land and previously Government project failed to recognize them and therefore compensate them them for this loss of land.	Any asset impacted directly by KWSCR projects will be fully compensated without discrimination on the nature of ownership. No civil works will commence without full compensation being settled for all affected household first. So indigenous communities should be assured of compensation..
3.	Indigenous people do not consider water as a commodity to be paid for. We ask the KWSCR to consider making the resource cheap or free for us.	Though water is an economic resource, indigenous communities request will be put into consideration during planning session for cost reduction measures targeting indigenous communities. Or special supply system will be built to supply indigenous communities.
4.	Shall indigenous communities be involved in the management of water resources within their areas? Most indigenous communities do not have awareness of water institutions, technical information and regulation. There is need to enable them know about water institutions and engage in contributing to the water institutions.	KWSCR has component on water resources development. Care will be taken to ensure that they involve indigenous communities in water resources management particularly Water Resources User Association (WRUAs)

5.	We need to be engaged in water resources management in places where we are affected or KWSCRP project overlaps with our lands	KWSCRP has component on water resources development. Care will be taken to ensure that they involve indigenous communities in water resources management particularly Water Resources User Association (WRUAs)
6.	(IIChamus )We have experienced conflict related water resource from well-armed neighbouring communities. We hope this program can increase amount of water for our livestock and use	One of the outcomes of KWSCRP is to increase amount of water resources so that incidence of natural resource based conflict can eventually reduce.
7.	Trees are important to the indigenous communities. We hope in case KWSCRP investment impact them, they will be adequately compensated.	KWSCRP recognizes that all trees affected by the project are going to be fully and fairly compensated at market rates with all the cultural.
8.	Indigenous people have had little or no involvement in water reform and policy reform and water management committee yet we stay within water resources.	The KWSCRP will ensure that indigenous people participate in water reforms and policy reform and water management committees.
9.	Indigenous people are experiencing water scarcity due to climate change, long periods of droughts, over allocation of water to other industries and agriculture	KWSCRP has water investment component that will fund of the project geared toward addressing impacts of climate change and droughts affecting indigenous people across the county.
10.	The cultural significance of water to indigenous communities is not understood and remains unrecognized in the current water law 2002 and in development of the water law and policy 2015 that the KWSCRP project supports.	KWSCRP will recognize and respect importance of indigenous traditional ecological knowledge in management of biodiversity and conservation and particularly in shaping the current water law 2015.
11.	The status of water law 2002 limits access and allocation of water resources to indigenous and vulnerable people since they have no rights in the law.	KWSCRP will facilitate participation and contribution of indigenous communities in shaping up the new water law being supported by KWSCRP.
12.	Most indigenous people do not have title deeds for their lands. Will they receive compensation anyway?	All KWSCRP lost land owned by indigenous people that has document or not will be fully compensated or alternate land provided by

		implementing agency on KWSCRP program
13.	Traditional indigenous asset or thatched houses affected by KWSCRP investment might not be compensated	All assets or houses affected by KWSCRP investment will be compensated for fully.
14.	Water is life for us indigenous. If we going to lose it we don't know where we will go. The power of water for us is that it connects with our land.	KWSCRP will ensure that the explicit inclusion of indigenous interests in KWSCRP planning for investment and particularly benefit sharing.
15.	Indigenous people obtain and maintain their spiritual and cultural identity from our land, water and resources.	Consistent across KWSCRP investment will be providing recognition and protection of indigenous rights and interests across all KWSCRP investment.
16.	We are hoping the project will provide us space to have spiritual connection to land, water and natural resources associated with water place. The project should not limit our cultural activities such as hunting and fishing.	There will be no limit to cultural activities such as hunting and fishing for indigenous communities. Consistent across KWSCRP investment will be providing recognition and protection of indigenous cultural & livelihood rights and interests across all KWSCRP investment.
17.	Livestock watering points will not be replaced after road construction is complete	Better and new Livestock watering points will be replaced and constructed by KENHA through the contractors replacing those impacted by the project.
18.	The project may increase cases of HIV/AIDS among indigenous communities particularly during construction phases of KWSCRP	Sensitization awareness campaigns among KWSCRP workers and indigenous communities will be undertaken to mitigate the spread of HIV/AIDS during the construction phase.
19.	The project should take cognizance that indigenous communities or vulnerable communities are ethnically diverse and complex.	KWSCRP recognizes that indigenous communities are not same and will develop specific Vulnerable Marginalized Peoples Plan for every

		KWSCR investment that impacts on any indigenous group.
20.	Concerns about insecurity	It is hoped that the KWSCR project will help improve security in areas inhabited by indigenous communities and other dominant communities by availing water resources that most pastoral communities so desperately need.
21.	Inadequate time for compensations for indigenous communities may affect their asset integrity.	Adequate time will be provided for compensation, relocation, and resettlement. KWSRCP investment construction will not begin until all compensations have been cleared.
22.	Indigenous and culturally important trees will be cut down during KWSCR investment	Care will be taken to limit the number of indigenous and culturally important trees cut down. Where they can be avoided, they will not be cut down.
23.	The project should take cognizance that cultural values for water are part of indigenous people way of life.	KWSCR commits to adopt and comply with the principle of free, prior and informed consent during KWSCR implementation. The project will protect indigenous people interest specifically access to land, water and natural resources. KWSCR will also ensure that social cultural environment impacts on indigenous peoples arising from water and climate change are sufficiently addressed.
24.	Catchment protection which is part of KWSCR project should recognize and engage indigenous people. Indigenous people have been secluded in conservation and natural resources management activities	The project will ensure equitable participation of all indigenous people in catchment protection activities where KWSCR investment are placed.
25.	The project should improve indigenous technology to fully utilize limited water resources and safeguard the resources against institutions	The project will ensure that indigenous people partake in the sharing benefits of the projects through sharing of culturally appropriate technology that enable access to water.
26.	Large dams have serious impacts on the lives livelihoods, cultures and spiritual existence of the indigenous and tribal people. Indigenous people are	Measures will taken to limit negative impacts occasioned by large dams supported by KWSCR investments.

	likely to suffer disproportionately from negative impacts of large dams while being excluded from the sharing of benefits.	Specifically, ESMP, RAP and VMGP will be developed
27	KWSCRП should also make use of indigenous knowledge, customary practices and intellectual property in water catchments conservation in areas where indigenous communities exist	KWSCRП will recognize indigenous people knowledge, customary practices and intellectual property in water catchment conservation and protection.

### 13.8 Annex 8 – Participants List - VMGs Consultative Meetings

#### a) KAMATIRA VMG CONSULTATIVE MEETING

SECTION KAMATIRA  
 LOCATION KAPKORIS - KAMATIRA

**LIST OF ATTENDEES**

NO	NAME	LOCATION/ ORGANIZATION	PHONE	SIGN
1	BRUNO S. MAGAL	KANASIONIA	0729635229	
2	Alyed Kemeta	Kapenw/Kaprom	072542788	
3	Peter L. Adulian	Kapenquia	0710754718	
4	Jacob KBEJ	Kapenguna	072605882	
5	Jacob Polich	Kapenguria	0700229518	
6	Jacob chobozwa	Kaprom	0700229518	
7	Samson Chomwizu	Kapenw	0736342677	
8	MARTIN Komata	Kapenw/Kaprom	0736342677	
9	LONYANGOLE SALVINO	Kapkoris/Kaprom	071183343	
10	Silvanus Izakomwa	Kapkoris	0717690166	
11	MARK KOTILO	Kapkoris	071134459	
12	NYUKI AKORU	Kapkoris	NA	
13	Pbnot photo stephon	Kapkoris	071863386	
14	Loreng Lokasikwang	Kapkoris	NA	
15	Simion Limang	Kapkoris	0718063237	
16	MARK K. Lokitaman	Kapkoris		
17	KAKURO L. JOHN	KAPENBURIA	0705671035	
18	ABRAHAM LOKITUMAN	KAPKORIS	0707568595	
19	DAVID SEROMUK	KAPKORIS		
20	JOSEPH MARAMBO	KAPKORIS		
21	WILLIAM LOKAPIS	KAPKORIS	0712945240	
22	STELLA C. KASIWA	KAMATIRA	0705838247	
23	BETHUCE J. MALAT	KAMATIRA	0711154225	
24	BASLINE J. LOKAPIS	KAMATIRA		
25	STEPHEN M. MATAYU	KARAS	0729376184	
26	KORINYANG	KAMATIRA		
27	IABAZA C. MADANG	KAMATIRA		
28	Linganyang Kakupe	Kamatira		
29	John Slangole	Kamatira	0708783142	
30	Albert Satchub	Kamatira	0711595803	
31	Reuben Kalikason	Karas	0737117183	
32	Silvanus Kijego	Kamatira	075515148	
33	Zabla Kemet	Kamatira	0712511653	
34	Joel Rohit Kide	Kapenw/Kaprom	0708102240	
35	Jacob Amasa	Kapenw/Kaprom	0726071162	
36	LIANC M. LOKITUMAN	Kapenw/Kaprom	0716155028	
37	Milman K. Iole	Kamatira	071203424	
38	ALPHONSE I.	Kamatira		

b) PARUA VMG CONSULTATIVE MEETING

LOCATION <u>PARUA</u>		LIST OF ATTENDEES		
NO	NAME	LOCATION/ ORGANIZATION	PHONE	SIGN
1	EMMANUEL MOROLO	PARUA Location	0787192510	
2	KEVIN MURARA	PARUA	0723835800	
3	JULIUS KAPEL	PARUA	0737371002	
4	ERIK UHURU	PARUA	07220771002	
5	DANIEL YWALANYANG	PARUA	0737467096	
6	JACKSON CHERUTOI	PARUA	0739174863	
7	LINGA STAA	PARUA	0731075746	
8	HILARY PIOLONG	PARUA	0715060751	
9	PETER LIMADIA	PARUA	0713393042	
10	MOSES ANUAN	PARUA	0739590288	
11	LAKWANSAKILE MWATA	PARUA		
12	DANIEL YWALONHAR	PARUA	0734570718	
13	RICHARD CHEPLOKAY	PARUA		
14	DANIEL KOREE	PARUA		
15	JOHN CHEPNDYON	PARUA		
16	BEATRICE BOMO	CHEPARCIA	0702909391	
17	KEVIN KEKE	PARUA	0735065895	
18	SAMUEL KROP	PARUA	0788771952	
19	JOSEPH SIARA	PARUA	0738175492	
20	Simon Y Kariko	PARUA	0753805302	
21	JACKSON KALAKO	PARUA	0729356044	
22	Benjamin Pyeko	PARUA	0738204066	
23	Letheke Samuel	PARUA	0731530166	
24	Peter Koiun	PARUA	0708966490	
25	MARILE NGVIZIADOMO	PARUA		
26	LONGAN GERTVEY	PARUA	0702501141	
27	Peter Riagosia	PARUA	0706501781	
28	Jacob Imuran	PARUA		
29	Philip Kipet	PARUA	0782176902	
30	Keneth Anuan	PARUA	0715570121	
31	DAVID K. LOSIAKODIA	PARUA	0704908982	
32	AMBROSE KALIAMINO	PARUA		
33	STEPHEN LOCHRIM	PARUA		
34	CHURUNGOLE MEVI	PARUA		
35	MUSA-K. SIKIKI	PARUA		
36	CHRISTOPHER LONGHARIM	PARUA	0789940232	
37	MICHAEL KATATWA	PARUA	0731325561	

c) KIPKOMU CONSULTATIVE MEETING

**LOCATION KIPKONO**

**LIST OF ATTENDEES**

NO	NAME	LOCATION/ ORGANIZATION	PHONE	SIGN
1	JACOB TK KENTUKEI	SENIOR CHIEF YWALATEKE	0728253038	[Signature]
2	LOKORNIRO LOKOAWA	PSERUM LOCATION	0718064737	[Signature]
3	PATRICK SEHEMU	KIPKOMU	0710178833	[Signature]
4	SAMUELA LOKKINO	KIPKOMU	07553534	[Signature]
5	CHRISTOPHER KAPTILAL	KIPKOMU	072331192	[Signature]
6	PRICILA KAMATEPEN	KIPKOMU	N/A	[Signature]
7	RICHARD KOUMO	KIPKOMU	071370466	[Signature]
8	Gabriel Aipat	Sunatan	0728174827	[Signature]
9	Lanukang chachama	KIPKOMU	073528679	[Signature]
10	STEPHEN ATANYANGOLE	YWALATEKE	0713671293	[Signature]
11	SOLIANA PWEMOI	KIPKOMU	0418628356	[Signature]
12	DAMIAN LOKAKAY	KIPKOMU	0700531115	[Signature]
13	JOHN RIGNERT	KIPKOMU	0718782903	[Signature]
14	CHRISTOPHER PKOMBOL	KIPKOMU	0728948115	[Signature]
15	DAVID AYOROMOI	KIPKOMU	0738557126	[Signature]
16	Amos Abich	magu	0722-12444	[Signature]
17	DANIEL KOMUTONI	KIPKOMU	072820471	[Signature]
18	PIUS LOSIALOI	KIPKOMU	0711421803	[Signature]
19	Shadrach Poulon	KIPKOMU	071125277	[Signature]
20	JACOB KOMOLIKAI	KIPKOMU	0712602286	[Signature]
21	SABAH KUMONKAI	KIPKOMU	0729905170	[Signature]
22	LUCAS OBERHUBER	KIPKOMU	0715476110	[Signature]
23	LAWRENCE MEBACH	PSERUM	0722322229	[Signature]
24	Joseph NARANANG	KIPKOMU	072886823	[Signature]
25	Yakotia, CHODE		12564665	[Signature]
26	PETER SIMILU MUCUMBO	CHEPARERIA	071899310	[Signature]
27	JACOB P. LORTALE	CHEPARERIA	14406481	[Signature]
28	JOHN CHOMIL	CHEPARERIA	0736128509	[Signature]
29	LOCO URIBI	CHEPARERIA	-	[Signature]
30	JACKSON MUSHIAN		0700156215	[Signature]
31	Stephen LORIMAKAI	CHEPARERIA	0702547853	[Signature]
32	St Joseph MUGO	CHEPARERIA	0723215014	[Signature]
33	CHRISTOPHER TOPEL	CHEPARERIA	-	[Signature]
34	JOHN LOTAU	"	0725529573	[Signature]
35	Amos LATERORI	"	0700834230	[Signature]
36	ORRINO JULIUS	"	0722933201	[Signature]
37	FRANCIS YERANANG	"	0712230660	[Signature]



d) SINYERERI VMG CONSULTATIVE MEETING

SECTION SINYERERI  
 LOCATION SINYERERI-KWANZA

LIST OF ATTENDEES

NO	NAME	LOCATION/ ORGANIZATION	PHONE	SIGN
1	PHILIP O. ONCHIRI	KAISAGAT	072334827	[Signature]
2	GEOFFREY OLENGE	SINYERERE	0725429558	[Signature]
3	OBADIAT MYAMUNDI	SINYERERE	072172183	[Signature]
4	ALFRED A. KEYA	KAISAGAT	0726569790	[Signature]
5	JOHN CHOROONY	SINYERERE	0788388785	[Signature]
6	Kenneth Amundi	KAISAGAT	070448223	[Signature]
7	NEHEMI K SIRMA	SINYERERE	0721921951	[Signature]
8	RONALD MANDALA	SINYERERE	0710229821	[Signature]
9	ABDUL BUKWASI	SINYERERE	0723876957	[Signature]
10	PILGRIM JOE	SINYERERE	0722875735	[Signature]
11	AK McLEAN	S 27	0722570782	[Signature]
12	BEN SAGWE MATWANA	KAISAGAT	0729478024	[Signature]
13	ISAAC M. OMUGO	SINYERERI	07250893580	[Signature]
14	Robert Manji	SINYERERE	070891397	[Signature]
15	BENAD KIKAI	KWANZA		[Signature]
16	JOHN K. EMELWI	WIYEIA	0711617100	[Signature]
17	ABRAHAM NJUGUNA	SINYERERI		[Signature]
18	HUDSON MBAMI ISAYA	KESODON	0713253335	[Signature]
19	JOSEPH MUGO	KIPSAINA	0700911336	[Signature]
20	PHYLLI K. Mbayi	KAISAGAT	0726512877	[Signature]
21	Joseph Labito	KAISAGAT	0723178630	[Signature]
22	DOUGLAS BULIMU	SINYERERE	07286711467	[Signature]
23	VINCENTI MUKOLWE	SINYERERE	0726561610	[Signature]
24	AUBU MAMIMEI	KANUSI	071258737	[Signature]
25	HENRY OBUNGA ODIKO	SINYERERE	0725671480	[Signature]
26	EMMANUEL KILWEKWIYA	KAISAGAT	0711815790	[Signature]
27	MURTERA NIKESA	SINYERERE	0714073736	[Signature]
28	DONALD W. MAKATA	KAISAGAT	0734771188	[Signature]
29	DEHMIS ROTH	SINYERERE	0718044021	[Signature]
30	WALTER OMOITI EPOH	KAISAGAT	0727615462	[Signature]
31	VINCENT VANYAMA	KAISAGAT	0711828281	[Signature]
32	JAMIN C. KANGUGO	KWANZA	0721372052	[Signature]
33	ELSHADWATH K. MASIMON	KWANZA	0710277437	[Signature]
34	PETER K. A. MARINDAKI	KIPSAINA	0711890135	[Signature]
35	ISACK CHEKONYI	KIPSAINA	0712110000	[Signature]
36	SAMMY TARE	SINYERERE	0712939311	[Signature]
37	JOACHIME M. MCHARIARIRI	SINYERERE	0712246379	[Signature]

### **13.9 Annex 9- Profile of Vulnerable and Marginalized Groups in Kenya**

The Constitution of Kenya has established a list of all the vulnerable and marginalized groups in Kenya and they are described below. Although they may be considered as VMGs under GoK's legislation, they also need to meet the Bank's criteria for determining whether they are indigenous. Given that this topic is currently under discussion, the framework document describes what groups GoK recognizes as vulnerable and marginalized and the Bank's policy criteria for determining indigenosity - through the social assessment at the subproject an evaluation is made if the policy will be triggered

#### **13.9.1 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). The Sengwer in Kapenguria and Kesogon hold the total population of the Sengwer at 70,000. 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 Cherangany Hills were the Cherangany Dorobo, a small tribe of Dorobo (Sengwer). The Sengwer in diaspora are spread in and out of Kenya living amongst Maasai (Kenya and Uganda), Pokot (Uganda and Kenya), Sabiny (Uganda), Luhya (Sirikwa Mpai, Apa Sengeli), Tugen, Ogiek, Kipsigis, Nandi, Marakwet, Keiyo, Sabaot (Kiptum 2006).

Oral history traces the history of the Sengwer back to a man called Sengwer, who is considered to be the mythical first inhabitant of the Cherangany hills. It is said that he had two sons named Sirikwa (elder) and Mitia, whose children formed the clans: Kapchepororwo, Kapcheper (Kaptoyoi), Kapumpo, Kaptogom, Kapcherop, Kakisango, Kimarich (Kamosus), Kapsorme (Kapseto), Kapteteke, Kipsirat, Kamengetiony (Kopoch & Kapkotet), Kaplema and Kamesieu. Each patrilineage is said to have had their portion of land running from the highlands to the plains. The elders said that before the advent of the colonialists, the Sengwer lived during the rainy season in the vast plains of what is today Trans-Nzoia and during the dry season in the forest on the mountain slopes of the Cherangany hills. It is said that the Sengwer lived in good relation with their neighbors as they were not competing for the same resources, but barter honey and dry meat for food crops and/or milk etc.

It is believed that the first Arab slave and ivory hunters came to the area around 1600 and oral history claims that the Sengwer have been quite involved into the trade. In exchange for the ivory they were provided with Millet and Sorghum seedlings. During the Maasai immigration they acquired their first cattle, but it is a common belief that hunting and gathering remained the main source of livelihood for all Sengwer until the mid of the last century.

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 group 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. When the government started to protect the water-catchments and forests in the 1920ies and 30ies as forest reserves, they acknowledged the presence of the Sengwer and provided them with all usufructuary rights for this area as well as the right to farm on the openings in the forest. They enjoyed these rights until the 1970ies, when a new fashion of conservation recommended that all hunting should be prohibited and forests should be cleansed of people.

As the Sengwer were not considered as 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. During the Sakas (collective hunt) a group of people would try to circle large animals such as elephants and buffalos on the plains and spear or arrow them down. In contrast, the Kwo (individual hunt) is carried out by a nuclear family and mostly based on the use of poisoned baits and/or traps.

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 - beside 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. The night before the marriage, wife and husband had to smear honey on their future house, each starting in a different direction until they meet and unite. 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. These days, maize, potatoes, beans and a variety of vegetable are grown. Before land became scarce, the Sengwer used shifting cultivation patterns and changed their farms every three years. Transplanting, harvesting transforming, marketing and preparing of crops is considered beside of gathering, the provision of water and the education of the children as core female activities.

The Sengwer learned to keep animals, especially cattle, from the Maasai, when these arrived in the area in the context of their expansion from the north. The herds of the Sengwer are - also due to the common cattle rustling - very small and milk and livestock mostly used for auto-consumption. Most of the ancestral land of the Sengwer is occupied either by other ethnic groups or demarcated as forests, which prohibit legal settlements or agriculture. It is said that around 20% of the Sengwer have legal access to land, but that these plots are on average only 2.5 acres per household, i.e. very small. The majority of the community members are landless. Significant parts of the ancestral lands have been demarcated as forests: Kapkanyar 70,000 acres; Kipteber 57,000 acres; Kapolet 10,800 acres; Chemurgoi 9,800 acres; Sogotio 8,800 acres; Kerer 5,340 acres; Kaisingor 2,680 acres and Embobut 8,000 acres. The problem of the Sengwer to access land and/or resources legally might best be described best through an assessment of the three communities visited:

The Embobut forest in the Marakwet Sub-County contains, according to local sources, approximately 5,000 Sengwer, which claim to have arrived in the area in the 1930s when they were displaced from the plains of Trans-Nzoia. The settlements are located right on top of the highest lines of the Cherangany hills, with a view into the Rift Valley and the plains of Trans-Nzoia on either side, but without roads, schools, health infrastructure as it is officially considered as forest. The people who took refuge there, report of ongoing conflicts with forest officials and neighboring communities. They commonly stated that the forest guards would arrive every three to four years to burn and destroy their houses and farms in the name of forest conservation and to loot their property. In the meantime armed cattle rustlers would come time and again to take crops and cattle and shoot those who resisted. The Sengwer of the Embobut forest made clear that the local and central administration did not react on any complaints against the evictions, with the argument that the Sengwer are illegally in the area and due to that not entitled to any protection from the state and

county council. Their average annual cash income is said to be around KSh 3,000 (USD 40) per household as significant parts of their production are taken away before they can market it.

The situation of the Sengwer of the Kapolet forest is not much better. Presently there are 487 Sengwer households living in this half-legal settlement, which had been given to them after they invaded a state lodge. The history of these people is closely linked to the quest of the Sengwer for land and recognition: In result of years of broken promises from side of the government approximately 2,000 Sengwer invaded on March, 22, 1997 a state owned farm in the plains (ADC Milimani) and stayed there even when their elders and leaders were arrested. After a month of serious fights, the government offered them a new settlement scheme in the Kapolet forest (in total over 3,000 acres) in exchange for a peaceful end of the invasion. The Sengwer accepted, and in a first phase 1,000 acres were demarcated for nearly 500 households, who moved in the same month, but the promised letters of allotment were not even issued by December 2005 with the official reason that the land is officially a forest and due to that not suitable for a settlement scheme. Due to the same reason, the second and third phase of the settlement scheme, which supposed to provide the entire 3,000 acres to Sengwer, have not yet started.

In view of legal access to land, the Sengwer of the Talau Location are quite lucky. All 755 households have letters of allotment and they are satisfied with the quality and size of their lands, but they also have significant problems: Only in 2005 about 20 Sengwer of this small location with a total population of around 4,000 people have been killed by cattle rustlers. The total loss of cattle is reported to be around 400 and the non-economic losses might be even higher as most families have to be on alert each night. The Sengwer complained bitterly that even those cattle which have been identified to be theirs, were not returned and that no support was coming from the government. In contrast, some rifles, which had been organized by the only Sengwer councilor to protect the lives and property of the Sengwer, have been confiscated by the police, leaving the Sengwer unarmed to stand well equipped intruders. From that perspective it is not surprising that most Sengwer feel marginalized by the government.

### **Social organization**

Patrilineages led by the elders are the traditional form of self-organization. In contrast to other hunter-gatherer societies, the influence of the elders seems to be quite strong among the Sengwer and have also survived the advent of modern forms of self-organization. In their struggle for land and recognition the Sengwer-elites have created a good number of Community Based Organizations and NGOs among others the Sengwer Indigenous Development Project and the Hunter-Gatherer Forum of Kenya, Sengwer land allocation committee). These groups will be consulted during the stakeholder consultation period.

Those Sengwer who have managed to obtain legal access to land also received some form of representation at local and regional level. The Sengwer of the Talau location have a Sengwer sub-chief and also an elected councilor (who presently serves as assistant mayor) in the county council since 1971, while those Sengwer who remain in illegal (Embobut forest) or partly legal settlements (Kapolet forest), are not represented by one of their people, but by members of other ethnic groups in the area.

### **Ancestral Territories, Lands and Natural Resources**

The Sengwer tribal boundary covers the whole of what is today's Cherengany constituency, parts of Sabaot and Kwanza constituencies in Trans-Nzoia Sub-County, parts of Lugari Sub-County, parts of West and East Marakwet constituencies in Marakwet Sub-County, and parts of Kapenguria and Sogor constituencies in West Pokot Sub-County. Before the coming of the colonialists Sengwer lived in these areas from time immemorial and bordered the Nandi, Pokot (Suk), Marakwet, Uasin Gishu Maasai, Keiyo, Karamojong (Uganda), Kony, and Sebei (Uganda) communities (Kiptum 2006).

The Sengwer claim to have used the forest continuously since the advent of colonial government<sup>5</sup>. The Sengwer in West Pokot (Kapenguria and Kesogon) complain about Pokot cattle rustlers who steal their

cattle, kill their people and hide in the forests. The ancestral land of the Sengwer commences from Kiporoom River in Uasin Gishu Sub-County and extends along Kapsumbeywet River through Ziwa (Sirikwa) center, Moiben Posta and Kose hills in Uasin Gishu from here it goes down to join Moiben River. The boundary goes up Moiben River to the confluence of Ko'ngipsebe and Kamowo streams. It turns eastwards to cover areas of Maron Sub-location in Emboput location in Marakwet Sub-County.

Turning to the West it then goes to Kamolookon along Marakwet/West Pokot and Marakwet boundary. From here it drops to Sebit, Somor, then to Kongelai and up along Swom River. From Swom river to the confluence of Swom and Cheptenden River and from hereto the confluence of Cheptenden River and Moiben River where these two Rivers confluence with Kiboroom (Kiptum 2002). Today, the Sengwer believe that land the Cherenganyi Hills and the plains was their ancestral land before it was taken away to make room for White settlements (KARI 2005).

### **Alienation of Sengwer ancestral lands**

The alienation of Sengwer traditional territory has been going on systematically since the colonial times. The British colonial administrators alienated much of Sengwer land for European settlement. The Chairman of the Carter Land Commission (1932) was clear in stating that “there was no question of the Europeans’ land being handed back to the Sengwer”.

The Sengwer who occupied Soi (the plains of Kapchepkoilel) lost their land stretching from Kapkoi in Trans Nzoia through Naitiri to Turbo in Uasin Gishu to white settlers. Likewise, the territory from Turbo, through Ziwa (Sirikwa) all the way to Moiben was also lost to colonial settlement. Other communities which took over land belonging to the Sengwer include Marakwet, Keiyo, Pokot (Suk), Nandi, and recently other migrants such as Kikuyu, Akamba, Kisii and a few Turkana. The Marakwet for example settled in between the Moyben and the Ndungiserr and spread beyond over the Cherenganyi country. In 1938 and 1939, meetings were held at Lelan in Cherenganyi to consider the claims of the members of the Cherenganyi tribe to expel the Elgeyo who occupied the Cherenganyi location.

This claim was based on prior occupation by the Cherenganyi and bad behavior taught to the Cherenganyi by the young people of the Elgeyo. In 1939 there were 50 Elgeyo immigrants owning approximately 1,200 hectares of land belonging to the Sengwer. A large area of Sengwer land was converted into forests and thus denying access to their home, herbal medicine, food and peaceful coexistence with nature. In 1943 for example, some of the Cherenganyi ‘Dorobo’ once more attempted to return to Kapolet Forest reserve in spite of the police raid and severe penalties imposed on them. The then Assistant Conservator of forests instructed the Sub-County Commissioner to shift them once and for all from the forest into West Suk

The following are some of the Sengwer ancestral lands that were converted into forest:-

1. Kapkanyar 70,000 acres
2. Kipteber 57,000 acres
3. Kapolet 10,800 acres
4. Chemurgoi 9,800 acres
5. Sogotio 8,800 acres
6. Kerer 5,340 acres
7. Kaisingor 2,680 acres
8. Empoput 8,000 acres
9. Other Forests within Kitale Municipality.

Part of Sengwer ancestral land in Trans Nzoia was converted into a game park. It is now known as Saiwa Swamp National Park. This was and is still a home for wild animals. This area was one of the most prestigious hunting areas of the Sengwer people. Immediately, after independence most of the land left by the Europeans was given out as settlement schemes to groups and individuals while the remaining portion

was made Agricultural Development Cooperation (ADC) farms run by the government. After independence Sengwer territory continued to be lost to other groups such as the Marakwet, Kisii and Kikuyu.

### **Forced Assimilation and Loss of Identity**

Assimilation policies and lack of recognition of separate and distinct identities of hunter-gatherers in Kenya began in colonial days, when it was decided that they be absorbed into larger ethnic communities<sup>12</sup>. In 1932, Mr. A.C. Hoey giving evidence before the Kenya Land Commission had an idea “of amalgamating the Elgeyo and Marakwet and Cherenganyi (Sengwer) into one tribe” without the right to identity, right to profess and enjoy their cultural values and traditions. While other communities were given native reserves, Sengwer community was not considered. The colonial administration also promoted livestock keeping and potato planting for purposes of transforming the hunter/gatherer livelihood systems of the Sengwer and in so doing undermined Sengwer culture, language, customs and laws. This strategy was also aimed at getting the Sengwer out of the forest. The post-independence government also failed to provide for a classification of hunter-gatherers as separate groups, and by imposing a ban on hunting in 1970s, the independent government imposed more changes of the livelihoods of the Sengwer.

### **Land tenure among the Sengwer (past and present)**

Discussions with the community revealed that only about 70 per cent of them have partial ownership of land, having been issued with allotment letters by the government. The area around Kapolet forest is still gazetted as forest land not available for settlement. Those in Emboput forest are literally squatters with no papers which exposes them to regular evictions. Sengwer resettlement along the Kapolet and the Emboput forests face more problems associated with land ownership. The Sengwer in Talau location in Kapenguria (West Pokot Sub-County) are relatively better off, in that they have ownership documents and have relatively made more investment on their land (KARI 2005).

### **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. The Sengwer can be characterized thus:

- The incomes of indigenous peoples are only about one third of those of other rural Kenyan households.
- Most of them are landless, and lack legal access to natural resources or other assets for income generation.
- They are ill equipped to defend even the informal, de facto access that they retain to the remnants of their ‘homelands’ from encroachment or restriction by outside authorities and interests
- They do not have the institutional capacity or degree of empowerment that will enable them to benefit from reform processes in the forestry, water and lands sectors which are intended to give more say to communities in the management of resources that are central to this project.
- Few indigenous people hold positions in government, even at junior levels (such as chiefs and sub-chiefs).
- Face further physical and economic displacements from their lands and forests traditionally utilized by them as a source of livelihood and basis for their cultural and social survival;
- Lose all legal access to natural resources, which are an important source of livelihood and basis for their cultural and social system;

- Continue to be harassed by cattle rustlers;
- Become even more marginalized in the society and become alienated from national life;
- Receive less support from governmental services;
- Have less capacities to defend their legal rights;
- Become or remain dependent on other ethnic groups;
- Lose their cultural and social identity;
- They have little representation even as local government councilors, let alone at higher political levels, and are thus administered and represented by members of non-governmental groups (NGOs)

### 13.9.2 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 e.t.c. Okiek, 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 Sub-County.

Most publications (Ogiek.org etc.) and most NGOs assume that the hunter-gatherers at Mt. Elgon belong to the Ogiek and that they are not – as they claim - an independent hunter-gatherer group. Their argument is not very convincing as they address themselves as Dorobo, which is – as said before - the Maa word for people without cattle, while they share most cultural practices with the Ogiek. Precise demographic figures are not available as the last national census did not count the Ogiek as an independent group.

#### History

Knowledge of Ogiek history before 1900 is limited. Oral history traces back the origin to the Kiplombe hills near Siswek. It is said that all Ogiek have lived there before a famine forced some of them to migrate to the Mau and Tindiret forests. Before the advent of the colonialists, they were already involved in the local and regional trading networks, bartering honey and meat for agricultural products.

Colonial administration affected Ogiek groups in different ways. Between the 1920s and 1940s, many Ogiek were displaced from their lands by European farmers, while others – especially deeper in the forests – received at least full usufructuary rights for their lands, which were transformed into forest reserves. Initially they had limited direct government interaction, but felt colonial policies through the ever increasing encroachment of their neighbours, who were forced into the forests by the government to create space for the farms in the plains. Due to the reduction of land and increasing hunting pressure, the Ogiek gradually diversified their economy, adding agriculture and/or herding to the traditional hunter-gatherer lifestyle.

#### 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. Traditionally the Ogiek hunt with dogs, bows and arrows, spears, clubs and poison. Traditionally they were going for buffalos, elephants, duikers, hyraxes, bongos, and giant forest hogs. Now that hunting is illegal, they only hunt with small traps around their garden farms resulting in some meat from monkeys and other smaller game.

Starting in the 1920ies 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).

The economic activities are organized by gender groups: Men traditionally make beehives; collect honey, hunt and these days herd cattle and/or clear land to plant maize and beans. Women's work traditionally included building the houses under thick canopies (*Sanet*) and the making of leather bags, straps and clothing. Today they concentrate on the planting and harvesting of crops, the processing and cooking of food, the maintaining of firewood and water supplies and the childcare.

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 channelled 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.

Those Ogiek that managed to obtain group-ranch titles, started in the 80ies and 90ies to divide the land into individual plots following the example of their neighbours and supported by governmental services. Settlement patterns shifted again as people moved to live on their own land, but it also attracted many Ogiek to lease or sell their lands to other ethnic groups. Many of these land sales were technically illegal as they were made before group-ranches were legally divided and many sales were undertaken before Ogiek learned about the market value of their land and at ridiculously low prices. Today the majority of the Ogiek have still no legal access to land or any source of livelihood and live a life at the mercy of their non-Ogiek neighbours and local and national governments in which they are not represented (Huntingford 1929, 1954; Blackburn 1976, 1982; Kratz 1981, 1994; Marshall 1994; Tuweit 2004).

### **Social organization**

Ogiek live in local groups dispersed throughout the highlands, typically near one or more other Ogiek groups and adjacent to more populous ethnic groups. In quite a good number of cases Ogiek speak their neighbours' language better than their own. Ogiek groups thus have distinctive histories of interaction with one another, with their neighbours, and with local government administration. Modes of social organization vary among Ogiek groups, but in general one can say that patrilineages are central in land holding and residence, legal matters, inheritance, and marriage arrangement, while matrilineal and affine relations are important for ceremonial occasions, in some residential and work groups, and in emotional terms. Further



units are the age-sets, which create relationships among members, crosscutting relations defined by lineage and clan. Women have no separate age-sets, but become associated with male age-sets through relatives. Political and legal matters are discussed in meetings of men.

Depending on the issue, gatherings involve men from one lineage, several lineages, or a large neighborhood. All adult men have the right to attend and speak at meetings, though older men often speak more extensively. This changes of course in meetings with officials as most elders don't speak Swahili or English. Women were traditionally excluded from formal councils, but this traditional setting is no longer ruling as government officials and external visitors demand and invite the presence of all gender groups (Huntingford 1929, 1954; Blackburn 1976, 1982; Kratz 1981, 1994; Marshall 1994).

### 13.9.3 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. **Turkana tribe** is the second largest **pastoral community** in Kenya. 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. However, recurring drought in Turkana Sub-County adversely affect the nomadic livelihood. 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 laborer), farming (subsistence and commercial), and the gathering and selling of wild products (e.g. gum arabic, firewood, or medicinal plants). The sale of livestock and milk products at the herd gate are not included in this definition, nor are herd diversification strategies that instigate a mix of animal species to cope with drought etc. Over recent years, Turkanas have also had to employ other supportive activities to supplement pastoralism, which has proved to be ineffective in meeting all their economic and social needs. Key areas of activity include sedentary agriculture, particularly along the Turkwel River, where settled farmers and agro-pastoralists grow maize, sorghum, sukuma, oranges, mangoes, bananas and vegetables.

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. In addition, there is now more emphasis on the processing and sale of skins and hides

**Cultural Profile:** The biggest events for life of Turkana are marriage and child birth. Other cultural rituals such as circumcision are completed with little ceremony. The marriage however, may be in process for as long as three years. Subsequent to the payment of bride price, the wife to be is brought into the home of her

husband. The wedding ceremony is not performed until after at least one healthy child is weaned. Houses are constructed over a wooden framework of domed saplings on which fronds of the Doum Palm tree *Hyphaene thebaica*, hides or skins, are thatched and lashed on. The house is large enough to house a family of six. Usually during the wet season they are elongated and covered with cow dung. Animals are kept in a brush wood pen. Due to changes in the climatic conditions most Turkana have started changing from the traditional method of herding cattle to agro-pastoralism. Traditionally, men and women both wear wraps made of rectangular woven materials and animal skins. Today these cloths are normally purchased, having been manufactured in Nairobi or elsewhere in Kenya. Often men wear their wraps similar to tunics, with one end connected with the other end over the right shoulder, and carry wrist knives made of steel and goat hide. Men also carry stools (known as ekicholong) and will use these for simple chairs rather than sitting on the hot midday sand. These stools also double as headrests, keeping one's head elevated from the sand, and protecting any ceremonial head decorations from being damaged.

It is also not uncommon for men to carry several staves; one is used for walking and balance when carrying loads; the other, usually slimmer and longer, is used to prod livestock during herding activities. Women will customarily wear necklaces, and will shave their hair completely which often has beads attached to the loose ends of hair. Men wear their hair shaved. Women wear two pieces of cloth, one being wrapped around the waist while the other covers the top. Traditionally leather wraps covered with ostrich egg shell beads were the norm for women's undergarments, though these are now uncommon in many areas. The Turkana people have elaborate clothing and adornment styles. Clothing is used to distinguish between age groups, development stages, occasions and status of individuals or groups in the Turkana community.

#### 13.9.4 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, Samburu and Turkana tribes. They (Rendille) 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. When migrating to new pastures, the camels are also used to carry all the family possessions in a specially designed saddle. The Rendille people living in the southern and less dry part of their region have had a good relationship with their Samburu neighbors where intermarriage with the Samburu has led to the emergence of a hybrid culture. Their ceremonies are similar to the Old Testament Jewish traditions, providing a basis for discussion of Christ's sacrifice and an opportune introduction to personal salvation.

Traditionally the Rendille are a very religious people, believing in one God, an omnipresent creator and provider who answers prayer and cares for the poor. They practice many magical rituals, involving their camels or sheep. For example, the way a certain bull camel approaches a proposed new settlement area is taken as a good or bad omen. A propitious camel may be placed outside the camp facing the direction of an expected enemy attack in order to prevent the attack. Age-sets are the main component of Rendille society.

The oral history of this Cushitic tribe indicates they are of Jewish descent. They traveled through the Suez Canal through Ethiopia to their present homeland. They descended through the Cushitic family lines with the Somali people. When the Somali people were traveling from the Suez Canal through Ethiopia the Somali people chose to go toward Somalia for good pastures. The Rendille people refused to go with them and separated to their present homeland around Marsabit.

They had rejected the land of the Somali's and were thereafter called Rertit. The Somalis consider them rejected people. Their name "Rendille" is a colonial misinterpretation of the word "rertit", which means separated, refused or rejected in the Somali and Rendille languages. The Rendille occupy an area in Northeastern Province of Kenya from the Merille River and Serolivi in the South to Loyangalani in the North from Marsabit and Merti in the East to Lontolio in the West. The climate of their homeland is semi arid. The Rendille people speak Rendille, which is very close to Somali but is spoken more slowly. Many Rendille also speak Samburu (the tribe neighboring them to the South). Those of the Rendille language are called Rendille and those who speak Samburu are called Arielle Rendille.

There are about eight or nine sub clans including the Urowen, Dispahai, Rongumo, Lukumai (Nahgan), Tupsha, Garteilan, Matarbah, Otolu, and Saale with an estimated population of 63,000.

**Location in the Country:** Eastern Province, Marsabit Sub-County, between Lake Turkana and Marsabit Mt. 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. Their nomadic lifestyle is 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. Elders often sanction the raids blessing raiders before they set off. During draught some take little lambs to the raga or laga (dry river bed) and sacrifice them to god asking for rain. Others go to Mount Moile where the women sing and pour milk and men offer sacrifices of goats to the gods and ask for rain

**Cultural Profile:** In terms of creed, many Rendille practice a traditional religion centered on the worship of Waaq/Wakh. In the related Oromo culture, Waaq denotes the single god of the early pre-Abrahamic, montheistic faith believed to have been adhered to by Cushitic groups. Some Rendille have also adopted Islam or Christianity. Initiation rituals take place precisely every seven or fourteen years, creating a series of generational age-sets, each with its own role in society. In the common Kenyan practice, the first initiation is circumcision. Men have many stages of warrior-hood, but women are simply married or unmarried.

Traditional dress includes beautiful beads worn by the women around the neck, wrists, and ankles. Children can often be seen without clothing. The moran wears colorful shukas (clothe wrapped around their bodies) and colors their hair with a mud/mineral mixture. Men often wear a wrapped cloth rather than trousers. Western clothing is becoming more popular, but more among the men than the women.

Ancestral spirits of deceased men must be appeased. Among some of the Rendille, after a man dies, the manyatta will be burned, a sheep slaughtered, and the family must move to another place. Rites of passage include the young men (moran) living in the bush, learning traditional skills, and undergoing traditional circumcision. Men marry after circumcision and the time of becoming a moran is as young as about eighteen to twenty years.

The Rendille are organized into an age grade system of patrilineal lineage groups (keiya), which are subsumed under fifteen clans (goup). Of those, only nine are considered authentic Rendille. These Northern Rendille or Rendille proper are consequently the only ones that are included in the traditional Rendille moiety (belesi). The remaining six clans that are excluded from the moiety consist of mixed individuals. Five of those clans are of Rendille (Cushitic) and Samburu (Nilotic) descent. Collectively, the latter hybrid groups are referred to as the Ariaal or Southern Rendille.

### 13.9.5 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. Population: 3,000

Location in the Country: Samburu Sub-County, Lake Baringo south and east shores; 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. As a result leading to mass migration their migration in search of pastures and water for their animals. 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.

For the Gabra, to live in balance with a trying environment is to protect land, animal, and fellow Gabra. Thus, they practice certain food and plant taboos; preserve full-grown trees called "korma" (bulls), and revere pregnant women and pregnant animals. As resource managers, they migrate to the highlands during the rainy season to allow the dry season pasture to replenish its water resources. Perhaps most symbolic of the Gabra's identity is the proverb: *"a poor man shames us all."* Since mutual support is imperative for their survival as nomads, no Gabra may be allowed to go hungry, go without animals, or be refused hospitality or assistance. A person who refuses to help others is labeled "al baku," a stigma that stays affixed to the family for generations. The practice of camel lending exemplifies this support system.

The Gabra have a mixed-livestock economy consisting of camels, cattle, sheep, and goats. It is almost entirely based on reciprocity. Most central to the way of life and economy is the camel. When a Gabra comes into possession of a camel, it's named to ensure the Gabra's right of ownership. The camel will be loaned or given to other Gabra in need, and a future act of reciprocity will be expected. In this sense, camels provide great security; they also provide most of the meat and the dry season's supply of milk. They also transport goods and water from foraging areas to surrounding villages. Selling camels and their by-products to outsiders is taboo. Villages and camps are outside foraging grounds for several reasons: camels are unpredictable, don't forage near their own dung, and destroy the vegetation within nine miles.

The Gabra split their camps into two sites. The settlement - "i'ola" - ranges from three to twenty-five huts. Satellite camps - "fora" - are smaller and far from the settlement. In fora, young men watch over part of the clan's herds to prevent pastures from being consumed too quickly. Splitting the herd also protects it from thieves, disease, or other disaster.

Cultural Profile: Since many young Gabra men are separated from the main camp for long periods of time, marriages are often postponed. In fact, 50 percent of Gabra women are unmarried until well into their thirties. This, along with the Gabra's postpartum sex taboo, controls the population. Living in the fora also excludes young men from the political and social activities of the main camp. Young men of herding age (19-33) qualify as "pre-adults" in men's five-stage life cycle. The stages are (1) children; (2) men aged 19-33; (3) male political elders, a status achieved when a man marries; (4) spiritual elders; and (5) retired elders. These stages, ideally separated by eight years, are usually initiated with a long pilgrimage to the

shrines of mythical founders. Gabra life is labor-intensive, so everyone has specific tasks. Although the men decide when to migrate, women pack and unpack the camp site before and after migration. In fact, women "own" the huts and have complete authority over them. From age 7, children work six to seven hours a day, mainly tending the animals, while grandmothers largely rear and educate the young. Men are active in three levels of political and judicial administration. The camp is run by its headman.

The Sub-County is comprised of a number of camps, whose council of men decides on stock, organization, raids, defense, disputes, and assistance for victims of stock epidemics and raids. The five phratries, the largest regional group, have assemblies that serve as a mobile judicial, administrative, and spiritual hubs. Women's political contributions are subtle. Although they refer to themselves as children in regard to the political process, and although men demean the contributions women make, men often defer to women in certain matters.

The Gabra's ornamentation and physical culture is similar to many other Cushitic-speaking camel herders. The latter include the Rendille and Somali, all of whom the Gabra describe as warra dassee ("people of the mat"), in reference to the mat-covered, portable tents, which accompany their nomadic lifestyle. The Borana, on the other hand, are described by the Gabra as warra buyyoo ("people of the grass"), in reference to the grass huts that characterize their sedentary lifestyle. Gabra homes, called mandasse, are light, dome-shaped tents made of acacia roots, and covered with sisal grass mats, textiles, and camel hides. Each mandasse is divided into four quarters; a public quadrant each for male visitors, female visitors, and a private quadrant each for parents and children. A mandasse can be completely disassembled and converted into a camel-carried palanquin in which children and the elderly travel. Gabra live in small villages, or ola made up of several mandasse. Ola move short distances as many as twelve times per year, in search of better grazing for the camels and other animals the Gabra rely on.

### **13.9.6 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 Eji iyo 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 Qalaafo (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 marginalisation and discrimination based on ethnicity and caste; poor access to economic/employment opportunities. Ajuran population travel great distances in search of food, pasture and water especially during times of stress as a key coping mechanism. 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. Of importance in the understanding of vulnerability are the changes in displacement trends.

**Cultural Profile:** The Ajuran clan is divided into seven (7) sub-clans, which are further divided into sections and sub-sections. Currently there are only two sub-clans the Walmega and Wakhle sub-clans that greatly live in Wajir County of North Eastern Region, Kenya. They also partly live in lower Jubba in Somalia and Region five (5) of Ethiopia. Some of those who settled in present day Kenya eventually adopted the language and customs of their neighbours and hosts, the Borana. 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 Wakhle and Garren sections. 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 learnt the language as they assimilated with Boranas during the great migration.

### **13.9.7 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. Population: 684,000

**Location in the Country:** 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.

Cultural Profile: In spite of their reputation as fierce warriors, Maasai culture revolves around their cattle. One of their spiritual beliefs is that their rain god Ngai gave all cattle to the Maasai people, and therefore anyone else who possesses cattle must have stolen them from the Maasai. This has led to some fatal altercations with other tribes of the regions over the centuries when they attempt to reclaim their "property". Despite the growth of modern civilization, the Maasai have largely managed to maintain their traditional ways, although this becomes more challenging each year. Circumcision is performed on both sexes, with the elder men circumcising the teenage boys (who are not permitted to make a noise during the ceremony), and the elder women circumcising the teenage girls (for whom crying is permitted). Attempts by the Kenyan government to stamp out female circumcision have failed, primarily due to the fact that it is the Maasai women who defend the practice, not the men.

Natural Environment: The ability to graze their cattle over large territories, for example, has diminished considerably in recent years, due to increased urbanisation and the declaration of the Maasai Mara and Serengeti game reserves, which was all formerly Maasai grazing land.

### *13.9.8 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. Population: 34,000

Location in the Country: 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.

The Ilchamus fishing communities, on four of the seven islands of Lake Baringo, has a total population of around 800 people, are even more disfavoured. Due to the absence of significant rains and irrigation systems, they don't cultivate anything and the grazing areas on the island sustain only very limited numbers of livestock. The only source of income is fishing and for about ten people on the main island (Ol Kokwai), jobs in the Baringo island camp. Income from fishing (Tilapia, Catfish and Mudfish) has reduced significantly over the last years as industrial fishing carried out in 70s and 80s from the mainland and by migrants from other areas have significantly reduced the stocks. As they are unable to stop fishing to allow the stock to recover, even their very limited fishing reduces the stocks further. The ever reducing stocks are associated by the villagers to environmental degrading (sedimentation from erosion along the contributors) and overexploitation in the 70s and early 80s, and on the other hand to the increasing population of crocodiles, which are totally protected and are said to affect not only the fish stocks, but also cause significant losses of livestock and even human lives.

The fishing itself is carried out by the men, while the women smoke and market the fish on the mainland. Revenues are small and hardly able to provide enough cash to buy maize etc. to feed the islanders. Famine seems to be a common problem and is mostly covered by subsidies from the owner of the Lake Baringo island camp and other white families, who have houses on the islands. While this secures the survival of the Ilchamus during famines, it also increases their dependency and marginalisation. Agriculture is carried out at very small scale and nearly entirely for subsistence due to limited rainfalls in the area and due to the fact that the Ilchamus have been displaced from their former land in which they had established small scale irrigation schemes. Two modern irrigation schemes (with small dams) at the Perkerra and Molo Rivers have enhanced the situation and enable the families involved to produce enough to even commerce parts of it. The main products cultivated are maize, beans and millet.

**Cultural Profile:** Traditionally the Ilchamus don't seem to have any central authority, but are ruled by the elders of the patrilineages. The Ilchamus claim that structures above the level of the clan were first introduced in the 60s in preparation of independence. The first sub-chief was elected around 1970. Presently, Ilchamus chiefs and councillors have been elected in all six locations where they constitute the majority, but in none where they are in the minority. Because of their being considered as a Maasai subgroup and due to that as nomadic herders, their relation to and dependence on land for their small scale agriculture have not been considered when "developing" the area. The Ilchamus have been moved around by all kinds of people and for all kinds of activities and interests. The last major displacement took place in the 40s and 50s, when significant Ilchamus populations were moved away for the Perkerra Irrigation scheme near Marigat.

#### **13.9.9 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. Population: 8,000

**Location in the Country:** 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.

The Aweer are also best known for its unusual practice of using semi-domesticated birds to find honey, with whistling signals. Their remote territory is heavily wooded and the tribes are traditionally hunter-gathers, rather than the typical Kenyan cattle herders. They live off forest resources and farming in Lamu. They are the smallest of the four indigenous groups in the area. In recent times though, their livelihoods have been encroached and partially destroyed. They depend on the forest not only for the economic but for their spiritual, economic and political survival.



Cultural Profile: Although the majority of the Aweer settled in villages located in this corridor between the two reserves, some established themselves in nearby Bajuni villages. Today, the Aweer have adopted slash and burn agriculture as their main source of livelihoods, but they continue to engage in many of their traditional practices, utilizing the nearby forests for the collection of wild honey, plants for traditional medicine and building materials, and bush meat to supplement their diets. With laws banning the hunting of all wildlife in Kenya, the Aweer's traditional way of life is in danger. The Aweer are mostly Muslim, like other coastal tribes.

### **13.9.10 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. About half of the homestead is the social center for the Pokot. Here a man lives with his wives, each having their own hut. All members of the family live here and the stock is corralled here at night. The man of the family rules the homestead, telling the others what duties they are to perform. Population: 662,000

Location in the Country: 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, Pokoot 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 Pokoot 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.

Cultural Profile: The Pokot people are made up of two main groups: the "cattle people," who are herdsmen who live on the plains, and the "grain people," farmers who live on the mountainsides. The lives of the herdsmen are harsher than those of their farming neighbors, but they have more wealth, because cattle are considered to be valuable by both groups. In addition to cattle, both groups have some goats, sheep and a few donkeys or camels. The Pokot are proud of their culture. They are one of the last groups in Kenya that have refused to be influenced by modern ways. In Pokot cosmology, the universe has two realms, the above and the below. The above, remote and unknowable, is the abode of the most powerful deities—Tororot, Asis (sun), and llat (rain); the below is the abode of humans, animals, and plants. Men and women are considered responsible for the peace and prosperity of the realm that they inhabit, but they must rely upon divine vitality and knowledge to achieve and maintain these conditions.

The Pokot communicate with their deities through prayer and sacrifice: Tororot is said to listen to his creatures below, Asis to witness their activities, and llat to serve as a messenger between the two realms. Deities, in turn, communicate with humans, warning and rebuking them about their misconduct. Christianity has reshaped Pokot cosmology, primarily by reducing the number of deities, while augmenting

their attributes. The divine messenger Ilat has a human counterpart called a werkoyon (prophet), who foresees disaster and recommends expiation, usually animal sacrifice, to alleviate it. A werkoyon may be either male or female; his or her ability to foresee and to advise is considered a divinely given gift, to be used on behalf of all Pokot. The main ceremonies mark transitions in the social lives of individuals and communities. Especially notable among these are the cleansing of a couple expecting their first child; the cleansing of newborn infants and their mothers; the cleansing of twins and other children who are born under unusual circumstances; male and female initiation; marriage; sapana, a coming-of-age ceremony for men; and summer-solstice, harvest, and healing

### **13.9.11 Endorois**

Endorois community is a minority community that was living adjacent to Lake Baringo. 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 present 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 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 Monchongoi 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.

Although the High Court recognized that Lake Bogoria had been Trust Land for the Endorois, it stated that the Endorois had effectively lost any legal claim as a result of the designation of the land as a Game Reserve in 1973 and in 1974. It concluded that the money given in 1986 to 170 families for the cost of relocating represented the fulfillment of any duty owed by the authorities towards the Endorois for the loss of their

ancestral land. Since then, Endorois have not owned until recently, when African Human Rights courts passed judgment to force Government to compensate them.

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 bee-keeping 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. Population: 20,000

Location: Around the environs of Lake Baringo.

Livelihood: Dependant 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. Land, they claim, belongs to the community and not the individual and is essential to the preservation and survival as a traditional people. Endorois health, livelihood, religion and culture are all intimately connected with their traditional land, as grazing lands, sacred religious sites and plants used for traditional medicine are all situated around the shores of Lake Bogoria. At present the Endorois live in a number of locations on the periphery of the Reserve – which the Endorois are not only being forced from fertile lands to semi-arid areas, but have also been divided as a community and displaced from their traditional and ancestral lands. Their access to the Lake Bogoria region, is a right for the community and the Government of Kenya continues to deny the community effective participation in decisions affecting their own land, in violation of their right to development. This has jeopardized the community's pastoral enterprise and imperiled its cultural integrity. They also claim that 30 years after the evictions began; the Endorois still do not have full and fair compensation for the loss of their land and their rights on to it. They further allege that the process of evicting them from their traditional land not only violates Endorois community property rights, but spiritual, cultural and economic ties to the land are severed.

#### **13.9.12 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 (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 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 the Boni inhabited areas as communally theirs. However, with the gazettelement of all the forest by the government this has become a source of conflict.

#### **13.9.13 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. The 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, Mandera 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.